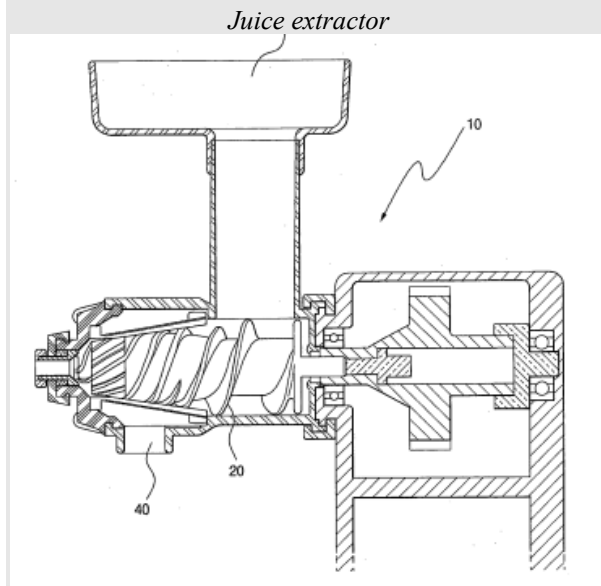


UPC CFI, Local Division Mannheim, 11 March 2025, Hurom v NUC - I



PATENT LAW – PROCEDURAL LAW

Direct patent infringement within the territory of the UPCA member states by acts outside that territory (Article 25 UPCA)

- acts in the meaning of Art. 25 UPCA also encompass acts which make the infringement possible and support it, at least when such acts give the potential perpetrator control over the infringement.

In this regard, [Art. 25 UPCA](#) and consequently [Art. 63 et seqq. UPCA](#) do not call for own acts within the territory of the UPCA member states in order to establish an infringement committed as perpetrator. Depending on the circumstances of the individual case, acts in the meaning of [Art. 25 UPCA](#) also encompass acts which make the infringement possible and support it. This is true at least for such acts which give the potential perpetrator control over the infringement. Otherwise, the protection would fall short of the protection by traditional national law without any indication that the UPCA intends to provide less protection in itself. At least under the circumstances of the present case, where a defendant hands over the contested embodiments to its distributors outside the territory of the UPCA member states with the intention of distributing them within said territory, these supporting acts give the defendant control over the infringement and thus constitute own infringing acts committed by the defendant as perpetrator.

- infringing acts with regard to France and Germany respectively do not suffice to extend the remedies sought to other UPCA member state. Art. 34 UPCA is no provision of substantive law.

112. However, the fact that the infringing acts also relate to Denmark, Italy and The Netherlands has to be

assumed because the Defendant did not specifically contest corresponding infringing acts ([R. 171.2 RoP](#)).

JURISDICTION

No jurisdiction regarding the EU non-member state Turkey

- no single fact brought forward or apparent that may constitute an act committed within the territory of the UPCA member states and relating to a possible infringement in Turkey (Article 7(3) Brussels)

No preliminary objection required to challenge jurisdiction:

- suffices that the defendant raises the objection against the international jurisprudence in its first defence. Art. 26 Brussels Ia Reg. prevails over R. 19.7 RoP due to the primacy of Union Law

UPC has jurisdiction

- for acts committed before the UPCA's entry into force on 1 June 2023 (cf. [Court of Appeal, Order of 16 January 2025, UPC CoA 30/2024](#)).

Considering the lack of a provision determining a deviating temporal scope, this finding already follows from the fact that [Art. 3 \(c\) UPCA](#) establishes the jurisdiction for any European patent, which has not yet elapsed at the date of the entry into force of the UPCA.

APPLICABLE LAW

The determination of the substantive law applicable to an alleged infringement

- is to be strictly distinguished from the jurisdiction to hear the case

When determining the applicable substantive law

- the fundamental principles governing retroactivity being enshrined and recognised in European Law and international law have to be respected.

With regard to traditional European bundle patents:

- the substantive national laws of the UPCA member states applies to acts committed before the entry into force of the UPCA on 1 June 2023
- the substantive law as laid down in the UPCA applies to acts committed after the entry into force of the UPCA and to ongoing acts started before the entry into force of the UPCA and continued after the entry into force on 1 June 2023
- An infringing act is ongoing if the infringer continues its infringing behaviour although he could have stopped the infringement in the light of the entry into force of the new regime on 1 June 2023
- However, in order to avoid potential hardship, the party concerned may rely on the provisions of the respective national law in force prior to the entry into force of the UPCA with regard to acts of past use which lie before 1 June 2023. Thus, a defendant may defend itself by pointing to advantageous provisions of

the respective national law as well as a claimant may base its claims on provisions of national law being favourable to its position compared to the provisions of the UPCA and the RoP. In both cases, the party which advances the argument based on national law has to elaborate on such rules of national law and set out with a sufficient degree of substantiation why that rule of national law supports its argument.

- [It is not for the UPC to determine and analyse the legal arguments based on various national laws ex officio.](#)

PROCEDURAL LAW

Unsuccessful rebuttal of presumption of ownership of the registered proprietor (R. 8.5 RoP).

- [No doubt that the Transfer Agreement 2018 was validly concluded.](#)

58. Apart from that, the Claimant filed the statement of claim with the obvious support of the inventor on the basis that the patent in suit was transferred to the Claimant, and both stick to it during the proceedings at hand. Even if the Transfer Agreement 2018 (exhibit P23) were originally invalid, these facts would constitute an implicit transfer of the patent in suit on the instant facts.

Right to information of [Article 67 UPCA](#) and [Article 68 UPCA](#) may encompass time periods which resided before the entry into force of the UPCA

- [the question of intertemporal applicability of a right to information and the question of the scope of the period, for which information has to be provided, have to be distinguished.](#)

By its nature, rendering information concerns acts of past use and aims at providing the infringed party with sufficient details to be able to protect its patent rights. As far as such information serves as a basis to calculate damages it is furthermore imminent to the right to information that details may have to be laid open which may not be used to calculate damages in subsequent proceedings as it may turn out that the details relate to acts which do not constitute an infringement of patent rights or do not result in damages. However it is not for the infringer to predetermine which acts are to be regarded as infringing or resulting in damages or not. Therefore, information may have to be rendered in consequence of the infringement found which after evaluation by the claimant and/or the court do not relate to such infringing acts and may not be used to calculate damages. E.g. it may not be for the infringer to finally assess, if certain items offered or delivered, which qualify as means relating to an essential element of the invention, were used for a subsequent direct infringement by arguing they were not and therefore not to render the respective information. The same holds true for the information to be rendered according to [Art. 67 UPCA](#) which may be used in subsequent proceedings in which damages are being determined ([R. 125](#) et seqq RoP).

Source: [Unified Patent Court](#)

Same decision of same date between same parties and patent in re [UPC CFI 159/2024](#)

**UPC Court of First Instance,
Local Division Mannheim, 11 March 2025**

(Tochtermann, Böttcher, Perrotti)

UPC_CFI_162/2024

Decision

of the Court of First Instance of the Unified Patent Court
Local Division Mannheim
Delivered on 11 March 2025

concerning [EP 2 028 981](#)

HEADNOTES:

1. [Art. 26 Brussels Ia Reg.](#) prevails over [R. 19.7 RoP](#) due to the primacy of Union Law.
2. The determination of the substantive law applicable to an alleged infringement is to be strictly distinguished from the jurisdiction to hear the case.
3. When determining the applicable substantive law, the fundamental principles governing retroactivity being enshrined and recognised in European Law and international law have to be respected.
4. Considering these principle, with regard to the determination whether substantive law as laid down in the UPCA or substantive national laws of the UPCA member states applies to acts allegedly infringing traditional European bundle patents, the following applies:
 - a) to acts committed after the entry into force of the UPCA, the substantive law as laid down in the UPCA applies;
 - b) to acts committed before the entry into force of the UPCA, the substantive national laws apply;
 - c) to ongoing acts started before the entry into force of the UPCA and continued after the entry into force on 1 June 2023, the substantive law as laid down in the UPCA applies.
5. When assessing whether infringing acts are in that sense “ongoing” and justify the application of the UPCA as a general rule, an overly formalistic approach which runs counter to the aims of the Agreement must not be applied. What is decisive is to categorize such acts not in a formalistic manner which only takes into account, if, when viewed from a pure natural perspective, such acts can be referred to as separable acts, but which looks at the scenario from a normative and therefore evaluative perspective. Before this backdrop it is justified to apply the UPCA as a harmonized set of national law of the contracting member states of the UPCA to ongoing acts, if the infringer continues its infringing behaviour although he could have stopped the infringement in the light of the entry into force of the new regime on 1 June 2023. In that case, however, each party reserves the right to rely on provisions of the national laws for acts before 1 June 2023 being favourable to its position compared to the provisions of the UPCA and the RoP. The party which advances the argument based on national law has to elaborate on such rules of national law and set out with a sufficient degree of substantiation why that rule of national law supports its argument.

6. With regard to a right to information, the question of intertemporal applicability and the question of the scope of the period, for which information has to be provided, have to be distinguished. The rights to information provided by the UPCA as laid down in particular in [Art. 67 UPCA](#) and [Art. 68 \(3\) \(a\) \(b\) UPCA](#) in conjunction with [R. 191 sentence 1 alternative 2 RoP](#) are to be interpreted to encompass time periods which resided before the entry into force of the UPCA.

KEYWORDS:

Infringement action; applicable substantive law

CLAIMANT

Hurom Co., Ltd.

- 80-60, Golden root-ro - 62184 - Juchon-myeon,

Gimhae-si, Gyeongsangnam-do - KR

Represented by Klaus Haft

DEFENDANTS/APPLICANTS

1) NUC Electronics Co. Ltd.

- 280, Nowon-ro - 41548 - Buk-gu, Daegu - KR

Represented by Martin Momtschilow

PATENT AT ISSUE:

European Patent Nr. [EP 2 028 981](#)

PANEL/DEVISION:

Panel of the Local Division in Mannheim

DECIDING JUDGES:

This decision is delivered by the presiding judge Tochtermann, the legally qualified judge Böttcher as judge-rapporteur and the legally qualified judge Perrotti.

LANGUAGE OF PROCEEDINGS: English

SUBJECT-MATTER OF THE PROCEEDINGS:

Patent infringement action

DATE OF THE ORAL HEARING: 28 January 2025

SUMMARY OF FACTS

1. The Claimant is suing the Defendant for the alleged infringement of the [EP 2 028 981 B1](#) which relates to a juice extractor (hereinafter: the patent-in-suit). The Claimant, a manufacturer of juicers and blenders, is the registered proprietor of the national part of the patent in Denmark since 18 September 2019, in Germany since 18 September 2019 and in the Netherlands since 30 March 2020. The French patent register contains the entry “02/01/2020 - N°0232224 - TO: Transmission totale de propriété (BOPI 2020-07)”, the Italian patent register the entry “Data trascrizione 11/02/2020” and “Data esito 05/05/2020”. The patent-in-suit was originally filed by and granted to the inventor Mr. Kim, Young-Ki and is in force in the aforementioned countries. Claim 1 of the patent in suit reads as follows in the language of the patent:

A juice extractor comprising:

a cover (100) having an inlet port formed on one side of an upper part thereof and a rotary shaft hole (120) formed in the center of an inner part thereof;

a housing (500) installed on a lower part of the cover, and having a guide jaw formed on a bottom of the housing, a draff outlet port (570) and a juice outlet port (560) formed apart from each other on a lower end part of the housing, a waterproof cylinder having a through hole and formed in the center of the lower end part of the housing, and a pressure discharge passage formed around a lower part of the waterproof cylinder;

a screw (200) having an upper rotary shaft formed on an upper part of the screw (200) to be rotatably inserted into the rotary shaft hole, a plurality of screw spirals formed on an outer surface of the screw, an inner ring formed at a lower end of the screw to project downward and having a plurality of screw gears rotatably inserted into the pressure discharge passage, a lower space formed inside the inner ring to receive the waterproof cylinder therein, and a lower rotary shaft formed in the center of a lower part of the screw and a polygonal shaft hole formed thereon;

a mesh drum insertable into the guide jaw of the housing, the mesh drum (300) having a mesh structure formed on an outer wall of the mesh drum (300) to discharge juice to the juice outlet port, and a plurality of wall blades longitudinally formed on an inner surface of the mesh drum;

a rotary brush installed (400) between the housing and the mesh drum (300) to be rotated, and having a brush holder in which a brush for continuously sweeping the mesh drum and the housing is installed; and a drive unit having (600) a polygonal shaft that is inserted into the polygonal shaft hole through the through hole of the waterproof cylinder, and rotating the screw at (200) a low speed;

wherein the housing accommodating the screw is longitudinally fixed to an upper side of the drive unit (600) so as to press, grind and extract juice from materials put into the inlet port and to discharge the draff.

2. To Claimant’s mind, slow juicers marketed by the Defendant under the name “*AUTO10*” (“contested embodiment”) are falling within the scope of the patent-in-suit.

3. The Defendant is a Korean company specializing in the manufacturing and sale of kitchen appliances under the brand “*Kuvings*” and is the parent company of the NUC group. The Defendant provides a list of its global subsidiaries and distributors on its Korean website under <https://www.nuc.co.kr/company/global> (exhibit P15/15a) which provides as contact for Europe its German subsidiary NUC Electronic Europe GmbH and directs to the website “*kuvings.de*” on which NUC Electronic Europe GmbH offers Defendant’s products. For France, the Defendant’s Korean website directs to [kuvings.fr](https://www.kuvings.fr), the website of the French distributor. NUC Electronic Europe GmbH and Warmcook are the Defendants in a parallel infringement proceedings before the Local Division Mannheim (UPC_CFI_159/2024) regarding the same patent in suit and the same contested embodiment.

4. The Claimant submitted the following picture of the contested embodiment from the websites of the NUC Electronics Europe GmbH:



5. In addition, the Claimant, inter alia, filed the following photographs (exhibit P12, arrows added by the Claimant) showing

- the drum section (labeled “Pressbehälter” in the previous picture), in the upper left photograph together with the “AUTO hopper” on top (labeled “Behälter” and “Deckel” in the previous picture):



- and the drive unit (labeled “Motorsockel” in the picture of the previous marginal number, circles added by the Claimants):

REQUESTS OF THE PARTIES

6. The Claimant requests (cf. permitted amended request from the brief of 21 January 2025, workflow to order ORD_2344/2025):

A. As main request,

I. to hold that the Claimant has demonstrated that the Defendant infringes the claims No. 1, 2, 3, 4, 6, 7, 8 and 9 of the European patent No. EP 2 028 981;

II. to order the Defendant to refrain from importing, exporting in the EU territory, offering, placing on the market, using a juicer within Germany, Denmark, France, Italy, The Netherlands or storing it for those purposes, that has the following features

1. A juice extractor comprising:

a cover (100) having an inlet port formed on one side of an upper part thereof and a rotary shaft hole (120) formed in the center of an inner part thereof;

a housing (500) installed on a lower part of the cover, and having a guide jaw formed on a bottom of the housing, a draff outlet port (570) and a juice outlet port (560) formed apart from each other on a lower end part of the housing, a waterproof cylinder having a through hole and formed in the center of the lower end part of the housing, and a pressure discharge passage formed around a lower part of the waterproof cylinder;

a screw (200) having an upper rotary shaft formed on an upper part of the screw (200) to be rotatably inserted into the rotary shaft hole, a plurality of screw spirals formed on an outer surface of the screw, an inner ring formed at a lower end of the screw to project downward and having a plurality of screw gears rotatably inserted into the pressure discharge passage, a lower space formed inside the inner ring to receive the waterproof cylinder therein, and a lower rotary shaft formed in the center of a lower part of the screw and a polygonal shaft hole formed thereon;

a mesh drum insertable into the guide jaw of the housing, the mesh drum (300) having a mesh structure formed on an outer wall of the mesh drum (300) to discharge juice to the juice outlet port, and a plurality of wall blades longitudinally formed on an inner surface of the mesh drum; a rotary brush installed (400) between the housing and the mesh drum (300) to be rotated, and having a brush holder in which a brush for continuously sweeping the mesh drum and the housing is installed; and

a drive unit having (600) a polygonal shaft that is inserted into the polygonal shaft hole through the through hole of the waterproof cylinder, and rotating the screw at (200) a low speed;

wherein the housing accommodating the screw is longitudinally fixed to an upper side of the drive unit (600) so as to press, grind and extract juice from materials put into the inlet port and to discharge the draff.

- direct infringement of claim 1 EP 2 028 981 B1 - in particular,

2. The juice extractor of claim 1,

wherein the pressure discharge passage of the housing is connected to the juice outlet port (560)

- direct infringement of claim 2 EP 2 028 981 B1 – and/or,

3. The juice extractor of claim 1, further comprising:

a discharge jaw formed at an end of a lower part of the spirals of the screw (200) by internally cutting a lower border of the screw; a bottom ring formed at an end of a lower part of the mesh drum (300), and having an inner ring insertion hole formed thereon to accommodate the inner ring; a discharge slant surface formed on an upper surface of the bottom ring, the discharge slant surface being in the form of a circular arc of which the depth is increased in a rotating direction of the screw; a mesh drum discharge hole connected to an end of the discharge slant surface to discharge the draff out of the mesh drum (300) and a housing discharge hole formed on one side of the bottom of the housing and connected to the mesh drum discharge hole and the draff outlet port (570); wherein the discharge jaw discharges the draff to the draff outlet port (570) through the housing discharge hole by pushing the draff to the mesh drum discharge (360) hole as the discharge jaw is rotated along the discharge slant surface (350).

- direct infringement of claim 3 EP 2 028 981 B1 – and/or

4. The juice extractor of claim 3,

wherein a circular projection is formed at an edge of an inner side of the bottom ring (340), circular groove is formed on an outer side of the circular projection, an outer ring (260) is formed on an outer periphery of the inner ring (250) to project downward, and a circular projection insertion hole is formed between the inner ring (250) and the outer ring (260); wherein the outer ring is rotatably inserted into the circular groove to extend a contact area with the draff being guided by the discharge jaw (225), and the circular projection is inserted into the circular projection insertion hole to minimize an inflow of the draff to the pressure discharge passage.

- direct infringement of claim 4 EP 2 028 981 B1 -

5. The juice extractor of claim 1,

wherein a plurality of engagement jaws are formed on a border of a lower end part of the cover (100), a plurality of engagement projections are formed on an outer periphery of an upper end of the housing (500), and engagement hooks are formed on the drive unit; wherein the housing (500) that is secured to the cover (100) by the engagement of the engagement jaws with the engagement projections is detachably secured to the drive unit by the engagement hooks.

- direct infringement of claim 6 EP 2 028 981 B1 –

6. The juice extractor of claim 1,

wherein the brush (400) is composed of a net brush (410) attached to an inner surface of the brush holder (430) to continuously sweep the outer wall of the mesh drum (300), and a housing brush attached to an outer surface of the brush holder to continuously sweep the inner wall of the housing (500).

- direct infringement of claim 7 EP 2 028 981 B1 -

7. The juice extractor of claim 1,

wherein a brush gear (440) is mounted on a lower part of the brush holder (430), and an intermediate gear is rotatably mounted on the lower surface of the housing (500) to be engaged with the brush gear (440); wherein

the intermediate gear, which is engaged with the screw gear, rotates the brush gear.

- direct infringement of claim 8 EP 2 028 981 B1 -

8. The juice extractor of claim 1,

wherein a slant surface is formed on a lower end surface of the inlet port of the cover (100) in the rotating direction of the screw (300).

- direct infringement of claim 9 EP 2 028 981 B1 -

III. to order, that in the event of any violation of the injunction in accordance with no. II above, Defendant shall pay to the Court a penalty sum of at least EUR 2,000 per infringing unit and/or a penalty sum of at least EUR 10,000 for each day of violation of this injunction.

B. As a subsidiary request

I. to hold that the Claimant has demonstrated that the contested “*AUTO 10*” reproduces OR implements claims No. 1, 2, 3, 4, 6, 7, 8 and 9 of European patent No. 2 028 981;

II. to order the Defendant to refrain from:

importing, exporting in the EU territory, making, offering, placing on the market, using the contested “*Auto 10*” within the territory of Germany, Denmark, France, Italy, the Netherlands or storing or importing it for those purposes, that has the following features

1. A juice extractor comprising:

a cover (100) having an inlet port formed on one side of an upper part thereof and a rotary shaft hole (120) formed in the center of an inner part thereof;

a housing (500) installed on a lower part of the cover, and having a guide jaw formed on a bottom of the housing, a draff outlet port (570) and a juice outlet port (560) formed apart from each other on a lower end part of the housing, a waterproof cylinder having a through hole and formed in the center of the lower end part of the housing, and a pressure discharge passage formed around a lower part of the waterproof cylinder;

a screw (200) having an upper rotary shaft formed on an upper part of the screw (200) to be rotatably inserted into the rotary shaft hole, a plurality of screw spirals formed on an outer surface of the screw, an inner ring formed at a lower end of the screw to project downward and having a plurality of screw gears rotatably inserted into the pressure discharge passage, a lower space formed inside the inner ring to receive the waterproof cylinder therein, and a lower rotary shaft formed in the center of a lower part of the screw and a polygonal shaft hole formed thereon;

a mesh drum insertable into the guide jaw of the housing, the mesh drum (300) having a mesh structure formed on an outer wall of the mesh drum (300) to discharge juice to the juice outlet port, and a plurality of wall blades longitudinally formed on an inner surface of the mesh drum; a rotary brush installed (400) between the housing and the mesh drum (300) to be rotated, and having a brush holder in which a brush for continuously sweeping the mesh drum and the housing is installed; and

a drive unit having (600) a polygonal shaft that is inserted into the polygonal shaft hole through the through hole of the waterproof cylinder, and rotating the screw at (200) a low speed;

wherein the housing accommodating the screw is longitudinally fixed to an upper side of the drive unit (600) so as to press, grind and extract juice from materials put into the inlet port and to discharge the draff.

- direct infringement of claim 1 EP 2 028 981 B1 - in particular,

2. The juice extractor of claim 1, wherein the pressure discharge passage of the housing is connected to the juice outlet port (560)

- direct infringement of claim 2 EP 2 028 981 B1 – and/or,

3. The juice extractor of claim 1, further comprising: a discharge jaw formed at an end of a lower part of the spirals of the screw (200) by internally cutting a lower border of the screw; a bottom ring formed at an end of a lower part of the mesh drum (300), and having an inner ring insertion hole formed thereon to accommodate the inner ring; a discharge slant surface formed on an upper surface of the bottom ring, the discharge slant surface being in the form of a circular arc of which the depth is increased in a rotating direction of the screw; a mesh drum discharge hole connected to an end of the discharge slant surface to discharge the draff out of the mesh drum (300) and a housing discharge hole formed on one side of the bottom of the housing and connected to the mesh drum discharge hole and the draff outlet port (570); wherein the discharge jaw discharges the draff to the draff outlet port (570) through the housing discharge hole by pushing the draff to the mesh drum discharge (360) hole as the discharge jaw is rotated along the discharge slant surface (350).

- direct infringement of claim 3 EP 2 028 981 B1 – and/or

4. The juice extractor of claim 3, wherein a circular projection is formed at an edge of an inner side of the bottom ring (340), circular groove is formed on an outer side of the circular projection, an outer ring (260) is formed on an outer periphery of the inner ring (250) to project downward, and a circular projection insertion hole is formed between the inner ring (250) and the outer ring (260); wherein the outer ring is rotatably inserted into the circular groove to extend a contact area with the draff being guided by the discharge jaw (225), and the circular projection is inserted into the circular projection insertion hole to minimize an inflow of the draff to the pressure discharge passage.

- direct infringement of claim 4 EP 2 028 981 B1 –

5. The juice extractor of claim 1, wherein a plurality of engagement jaws are formed on a border of a lower end part of the cover (100), a plurality of engagement projections are formed on an outer periphery of an upper end of the housing (500), and engagement hooks are formed on the drive unit; wherein the housing (500) that is secured to the cover (100) by the engagement of the engagement jaws with the engagement projections is detachably secured to the drive unit by the engagement hooks.

- direct infringement of claim 6 EP 2 028 981 B1 –

6. The juice extractor of claim 1, wherein the brush (400) is composed of a net brush (410) attached to an inner surface of the brush holder (430) to continuously sweep the outer wall of the mesh drum (300), and a housing brush attached to an outer surface of the brush holder to continuously sweep the inner wall of the housing (500).

- direct infringement of claim 7 EP 2 028 981 B1 –

7. The juice extractor of claim 1, wherein a brush gear (440) is mounted on a lower part of the brush holder (430), and an intermediate gear is rotatably mounted on the lower surface of the housing (500) to be engaged with the brush gear (440); wherein the intermediate gear, which is engaged with the screw gear, rotates the brush gear.

- direct infringement of claim 8 EP 2 028 981 B1 –

8. The juice extractor of claim 1, wherein a slant surface is formed on a lower end surface of the inlet port of the cover (100) in the rotating direction of the screw (300).

- direct infringement of claim 9 EP 2 028 981 B1 –

III. to order, that in the event of any violation of the injunction in accordance with no. II above, Defendant shall pay to the Court a penalty sum of at least EUR 2,000 per infringing unit and/or a penalty sum of at least EUR 10,000 for each day of violation of this injunction.

C. As further requests,

I. to hold that the Defendant shall pay damages to the claimant compensating all losses caused by the infringing acts of EP 2 028 981 in

- France since 2 April 2019 and as long as EP 2 028 981 B1 is in force;

- Germany since 14 April 2015 and as long as EP 2 028 981 B1 is in force

- Italy, The Netherlands, Denmark, Romania, Poland, Spain, United Kingdom, Turkey since 23 September 2015 and as long as EP 2 028 981 B1 is in force

II. to order the Defendant to pay to the Claimant EUR 100.000 (one hundred thousand euros) in compensation for the moral prejudice suffered;

III. to order the Defendant to inform the Claimant to the extent of which it has committed infringing acts referred to under C.I. , stating

i. the origin and distribution channels;

ii. the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained;

in particular

o manufacturing quantities and times;

o the individual deliveries, broken down by delivery quantities, times and prices and the respective product designations as well as the names and addresses of the customers;

o the turnover, the gross margin and the contribution margin generated by the Defendant with the sale of these products;

o the individual offers, broken down by quantities, times and prices and product designations as well as the names and addresses of the commercial offer recipients;

o the advertising carried out, broken down by advertising media, their circulation, distribution period and distribution area, and in the case of Internet

advertising, the domain, access figures and placement periods of each campaign;

o the identity of all third parties involved in the distribution, in particular the names and addresses of the commercial buyers and the sales outlets for which the products were intended;

whereby details requiring confidentiality may, at the discretion of the court, be redacted or made available only to certain persons;

iii. within twenty-one days of the date of service of the decision, supported by evidence verified by an independent accountant, under a penalty of EUR 10.000 per delay day from the month following the date of service of the judgment to be handed down;

IV. to order the Defendant to pay the Claimant interim awards on damages in the amount of EUR 30,000 as provided under **Rule 119 of the Rules of Procedure** pending the communication of the requested accounting information, the Claimant retaining the right to bring an action at a later date for the determination of the damages;

V. to order the Defendant to destroy at its own expense the products, material and/or implements referred to under A. II. – as a subsidiary request: referred to under B.II. – which are in its possession and/or ownership within Germany, Denmark, France, Italy, The Netherlands and to provide the Claimant with proper evidence certified by an independent bailiff as to how and when the destruction was carried out;

VI. to order the Defendant to recall the products referred to under A. II. – as a subsidiary request: referred to under B.II. – which have been placed on the market from the channels of commerce, with reference to the infringement determined by a court of law (judgement of [...] on [...]) and with the binding promise to reimburse any fees and to assume any necessary packaging and transport costs as well as customs and storage costs associated with the return and to take back the products,

whereby an exhaustive list of all recipients is to be provided to the Claimant;

VII. to order the Defendant to definitively remove the products referred to under A. II. – as a subsidiary request: referred to under B.II. – from the channels of commerce, specifically taking the following measures at their own expense:

1. the Defendant shall take all possible and reasonable measures to identify the locations and owners of the products referred to under A. II (as a subsidiary request: referred to under B.II.);

2. to the extent that the Defendant itself has legal or actual control over the products referred to under A. II. (as a subsidiary request: referred to under B.II.), such measures as are legally permissible and reasonable shall be taken to ensure that such products come into and remain in the Defendant's immediate possession;

3. to the extent that the Defendant does not have legal or actual control over the products referred to under A. II. (as a subsidiary request: referred to under B.II.), they shall take all legally permissible and reasonable steps to induce the persons holding claims for restitution against

the holders of the control of the products to assert such claims and/or to assist such persons in asserting such claims;

VIII. to order for the Defendant

1. to place on its website, within seven days from the date of service of the decision and for a continuous period of at least two weeks, the following statement (or a statement as the Court deems appropriate), to be displayed in a manner visible directly on the website's home- or landing page, in a text box separate from the website's other content having a white background and black letters, set in typeface Arial and having at least 12pt size, and to provide the claimant with evidence as to when and how the statement was placed:

"On [date of decision], the Unified Patent Court has ruled that NUC ELECTRONICS CO., LTD, infringed European Patent No.2 028 981 held by Hurom Co., Ltd., by selling, and offering for sale Kuvings "AUTO 10". As a consequence, NUC ELECTRONICS CO., LTD, was ordered to terminate all commercial activities related to these products in Germany, Denmark, France, Italy and The Netherlands immediately. We apologize for any inconvenience this may cause and will be reaching out directly to commercial clients and customers to offer an appropriate solution."

2. to send to its commercial clients and customers, within seven days from the date of service of the decision, in the national language of the respective client or customers, a letter with the following contents only (or such contents as the Court deems appropriate) and without caption, and to provide the claimant with copies of all letters sent:

"NUC ELECTRONIS CO., LTD, has infringed Hurom's European Patent No. 2 028 981 with its products Kuvings AUTO 10. Those products may no longer be offered for sale or sold in Germany, France, Denmark, Italy and The Netherlands, either on- or offline. We hereby request you to remove (images of) these products from your websites, from your shops and from other promotional and sales channels, to cease all sales and offers for sale of these products, and to return to us these products within seven days from the date of this letter. We will refund the purchase price and all costs associated with the return of the products to you."

IX. In any case, to order the Defendant to pay the Claimant the sum of EUR 56.000 as an interim award on the legal costs and other expenses as provided under Article 69 of the Unified Patent Court Agreement and Rule 118(5), 119 and 150(2) of the Rules of Procedure.

7. The panel separated the proceedings with regard to Poland, Spain and the United Kingdom by order of 11 March 2025 because the decision of the ECJ in re C-339/22 (BSH Hausgeräte) had not been delivered until the end of the oral hearing but only thereafter on 25 February 2025.

8. The Defendant requests

I.1. to declare and judge that the Claimant has not demonstrated that the Defendant infringes the claims 1 to 4 and 6 to 9 of the European patent EP 2 028 981;

I.2. Consequently, to dismiss and reject the Claimant's action of April 10, 2024 (ACT_17365/2024) in its entirety.

II. In the alternative, it is requested as a subsidiary request to grant the Claimant's action of April 10, 2024 (ACT_17365/2024) on the basis of the auxiliary claim in part B. only, subject to the specification that the claim expressly includes the specific model no. "KHS-2520CE" in addition to the name of the contested product "AUTO10".

III. With regard to the Claimant's further requests (part C.), the following is requested –also in the alternative as a subsidiary request:

1. to limit the claims for damages as follows:

a. temporally

aa. for acts of infringement in Germany for the period after March 5, 2024;

bb. for acts of infringement in Denmark for the period after June 1, 2023;

cc. for acts of infringement in France for the period after April 18, 2024;

dd. for acts of infringement in Italy for the period after June 1, 2023 and ee. for acts of infringement in the Netherlands for the period after April 18, 2024;

b. territorially, to the countries of Germany, France and the Netherlands; and as a subsidiary request to countries that are Contracting Member States;

2. to reduce the non-material damages pursuant to the Claimant's requests in part C. II., the provisional damages pursuant to part C. IV. and the provisional claim for reimbursement of costs pursuant to part C. b. (which ought to be C. IX.) to an appropriate amount in accordance with the proven damage suffered by the Claimant;

3. to dismiss the Claimant's claim for information pursuant to request C. III. Insofar as it relates to the production of the infringing items and to the sale/delivery to noncommercial customers, and to reduce the penalty payment further requested in part C. III. iii) to a reasonable rate not exceeding EUR 250 per day of delay, the delay starting only after a period of 30 days after the communication of the Court's decision pursuant to [Rule 118.8 S. 1 RoP](#);

4. to amend request C. VIII. to the effect that the publication of the decision of the UPC must be made by the Claimant, for which the Defendant must reimburse the costs to a reasonable extent, whereby the claim for reimbursement of costs may not exceed an amount of EUR 1,000.00.

IV. In addition, it is requested, to order the Claimant to pay to the Defendant the amount of EUR 45,000 as an interim award on the legal costs incurred.

POINTS AT ISSUE

9. The parties dispute about different aspects.

TERRITORIAL SCOPE OF JURISDICTION

10. The parties argue whether the UPC has jurisdiction over an infringement of the patent-in-suit within Turkey. The Claimant refers to [Art. 71b \(2\), \(3\)](#), [Art. 7 \(2\) Brussels Ia Reg.](#)

JURISDICTION OF THE UPC OVER ACTS COMMITTED BEFORE 1 JUNE 2023

11. The Defendant rejects any jurisdiction of the UPC over infringing acts ending before the entry into force of the UPCA on 1 June 2023.

RELEVANCE OF THE OBJECTIONS TO JURISDICTION

12. The Claimant additionally rejects any objections to the jurisdiction by referring to [R. 19.7 RoP](#) because such objections should have been made as preliminary objection under [R. 19 RoP](#).

CLAIMANT'S ENTITLEMENT TO THE PATENT IN SUIT AND THE ALLEGED CLAIMS BASED THEREON

13. The Defendant disputes Claimant's entitlement to the patent in suit and the claims for past use based thereon. It inter alia challenges the validity of the Intellectual Property Transfer Agreement of 2018 (exhibit P23, "Transfer Agreement 2018") between Claimant and the inventor on the grounds of the discrepancy in the Korean "dojang" stamps allegedly used on the Transfer Agreement 2018 and on the inventor's written affidavit (exhibit P24) and of a possibly inadmissible self-dealing on the inventor's part in his then capacity as member of Claimant's board of directors. The Claimant states that the discrepancy is due to an old "dojang" stamp replaced in the meantime and that the inventor did not participate in the resolution of Claimant's board of directors on the approval of the Transfer Agreement 2018. Moreover, Claimants refers to the Korean Invention Promotion Association (KIPA) having certified the agreement by affixing its seal.

CONSTRUCTION OF THE PATENT-IN-SUIT

FEATURE [1B] – COVER, INLET PORT

14. In the Claimant's opinion, the upper part of the cover, on one side of which the inlet port is formed, could also be understood as "upper surface". According to Claimant, claim 1 leaves it to the skilled person to decide how to design the inlet port. 15. In the Defendant's opinion, the inlet port having a lower and upper end (cf. para. [0019], [0032], claim 9) cannot be interpreted as a mere hole in a surface. An inlet port would rather call for an upward extension from the cover as the topmost part (cf. para. [0011], [0055], Fig. 2, 3b, para. [0004], Fig. 1) of the juice extractor and for a guiding function guiding the material into the juicer along the direction of gravity, like a chute or tube (cf. para. [0024], [0031], [0059], [0080], Fig. 2, 3a, 3b). To its mind, the inlet port cannot be placed in the center of the cover.

FEATURE [1E] – WATERPROOF CYLINDER OF THE HOUSING

16. In the Claimant's opinion, neither the wording of claim 1, nor the further patent specification and figures require juice to be prevented from flowing over the waterproof cylinder. Likewise, the waterproof cylinder and the housing do not have to be formed as one part, and the waterproof cylinder can be formed in particular as a packing.

17. The Defendant argues that the waterproof cylinder has to be an integral part of the housing (cf. Fig. 2, 3a) and that it protects the through hole and thus the drive unit against liquid solely by its shape forming a barrier

effect by lifting the through hole to a higher level (cf. para. [0061], [0062], [0084]). In the Defendant's opinion, the patent-in-suit strictly distinguishes this concept of a barrier from the concept of sealing by a packing (cf. para. [0045], [0060], [0088]) and intentionally refrains from using a seal for protecting the through hole (520). This understanding would correspond to the understanding of the Korean Patent Court and the Korean Supreme Court (exhibit D3/3a, D4/4a) regarding the Korean patent KR 793852, a patent very similar to the Korean counterpart KR 755440 of the patent-in-suit.

FEATURE [1F] – PRESSURE DISCHARGE PASSAGE OF THE HOUSING

18. In the Claimant's opinion, claim 1 leaves it to person skilled in the art how to form the pressure discharge passage around the waterproof cylinder whereby it has to be formed (only) when all components of the juice extractor are installed and the juice extractor is ready for use (cf. para. [0061]). During the juice extraction, the screw gears of the screw, which are inserted into the pressure discharge passage, would act like a "water wheel", pumping the juice outward (cf. Fig. 4). The pressure discharge passage has not to be connected to the juice outlet, because only subclaim 2 expressly claims such a design (cf. [0012], [0046]).

19. In the Defendant's opinion, the pressure discharge passage has to be an integral part of the housing and has to be formed as a circular recess/channel/groove/deepened molded section in the bottom (surface) of the housing around the lower part of the waterproof cylinder as it receives the plurality of screw gears (280) of the screw (200) according to feature [1I] and thereby supports the screw (cf. para. [0044], Fig. 3a). To Defendant's mind, the age has the function of supporting the removal of liquid, which excludes a groove, in which juice remains, to be regarded as pressure discharge passage. Accordingly, there have to be means to drain the juice such as a connection to the juice outlet.

FEATURE [1N] – HOUSING LONGITUDINALLY FIXED TO THE DRIVE UNIT

20. In the Claimant's opinion, the housing of the juice extractor is longitudinally assembled, i.e. fixed, to the upper side of the drive unit (cf. para. [0024], [0080]) without having to be fixed in a way that prevents it from being vertically lifted or vibrating. Rather, the housing must be protected, in particular, against horizontal movement and/or rotation as forces perpendicular to the longitudinal axis act on the housing due to the movement of the screw and the material during the extraction process. To Claimant's mind, the engagement hooks of the embodiment shown in Fig. 2 secure the cover not the housing (cf. para. [0056]). Moreover, the engagement hooks according to Fig. 2 and 6 are not the subject matter of claim 1 and not included in all embodiments (Fig. 3).

21. In the Defendant's opinion, the feature requires a fixation between the housing (500) and the drive unit (600) in the longitudinal, i.e. vertical, direction so that the housing (500) (accommodating the screw etc.) is secured against vertically lifting and against vibrations

(cf. para. [0056]), the latter additional to such protection provided by the bidirectional fixation of the screw (200) inside the juice extractor (cf. para. [0025], [0081]). According to the Defendant, the requirement "longitudinally fixed" must not be equated to "longitudinally assembled". By the term "fixed", the patent-in-suit clearly means a fixed connection by a form fit (cf. para. [0025] and [0081], [0045], [0056], [0076]).

INFRINGEMENT OF THE PATENT-IN-SUIT

22. In total, according to the Defendant, the contested embodiment implements a technical concept different from the patent's teaching.

FEATURE [1B] – COVER, INLET PORT

23. Based on its claim construction, the Defendant denies that the opening in the cover constitutes an inlet port and that the auto hopper could be regarded as inlet port, because such inlet port would not be eccentric, i.e. laterally offset, to the screw shaft.

FEATURE [1C] – HOUSING

24. To the Defendant's mind, the contested embodiment has no housing according to claim 1 because, lacking an inlet port, it has no cover according to claim 1.

FEATURE [1E] – WATERPROOF CYLINDER

25. The Defendant rejects the Claimant's opinion considering the packing to be the waterproof cylinder because it has a sealing effect, does not form an integral body with the housing and has an insignificant height. In this context, the parties argue about the recommended use and non-use respectively of a so-called small cap, which can block the contested embodiment's juice outlet, and the implications thereof.

FEATURE [1F] – PRESSURE DISCHARGE PASSAGE OF THE HOUSING

26. The Claimant argues that the pressure discharge passage is not only formed by the groove, but also by the wall at the lower end of the mesh drum supporting the pressure discharge passage. The Claimant points out that, since the bottom of the groove is only slightly (2.4 mm) below the bottom level of the surface around the groove, the juice will easily flow out of the pressure discharge passage during juice extraction using the path where the intermediate gear is located, whereby the screw gears - which act like a "water wheel" pumping the juice outward - are inserted into the pressure discharge passage. Due to the residual juice, the picture below would show how the juice flowed during operation (cf. Reply, para. 156, arrows added by the Claimant):



27. The Defendant denies that the contested embodiment implements the feature. It points out that the groove around the through hole has no connection to the juice outlet and therefore, being below the bottom of the housing, is not suitable for draining juice or draff accumulated therein. It further points out that the screw gears of the contested embodiment are only formed on an outer side of the inner ring of the screw, whereas the inner ring is closed on its inner side (contrary to Fig. 4 of the patent-in-suit), thus not pumping juice or draff out of the groove.

FEATURE [1N] – HOUSING LONGITUDINALLY FIXED TO THE DRIVE UNIT

28. The parties agree that the housing of the contested embodiment is not protected against vertically lifting and dispute about the significance of such finding for the implementation of the feature. The Defendant points out that, according to the user manual (exhibit D5, p. 44), vibrations are tolerated.

REMEDIES REQUEST FOR PERMANENT INJUNCTION

29. In the Claimant's opinion, pursuant to Art. 34 UPCA, it is sufficient to prove the infringement in one contracting member state to the UPCA - as done by the test purchase in Germany from Defendant's European agency and subsidiary NUC Electronics Europe GmbH - in order to obtain an injunction for all relevant member states. Apart from that, the Claimant states, that Defendant sells its juicers to dealers across Europe, in particular to its distributor Warmcook and its subsidiary NUC Electronics Europe GmbH functioning as its European sales branch.

30. The Defendant points out that the Claimant did not demonstrate and prove any acts of infringement of Defendant within the territory of the patent-in-suit.

31. To the Defendant's mind, a specific designation of the infringing embodiment in the requests is required, and the requests are too broad in particular with regard to the alleged infringing acts of using and exporting. In addition, the Defendant rejects the request for injunctive relief on the grounds of disproportionality and the lack of information required by [R. 13. \(l\)\(i\) RoP](#).

REQUEST FOR DECLARATION ON DAMAGES (C.I.)

32. In the Defendant's opinion, the periods in time for which the Claimant can assert claims for damages are restricted and depend on the date of the (alleged) assignment of the patent-in-suit and statutes of limitation. They may further depend on the date of the registration of the assignment with the national patent register and national translation requirements. To Defendant's mind, in the absence of a warning letter, Claimant has not sufficiently demonstrate any awareness of the alleged infringement as required under Dutch law.

REQUEST TO PAY DAMAGES IN COMPENSATION FOR MORAL PREJUDICE (C.II.)

33. In the Defendant's opinion, opting for [Art. 68 \(3\)\(b\) UPCA](#) as done by Claimant by basing its request for an interim award of damages on the principles of license analogy excludes damages in compensation for moral prejudice pursuant to [Art. 68 \(3\)\(a\) UPCA](#). Apart from that, compensation for non-material damages should only be granted in extremely exceptional cases and in the event of particularly serious infringements, which Claimant did not demonstrate on the instant facts.

REQUEST FOR INTERIM AWARD OF DAMAGES (C.IV.)

34. In order to preliminarily estimate damages, the Claimant in particular relies on published Korean Government's 2023 export turnover data for Defendant and assumes a share of 20 % for the contested embodiment. The Defendant rejects the approach as unfounded in its entirety.

REQUEST FOR INFORMATION (C.III.)

35. The Defendant considers the request to be too broad. It would not owe information related to manufacturing and about names and contact details of non-commercial customers.

REQUEST FOR DESTRUCTION (C.V.), REQUEST FOR RECALL (C.VI.), REQUEST FOR REMOVAL (C.VII.)

36. In the Defendant's opinion, the requests have to be dismissed due to disproportionality and, with regard to recall and removal, lack of specificity.

Request C.VIII. – Publication on Defendant's website and information letters

37. The Defendant exerts that the request is unfounded and disproportional.

Request C.IX. – Interim awards of costs

38. The Claimant requests 50 % of the maximum recoverable costs of 112.000 EUR based on a value in suit of 750.000 EUR

39. In the Defendant's opinion, the request is unfounded in particular because Claimant did not send a cease-and-desist letter or equivalent warning letter and therefore did never allow the Defendant to discuss the alleged infringement out-of-court. Vice versa, the Court shall grant the Defendant an interim award requiring Claimant to pay it the sum of 45,000 EUR as a reimbursement of legal defense costs pursuant to Art. 69 UPCA, R. 118(5), 119, 150(2) RoP.

REFERENCE

40. For further details on the points at issue, reference is made to parties' briefs.

GROUND FOR THE DECISION

A. SCOPE OF THE REQUESTS IN THE OPERATIVE PART OF THE STATEMENT OF CLAIM

41. Despite the fact that the passage "within Germany, Denmark, France, Italy and The Netherlands" concerning the territorial scope stands in front of "or storing it for those purposes", it unambiguously follows from the reasoning in the statement of claim (cf. para. 262) that the said territorial scope relates to all infringing acts mentioned in requests A.II and B.II. That reasoning is unchanged by the amendments to the requests made in the brief of 21 January 2025.

42. With regard to the requests C.V. to VII. as amended by the brief of 21 January 2025, as far as the Claimant added to the reference to request A.II the auxiliary reference to the auxiliary request B.II, the amendment only concerns the mere wording, not the substantive content. Against the background of the reasoning in the statement of claim, it was unambiguously clear from the outset that the said requests under C should apply accordingly if the auxiliary request B becomes relevant. As far as the Claimant changed the terms "client" and "clients and customers" respectively to "commercial clients and customers" in requests C.VIII.1 and .2 as amended, there is no change to the content of the requests either.

B. ADMISSIBILITY

43. The action is inadmissible with regard to Turkey. Otherwise, the action is admissible as far as it is still part of the present proceedings.

International jurisdiction of the UPC over Defendant in principal

44. Since the Claimant alleges an infringement within UPCA member states, the international jurisdiction of the UPC follows from [Art. 71b Nr. 2](#) in conjunction with [Art. 7 \(2\) Brussels](#) Ia Reg. The issue as to whether the argumentation with regard to infringement is conclusive concerns the foundation of action only and is not decisive for the establishment of competence (cf. [UPC CoA 188/2024, GRUR 2025, 101 mn. 12, 13 18](#)).

Jurisdiction for infringements in UPCA non-member states

45. The [panel has separated the proceedings](#) with regard to a possible infringement in the UPCA non-member but EU member states Poland and Spain and in the EU non-member state United Kingdom in order to wait for the decision of the European Court of Justice in [re C-339/22 \(BSH Hausgeräte\)](#) which had not been issued until the end of the oral hearing but only thereafter on 25 February 2025.

46. With regard to the EU non-member state Turkey, the action is inadmissible regardless of the outcome of the [case C-339/22 \(BSH-Hausgeräte\)](#). Insofar the Claimant did not allege sufficient facts which, if given, would fulfill the requirements of [Art. 7 \(2\) Brussels](#) Ia Reg even if acts committed within the UPC territory that

result in an infringement in Turkey are covered by the provision. The Defendant's Korean webpage listing its distributors (exhibit P15/15a) mentions a distributor for Turkey. The Claimant alleges that the contested embodiment is Defendant's flagship product (SoC para. 334). However, there is no single fact brought forward or apparent that may constitute an act committed within the territory of the UPCA member states and relating to a possible infringement in Turkey. In particular, there is no pointer that Defendant's Germany-based subsidiary NUC Electronics Europe GmbH or Claimant's France-based distributor Warmcook, acts of which may be attributable to the Defendant, are involved in actual or threatened infringing acts in Turkey, in particular in shipments into Turkey. The marks CE, UK and CA on the nameplate of the test purchase in Germany (exhibit P14), designating NUC Electronics Europe GmbH as importer, obviously relate to the European Economic Area, the United Kingdom and presumably Canada, but not to Turkey. As far as the Defendant's Korean website (exhibits P15/P15a) lists und links to NUC Electronics Europe GmbH as the "Europe Branch" of the Defendant's group (SoC, para. 248), it is a mere speculation without sufficient factual basis that the term "Europe" is meant to encompass Turkey. On the contrary, the fact that the website eu.kuvings.com (exhibit P4) lists under the caption "Europe with Kuvings" EU member and non-member states but not Turkey points in the opposite direction.

47. The international jurisdiction with regard to Turkey does not follow from [Art. 71b \(3\) Brussels](#) Ia Reg. either. The provision serves the purpose to mitigate the Shevill-doctrine of the [ECJ \(C-68/93, Slg. 1995 I-415 \(416 f.\)\)](#) when applying [Art. 7 No. 2 Brussels](#) Ia Regulation (cf. Stein/Koller, 23th edition, EuGVVO Art. 71b mn. 10; Bopp/Kircher, EurPatentprozessHdB/Kircher, § 13 mn. 19 et seq.). Pursuant to this doctrine, the competence based on the place where the damage occurred is limited to damage, which arose in the respective member state. It can be left open, whether, against this background, the provisions solely extends the competence of the common court, which is based on the place of success, to the damage arising outside the Union from the very same infringement or it rather extends the competence to the national parts of a European bundle patent of EU non-member states. At least, [Art. 71b \(3\) Brussels](#) Ia Reg. requires inter alia a sufficient connection with an UPC member state. In this context, the alleged fact that NUC Electronic GmbH located in Germany, where the service of the statement of claim could be effected, is the European sales branch of the Defendant does not suffice. As discussed, the Claimant did not sufficiently allege that the Defendant's European sales branch has anything to do with potential actual or threatened infringing acts with respect to the Turkish part of the patent in suit.

48. The objection against jurisdiction regarding infringements in Turkey is not precluded by [R. 19.7 RoP](#). However, the Defendant did not file a preliminary objection pursuant to [R. 19 RoP](#), but raised its objection against the international competence with respect to

inter alia Turkey for the first time in the statement of defence (para. 327). It can be left open whether the objection would have been admissible as a preliminary objection. In any case, [R. 19.7 RoP](#) does not encompass such an objection. Since there are no national rules of a single EU member state within the meaning of [Art. 4 \(2\), Art. 6 Brussels Ia Reg.](#) due to the fact that the UPC is a court common to the UPC member states, [Art. 71b \(2\) Brussels Ia Reg.](#) stipulates that Chapter II of the regulation shall apply as appropriate regardless of the defendant's domicile where the defendant is not domiciled in an EU member state, and the regulation does not otherwise confer jurisdiction over him (cf. recital (6), Regulation (EU) No 542/2014 amending the Brussels Ia Reg. as regards the rules to be applied with respect to the Unified Patent Court and the Benelux Court of Justice). Pursuant to [Art. 26 \(1\) Brussels Ia Reg.](#), which has to be interpreted autonomously, according to the rulings of the ECJ, it suffices that the defendant raises the objection against the international jurisprudence in its first defence (cf. [ECJ, C-433/16 mn. 34 \(on Art. 24 of Reg. No 44/2001\)](#)). According to these rulings, the objection brought forward at this stage is not precluded, even if the defendant does not observe an invitation of the court to submit objections against the international jurisprudence up-front. Such non-compliance does not constitute an entering of appearance within the meaning of Art. 26 Brussels Ia Reg. and, therefore, cannot be considered as tacit acceptance, by the defendant, of the jurisprudence of the court (cf. [ECJ, C464/18 mn. 40](#)). In the opinion of the panel, the reasoning of the aforementioned rulings of the ECJ also applies if the invitation to comment on the jurisdiction up-front follows directly from the applicable procedural law. There is no indication that [Art. 26 Brussels Ia Reg.](#) is to be interpreted differently if it is applied over [Art. 71b \(2\) Brussels Ia Reg.](#) Thus, [Art. 26 Brussels Ia Reg.](#) prevails over [R. 19.7 RoP](#) due to the primacy of Union Law. This is all the more true as [Art. 31 UPCA](#) explicitly states that the international jurisprudence of the UPC shall be established in accordance with the [Brussels Ia Reg.](#) and, where applicable, the Lugano Convention. The fact that, in the statement of defence, the Defendant based the objection on the reason that the UPC has no jurisdiction for UPC non-member states at all is irrelevant, as long as the objection is unconditionally directed against the international jurisprudence as it is the case on the instant facts.

49. If [Art. 24 No. 4 Brussels Ia Reg.](#) were applicable to the situation at hand, the objection would not be excluded by [Art. 26 Brussels Ia Reg.](#) anyway, which is not applicable in case of exclusive jurisdiction by virtue of [Art. 24 Brussels Ia Reg.](#) Jurisdiction of the UPC over acts committed before 1 June 2023

50. Contrary to Defendant's view, the UPC has jurisdiction for acts committed before the UPCA's entry into force on 1 June 2023 (cf. [Court of Appeal, Order of 16 January 2025, UPC CoA 30/2024](#)). Considering the lack of a provision determining a deviating temporal scope, this finding already follows from the fact that

[Art. 3 \(c\) UPCA](#) establishes the jurisdiction for any European patent, which has not yet elapsed at the date of the entry into force of the UPCA. According to the excerpts from the national patent registers (exhibit P7), the patent-in-suit is in force in Denmark, France, Germany, Italy, the Netherlands and Romania. The Defendant did not submit deviating register entries. In fact, there are no indications in particular with regard to Italy that a national part elapsed or lost its effect due to non-compliance with national translation requirements. The Defendant did not dispute that the translation of the patent specification into Italian was submitted with the Italian patent office in due time. Against this background, it can be left open whether the UPC has jurisdiction over all national parts of an European bundle patent as long as at least only one national part was still in force on 1 June 2023 or whether the UPC solely has jurisdiction over the national parts that have not yet elapsed at that date and lacks jurisdiction for the other national parts. Since the Romanian part is still in force, it can be left open whether, insofar, the relevant date would be 1 September 2024, the date when the UPCA entered into force in Romania. In addition, it can be left open, if the Defendant would have to raise the objection against the temporal scope of jurisdiction by filing a preliminary objection.

Competence of the Local Division Mannheim

51. The competence of the Local Division Mannheim follows from [Art. 33 \(1\) \(a\), sentence 3 UPCA](#). The Claimant states an infringement inter alia in Germany. Whether the Defendant is actually liable for acts of its German subsidiary relates to the foundation of the statement of claim and is not a question of competence (cf. [Court of Appeal, UPC CoA 188/2024, GRUR 2025, 101 mn. 18](#) (on [Art. 7 \(2\) Brussels Ia Reg.](#))). As confirmed by [Art. 33 \(2\) UPCA](#), with regard to territorial scope, the competence established under [Art. 33 \(1\) \(a\) UPCA](#) extends to all national parts of the same European patent in the UPC member states.

SPECIFICITY OF THE REQUESTS

52. Contrary to the Defendant, the requests under part A do not lack specificity. There is no need to limit the requests to the specific infringing product. Requests for an injunction in general terms are admissible, in particular sufficiently specific, because such requests and consequently the order whereby the injunction is issued have to be interpreted in the light of the underlying reasoning (cf. [Court of Appeal, order of 14 February 2025, UPC CoA 382/2024 mn. 158](#)). To other requests nothing else applies. By submitting pictures of the contested embodiment and elaborating on which properties, according to Claimant's view, infringe the patent-in-suit, the Claimant made the subject matter of the alleged infringement sufficiently clear. Therefore, contrary to the Defendant, it is not necessary to designate the model number either even if there were several different products marketed under the indications "Kuvings", "Auto10" or "slow juicer" as Defendant suggests.

C. CLAIMANT'S OWNERSHIP OF THE PATENT IN SUIT

53. Contrary to Defendant, the Claimant has sufficiently established that it is the owner of the patent in suit.

54. The Claimant is the registered proprietor of the patent in suit. It can be left open, whether R. 8.5 (c) RoP only concerns the legal standing to sue, or, moreover, the ownership of the patent. In any case, the content of the register at least has a strong indicative effect that the registered proprietor is the actual owner of the patent (Local Division Hamburg, order of 04.06.2024, UPC CFI 54/2023, GRUR-RS 2024, 29238).

55. Defendant has not refuted the indicative effect. In particular, no sufficient doubts had been raised that the Intellectual Rights Transfer Agreement (“Transfer Agreement 2018”, exhibit P23) is valid. Even if no indicative effect would apply due to the long period of time between the alleged conclusion of the Agreement in early 2018 and the registration of the assignment with the competent patent registers, the panel has no doubt that the Transfer Agreement 2018 was validly concluded.

56. There is no doubt that the Transfer Agreement 2018 was duly signed by the Claimant and the inventor and that the assessment of its validity is subject to Korean Law. The Claimant provided a certificate of its corporate seal (exhibit P25), the log for the use of the corporate seal (exhibit P27) and the minutes with the approval of Claimant’s board of directors (exhibit P26), each together with an English translation. Furthermore, the Claimant submitted a legal opinion given by a Korean attorney-at-law (exhibit P22) on the use of Korean “dojang” stamp and the role of Korean Invention Promotion Association (KIPA) which has certified the agreement by affixing its “dojang” stamp. The Defendant does not challenge the legal effect of “dojang” stamps. Contrary to the Defendant, the fact that the inventor’s “Dojang” stamp on the agreement and on its written affidavit (exhibit P 24) deviate from each other, do not cast any doubt. In the interim procedure, the Claimant was given the opportunity to elaborate in writing on the issue, and the Defendant was heard in writing (workflow to ORD_65327/2024). The inventor declared convincingly in his second written affidavit (exhibit P35) that he has merely replaced the old “Dojang” stamp in the meantime. In addition, the head of Claimant’s intellectual property department declared equally convincingly in his written affidavit (exhibit P36) that he then explained the details of the agreement to the inventor up-front and that he was present when the inventor affixed his “dojang” stamp later on. Moreover, the additional documents (exhibits P8, P9) confirm the transfer.

57. The panel has no doubts either that the Transfer Agreement 2018 is not invalid due to an inadmissible self-dealing of the inventor in his capacity as then member of Claimant’s board of directors. The head of Claimant’s intellectual property department declared convincingly in his aforementioned written affidavit (exhibit P36) that the inventor did not participate in the resolution on the approval of the Transfer Agreement 2018. The fact that the minutes (exhibit P26) state that the proposal was unanimously approved without

objection by all directors does not cast sufficient doubt on the truth of the affidavit. The reason could also be an inaccuracy in the writing of the minutes. The fact that all three directors signed the minutes by stamping does not have to mean that all three participated in the resolution. After all, Claimant’s legal team affixed the Claimant’s corporate “dojang” to the agreement following the approval which indicates that the legal team then had no concerns about the validity of the agreement. In any event, even if the inventor had participated in the resolution, the Defendant did not sufficiently challenge the validity on this ground. Again, the agreement was stamped by the Claimant’s legal team and by the KIPA. According to the legal opinion (exhibit P22), the KIPA, if involved, affixes its seal to the contract to certify that the agreement has been concluded and agreed upon by the parties. Admittedly, the legal opinion does not deal with the issue of the validity of the specific approval. Nevertheless, it contains the general remark on the KIPAs authority. Against this background, it is not sufficient that the Defendant merely points out that the approval is probably not valid under Korean law due to a possible inadmissible self-dealing (rejoinder, para. 11, brief of 7 January 2025 in the interim procedure para. 7). While it is true that the claimant has the burden of demonstration and proof of its ownership (which would be not mitigated if no indicative effect of register entries applied), the defendant has to make specific objections against the validity of a transfer agreement. In this regard, nothing else applies as with regard to substantive national laws of the UPCA member states when a party wishes to rely on such deviating national laws favorable for its legal position (cf. below under “applicable law”). On the instant facts, the Defendant would have to demonstrate which specific provision of Korean law prohibits the assumed participation of the inventor and that the assumed participation results in the invalidity of the approval and consequently of the agreement itself even in cases where the forbidden vote was not decisive in view of the other votes cast. This is all the more true as the Claimant is the registered proprietor of the patent in suit. As far as the Defendant challenges the alleged authority of KIPA to certify agreements, similarly, it does not elaborate on the issue, but restrict itself to point out only that Art. 52 (Establishment of Korea Invention Promotion Association)) and 53 (Business Activities) of the Korean Invention Promotion Association by their wording do not confer such an authority to KIPA (brief of 7 January 2025 in the interim procedure, para. 8 et seqq.).

58. Apart from that, the Claimant filed the statement of claim with the obvious support of the inventor on the basis that the patent in suit was transferred to the Claimant, and both stick to it during the proceedings at hand. Even if the Transfer Agreement 2018 (exhibit P23) were originally invalid, these facts would constitute an implicit transfer of the patent in suit on the instant facts.

D. SCOPE OF THE PATENT IN SUIT

59. The patent in suit relates to a juice extractor. According to the patent specification, existing juicers

crush materials put into an inlet port at high speed and produce juice in a centrifugal separation method. The patent in suit criticizes that, during such a high-speed crushing process, intrinsic flavor and nutrients may be destroyed. Further points of criticism are that it is difficult to extract green juice from vegetables having branches or leaves and to extract juice from fruits having a high viscosity such as kiwi or strawberry, and that it is impossible at all to extract soymilk from beans. In addition, for continuous extraction of juice from vegetables or fruits, it is required to frequently disassemble and clean the juicer to remove draff (i.e., residue) caught in meshes of a strain net. Conventional juicer according to Fig. 1, which have a long screw horizontally assembled in a drum, at a low speed, horizontally transfer the materials put into an inlet. According to the patent in suit, such juice extractors require wide space when used or kept in custody. Since the juice extraction is performed as the materials are horizontally moved, the juice-extracting speed becomes low, and thick juice cannot flow downward well, but remains in the drum. Since, in conventional juicers, a rotary shaft is provided on one side of the screw only, the screw is shaken when rotating, and collides with wall blades formed on an inner wall of the juice-extracting net, which results in noise and abrasion of the screw (cf. para. [0002]-[0005]). Against this background, the patent in suit sees the aim of the invention in providing an extractor which can prevent beans or vegetables from becoming stale, can heighten the juice extraction speed and can make extracted juice well flow downward without remaining in a housing, irrespective of the kinds of vegetables or fruits. Furthermore, it should, by preventing the shaking of the shrew, reduce noise and abrasion. In addition, the juice extractor should be able to make material automatically move downward without pressing, and should be able to be used continuously without the necessity of frequently disassembling and cleaning it (cf. para. [0001], [0007]-[0010]).

60. As a solution, the patent in suit provides in claim 1 a juice extractor, the features of which can be structured as follows (deviating classification numbers of the Defendant in brackets and italics):

[1A] A juice extractor comprising:

[1B] a cover (100) having an inlet port formed on one side of an upper part thereof and a rotary shaft hole (120) formed in the center of an inner part thereof,

[1C] a housing (500) installed on a lower part of the cover,

[1D] [the housing] having a guide jaw formed on a bottom of the housing ([1C.1]), a draff outlet port (570) and a juice outlet port (560) formed apart from each other on a lower end part of the housing, ([1C.2])

[1E] a waterproof cylinder having a through hole and formed in the center of the lower part of the housing, ([1C.3])

[1F] a pressure discharge passage formed around a lower part of the waterproof cylinder, ([1C.4])

[1G] a screw (200) having an upper rotary shaft formed on an upper part of the screw (200) to be rotatably inserted into the rotary shaft hole ([1G.1]), [

1H] [said screw (200) further having] a plurality of screw spirals formed on an outer surface of the screw, ([1G.2])

[1I] [said screw (200) further having] an inner ring formed at a lower end of the screw to project downward and having a plurality of screw gears rotatably inserted into the pressure discharge passage, ([1G.3])

[1J] a lower space formed inside the inner ring to receive the waterproof cylinder therein, and ([1G.4])

a lower rotary shaft formed in the center of a lower part of the screw and a polygonal shaft hole formed thereon, ([1G.5])

[1K] a mesh drum insertable into the guide jaw of the housing, the mesh drum (300) having a mesh structure formed on an outer wall of the mesh drum (300) to discharge juice to the juice outlet port, and [the mesh drum (300) having] a plurality of wall blades longitudinally formed on an inner surface of the mesh drum,

[1L] a rotary brush (400) installed between the housing and the mesh drum (300) to be rotated, and having a brush holder in which a brush for continuously sweeping the mesh drum and the housing is installed,

[1M] a drive unit (600) having a polygonal shaft that is inserted into the polygonal shaft hole through the through hole of the waterproof cylinder, and rotating the screw (200) at a low speed,

[1N] wherein the housing accommodating the screw is longitudinally fixed to an upper side of the drive unit (600) so as to press, grind and extract juice from materials put into the inlet port and to discharge the draff.

61. Some features require further explanation:

Feature [1B] – inlet port

62. An inlet port (110) according to the patent in suit can be a mere opening which reaches through the cover and allows the input of the material to be juiced. Contrary to the Defendant, claim 1 does not impose any requirements on the further design of the inlet port.

63. All figures of the patent specification show a tubular shape of the inlet port which extends upwards from the cover and which serves the purpose to store the materials to be juiced and to guide it downwards into the housing and to the screw. However, such design is not reflected in claim 1. In particular, the non-exhaustive claim 1 does not exclude further parts of the juicer above the inlet port (cf. feature [1A] “comprising”). As far as claim 1 reads “inlet port formed on one side of an upper part of the cover”, this requirement merely indicates that the opening starts on one side of an upper part of the cover but does not require that the inlet port extends above the basic level of the cover. Only preferred embodiments call for a certain design of the inlet port, e.g. a design

which provides a lower end surface of the inlet port on which a slant surface may be formed (cf. subclaim 9, para. [0019], [0026], [0032]). An extension above the level of the cover is not implied by the word “port” either. In other contexts, the patent description, which established its own lexicon and can define terms that deviate from common usage, differentiates between a hole and a port (cf., e.g., para. [0013] (“housing discharge hole” and “draff outlet port”), para. [0045] (“housing discharge hole”), para. [0041], [0042] (“mesh drum discharge hole”). However, this distinction does not demand an understanding according to which a port has to extend beyond the surface of its surroundings. The respective design of draff outlet, juice outlet and inlet ports shown in Fig. 1 (prior art) and Fig. 2 to 6 are exemplary designs only with no sufficient pointer in the patent specification that a port is restricted to such a design. The patent in suit specifies an opening to be a port merely if the opening establishes a connection to the outside of the juice extractor with respect to those (non-exhaustive) elements which are listed in claim 1, in particular with respect to the housing. As far as the patent description states in paras. [0024], [0080] that the materials are naturally moved downward by the gravitation and the rotation of the screw, this relates to the transport within the housing. As far as paras. [0026], [0085] and similar [0059] state that the material are automatically put in the inlet port without pressing the materials downward, the same applies. In addition, these paragraphs (as paras. [0082], [0083]) concern a preferred embodiment, i.e. one with a slant surface on the lower side of the lower surface of the cover. Should claim 1 call for the ability to extract juice from vegetables with branches and leaves, this ability relates to the extraction process itself only (cf. para. [0003], [0079]). Even if an ability required by claim 1 to move the materials automatically downward without pressing and to extract juice from vegetables with leaves and branches implied an ability of the inlet port to support this, the patent would leave the measures to achieve such ability open and would not limit the skilled person in finding appropriate designs. There is no sufficient indication in the patent description that the inlet port is restricted to a port that provides a guiding function in itself. In particular, claim 1 does not exclude further elements like a rotating blade or knife, which convey the material to the screw.

64. Even if the inlet port according to the patent in suit called for a structure which extends above the level of the cover, a container-like structure formed by the upper side of the cover as bottom and separate walls as sidewalls would not be excluded from qualifying as an inlet port, as long as an opening through the cover exists. A requirement that the inlet port has to be formed as one single integral body does not exist. As far as para. [0031] states that the inlet port is eccentrically formed from the center in which the rotary shaft hole (120) is positioned, this concerns a preferable embodiment only (“It is preferable that...”). Apart from that, as the function shows, the eccentric position would be fulfilled as long as the inlet port’s part, which forms the actual

connection between the spaces above and below the cover, is positioned eccentrically.

Feature [1E] – waterproof cylinder

65. A waterproof cylinder consists of waterproof material, is positioned in the center of the lower part of the housing and has a through hole. Claim 1 does not require a certain height of the waterproof cylinder, in particular no height which is above the liquid level in the housing.

66. First, the water proof cylinder has a function in the context of the screw. A polygonal shaft hole is formed on a lower rotary shaft formed in the center of a lower part of the screw (feature [1J]). The drive unit has a polygonal shaft that is inserted into said polygonal shaft hole through the through hole of the waterproof cylinder (feature [1M]). The drive unit rotates the screw at a low speed by means of said polygonal shaft (feature [1M]). A lower space is formed inside the inner ring formed at a lower end of the screw (features [1I], [1J]). The lower space receives the waterproof cylinder (feature [1J]). Thus, the water proof cylinder guides the screw and the lower rotary shaft of the screw so that the said polygonal shaft hole of the lower rotary shaft of the screw engages with the said polygonal shaft of the drive unit when the juice extractor is assembled. In addition, may stabilize the screw and its shaft. Furthermore, the design is compact and allows the screw gears, which belong to said inner ring of the screw, to reach down to the pressure discharge passage in which the screw gears are inserted (feature [1I]). Claim 1 does not impose any further explicit requirements, in particular not with regard to the height of the waterproof cylinder.

67. Such further requirements do not follow implicitly either. In particular, the waterproofness of the cylinder does not imply a height above the liquid level in the housing. It just emphasizes that, as it goes without saying for housing, the cylinder must not be permeable to water. There is no sufficiently clear pointer in the patent specification that the waterproof cylinder functions so as to protect the through hole against liquid by raising it above the maximum height of the liquid level in the housing. As far as paras. [0061], [0062] (and para. [0083] accordingly) mention the risks that, without a connection of the pressure discharge passage to the juice outlet port, the juice overflows the waterproof cylinder into the through hole and may cause pollution of inter alia the motor of the drive unit, these paragraphs deal with an exemplary embodiment only (cf. paras. [0028], [0058] and caption “Best Mode” before para. [0028]). Even in the embodiment of para. [0061], the through hole is not protected by the shape of the waterproof cylinder alone, but the protection needs additional means like the connection with the juice outlet port. Apart from that, the description in particular in paras. [0061], [0062], [0083] does not impose a strict requirement that the aforementioned risk has to be avoided. At least the description leaves it open to the skilled person how to protect the through hole.

68. The waterproof cylinder has not to be formed as one integral body with the housing. Feature [1E] only prescribes that the waterproof cylinder has to be formed

in the center of the lower end part of housing. Thus, it indicates the location only and leaves it open to the skilled person, how the waterproof cylinder is formed there. There is no sufficient indication in the patent specification that the term “formed” implies an integral design in one piece with the housing. Against this background, the fact that all the figures show a waterproof cylinder being one integral body with the housing is not decisive. Claim 1 does not reflect a restriction of its subject-matter to those exemplary embodiments. In addition, claim 1 uses the term “formed” in other contexts without prescribing more than a local arrangement (e.g. feature [1G], [1J], [1K]). Moreover, the term waterproof in combination with the cylinder even suggests that the latter does not need to be an integral part of the housing, given that it is self-explanatory that the housing itself must be entirely waterproof otherwise it would not be able to contain any liquid.

69. Contrary to the Defendant, the patent does not exclude the waterproof cylinder to be a packing. Neither the wording of claim 1 nor the patent description contain a pointer that a packing should be avoided. The fact, that the description mentions a packing in the context of the housing discharge hole (540) only, does not suffice. As far as the Defendant refers to wear and tear of a packing, there is no indication in the patent specification that this has to be avoided according to the patent’s teaching. The patent specification wishes to achieve that the juice extractor is easier to clean (paras. [0001], [0003], [0010], [0065], [0086]). However, the description offers no indication that this has to be achieved by avoiding a packing. This is rather achieved by the longitudinal (instead of horizontal) alignment of the juice extractor and the brushes cleaning the mesh (paras. [0024], [0065], [0071], [0080], [0086], [0010]). These measures result in less draff/juice to be removed, which is caught in the meshes.

70. The deviating decisions of the Korean Courts do not mandate a different result, because they relate to a different patent.

Feature [1F] – pressure discharge passage

71. Feature [1F] requires the housing to have a pressure discharge passage. Contrary to the Defendant, the pressure discharge passage in total has not to form one single body with the housing or even with the bottom of the housing and doesn’t need to be of a certain shape, e.g. a groove in the bottom surface of the housing. At first sight, all relevant figures Fig. 2 to Fig. 4 may imply such a design. However, these figures show exemplary embodiments only, and there is no pointer that such a design is relevant to the teaching of claim 1. The function to discharge pressure does not require the pressure discharge passage to be one integral body with the housing, even if this function should encompass the function to discharge all juice. The requirement of feature [1I] that the screw gears of the screw are inserted into the pressure discharge passage can be also fulfilled if the pressure discharge does not form one integral body with the housing. Against this background, the scope of claim 1 cannot be narrowed down to such designs. The

term “having” merely indicates that the pressure discharge passage belongs to the housing.

72. Feature [1F] requires the pressure discharge passage to be formed around a lower part of the waterproof cylinder. It does not require that the pressure discharge passage is formed around the lowest part of the waterproof cylinder or that the pressure discharge passage is formed around a lower part only and does not extend to a level above the waterproof cylinder. As far as Fig. 2 – 4 show such a design, this relates to an exemplary embodiment only without such a restriction being sufficiently reflected in claim 1. Since the waterproof cylinder has not the function to raise the height of the through-hole above the liquid level in the housing (cf. supra), such a restriction to the lower part does not follow from the function of the waterproof cylinder either.

73. During juicing, due to pressure at the bottom of the mesh drum, a (minor) part of the juice is pushed into the gap between the inner ring 250 of the screw 200 and the inner ring insertion hole 380 of the mesh drum 300 to flow to the pressure discharge passage 580 (cf. e.g. para. [0061], [0070]). The function to discharge the pressure and the term “passage” imply that the pressure discharge passage is connected to the surroundings. However, a specific connection to the juice outlet port is only the subject matter of a preferred embodiment (cf. subclaim 2, paras. [0012], [0046]). Furthermore, claim 1 does not specify, where the pressure discharge passage opens to the surroundings. As far as Fig. 4 shows a channel, in which the intermediate gear is located and the bottom of which is on the same level as the bottom of the groove surrounding the waterproof cylinder, it can be left open if the channel still belongs to the pressure discharge passage (whereas Paras. [0018] and [0052] may indicate the negative). In any case, a requirement that the opening of the pressure discharge passage has to be at its bottom level is not reflected in claim 1.

74. The function of the local arrangement “around a lower part” of the waterproof cylinder is to locate the pressure discharge passage at a low point in order to support the discharge of juice or draff pressured into it. However, this function does not dictate that the pressure discharge passage has to be designed so that no liquid or draff at all remains in it. The subject of the discharge is pressure, not liquid or draff. Thus, it suffices that the pressure that builds up by the juice or draff collected in the pressure discharge passage is released. To achieve this goal, the removal of all juice or draff is not necessary. Apart from that, there is no sufficient pointer in the patent specification that remaining juice or draff has to be avoided. As discussed, claim 1 does not require the pressure discharge passage to be formed around a lower part of the waterproof cylinder including the lowest point. As far as paras. [0060] to [0061], [0083], [0088] combined may presuppose that all the juice or draff is eventually discharged, these passages refer only to a preferred embodiment without such a design being reflected in claim 1. As far as Fig. 2 to 4 show such design, the same applies. As far as the improvement with regard to less cleaning is concerned, neither claim 1 nor

the patent description reflect that this relates to the avoidance of remainders in the pressure discharge passage. As already discussed in the context of the waterproof cylinder (cf. *supra*), the improvement relates to the removal of juice/draff caught in the meshes.

Feature [1N] – longitudinally fixed

75. The feature longitudinally fixed does not require a fixation preventing the housing from being vertically lifted. The adverb longitudinally rather indicates the alignment of the housing, not the direction of the fastening force.

76. Feature [1N] reads in full “wherein the housing accommodating the screw is longitudinally fixed to an upper side of the drive unit (600) so as to press, grind and extract juice from materials put into the inlet port and to discharge the draff.” The indication of the purpose contained in feature [1N], i.e. in the part after “so as to”, specifies the purpose and the effect of the feature “longitudinally fixed”.

77. There is already no indication in the patent specification at all, why, according to claim’s 1 teaching, the pressing, grinding and extracting would require to avoid the vertical lifting of the housing. As far as para. [0056] mentions the prevention of vibrations of the juice extractor, which goes beyond the prevention of vibrations of the screw shaking or striking against the inner wall of the mesh drum (which is done by the bidirectional fixing of the screw, cf. [0025], [0009]), this relates only to a preferred embodiment with engaging hooks 620 (cf. Fig. 2, subclaim 6). There is no sufficiently clear indication that the preferred embodiment and the other preferred embodiment with differently designed engagement hooks 620a (Figs. 6, 7, subclaim 12) are only mere concretizations of the subject-matter of claim 1 with regard to the concrete design of the longitudinally fixation and not in fact embodiments having an additional feature. This is all the more true as paras. [0056], [0075] and subclaims 6 and 12 do not repeat the term “longitudinally fixed” and do not otherwise refer to a longitudinal fixation to be specified by them either, but rather use the different term “to secure the housing” for the function of the engagement hooks. In contrast, it is para. [0053] that describes the fixation of the housing to the drive unit. In doing so, para. [0053] refers to a plurality of fixing projections 630. These fixing projections prevent the housing only from being rotated or being moved sideways (so that the housing does not fall off the drive unit), but does not prevent the housing from being lifted vertically. The fact that para. [0076] speaks of the fixing of the housing as well is due to the fact that, in this embodiment (Figs. 6, 7), the fixing projections are modified to engagement hooks 620a, which fulfill both the aforementioned function of the fixing projections from para. [0053], i.e. to fix the housing to the drive unit, and the function from para. [0075], i.e. to secure the housing against vertical lifting and vibrations in this context. Since the preferred embodiment of para. [0072] to [0076] (Figs. 6, 7) is an alternative to the preferred embodiment of para. [0056] with respect to the engagement hooks, the term “secure” has the same

meaning as in [0056], and the function addressed in para. [0075] in this regard is the same as in para. [0056].

78. Apart from the considerations above, in any case, there seems to be no reason, why the discharge of the draff (feature [1N]: “longitudinally fixed ... as to ... discharge the draff”) should require that the housing is fixed in order to prevent the housing from being vertically lifted. Since the discharge of the draff takes part in the purpose indication, any construction of feature [1N] also has to make sense in this regard.

79. On the other hand, the patent specification repeatedly states that the housing (accommodating the screw, the mesh drum and the rotating brush) is longitudinally assembled, which has the advantage that materials are naturally moved downward by gravity and with higher speed and that (even thick) juice flows downward without remaining in the housing (paras. [0024], [0071], [0080]). These and other aspects are advantages over a conventional juicer of the prior art with a horizontal alignment of the housing (cf. paras. [0004] to [0006], cf. also the corresponding description of the technical problem in paras. [0007] to [0010]).

80. Therefore, the term “longitudinally fixed” means that the housing (accommodating the screw, the mesh drum and the rotating brush) and thus in particular the screw are aligned in the vertical direction (in contrast to the horizontal direction) and that the housing is fixed in this alignment to the drive unit without requiring that the fixation prevents the housing from being vertically lifted. Contrary to the Defendant, this does not result in equating the term “assembled” or “mounted” from the description (cf. e.g. paras. [0024], [0071], [0080], [0074], [0089]) with the term “fixed” from claim 1 and other parts of the description, because the housing has to be fixed to the drive unit, however, the fixation has not to encompass a fixation against vertical lifting.

81. As far as the Defendant pointed out in the oral hearing that claim 1 already addresses the vertical alignment in other parts of the claim addressing “a lower (end) part” (features [1C], [1D], [1E], [1F], [1I], [1J]), “an upper part” (features [1B], [1G]) and “an upper rotary shaft” (features [1G]) (and, in addition, by the wording “wall blades longitudinally formed” in feature [1K]), this is not decisive. The fact, that elements of a juice extractor have an upper or lower part, clarifies not unambiguously that the juice extractor is assembled in a vertical alignment. Rather, these indications of orientation are the mere consequences of feature [1N] calling for a longitudinal alignment when the housing is fixed to the drive unit. Apart from that, the fact that a vertical alignment may be deduced from other parts of claim 1 does not exclude emphasizing the vertical alignment in feature [1N] where the engagement of the housing with the drive unit is specifically addressed

E. IMPLEMENTATION BY THE CONTESTED EMBODIMENT

82. The contested embodiment implements all features of claim 1. As far as the Defendant does not dispute this, this is not based on a flawed analysis of the patent claim. Applying the claim construction discussed above, the contested embodiment also implements the features

[1B], [1C], [1E], [1F] and [1N] disputed by the Defendant.

Feature [1B] – inlet port

83. The opening of the contested embodiment shown below implements an inlet port according to claim 1 (arrows added by Claimant):



84. As discussed, the inlet port can be a mere opening and, in particular, does not call for an extension beyond the level of the surface of the cover or a guiding function. Even if one came to another conclusion, in any case the auto hopper establishes an inlet port. As discussed, the inlet port has not to be one integral body, and it suffices that the material is guided by the rotating knife or blade to the breakthrough through the cover. The Defendant's disagreement is not based on a different position on facts, but on claim construction.

Feature [1C] – housing

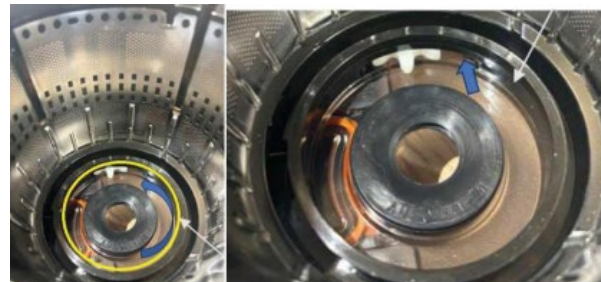
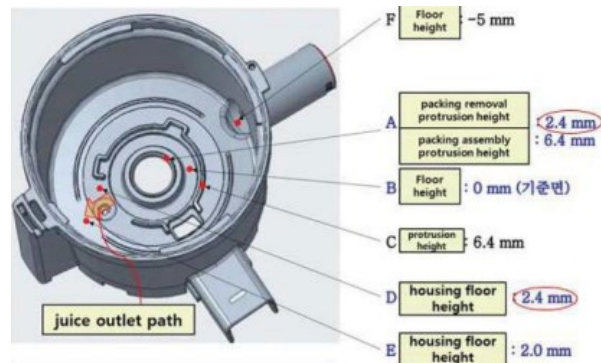
85. The Defendant argues that there is no housing because of the absence of a cover with an inlet port according to feature [1B]. Since this is not true, its argument is without foundation.

Feature [1E] – waterproof cylinder

86. The rubber packing implements a waterproof cylinder according to the patent. As discussed, a packing is not excluded, and the waterproof cylinder is not required to be one integral body with the housing and to raise the through hole above the liquid level in the housing. The rubber packing also supports the positioning of the screw. Again, the Defendant's disagreement is not based on a different position on the facts, but on the claim construction.

Feature [1F] – pressure discharge passage

87. The pressure discharge passage consists of the groove in the bottom of the housing and the little pathway in which the intermediate gear is located. As discussed, the pressure discharge passage has not to be built as one single body with the housing without any other involved elements, so that it does not go beyond the scope of claim 1 that, in the contested embodiment, the wall at the lower end of the mesh drum also supports the pressure discharge passage (cf. Reply, para. 152) and that the groove's opening to the surroundings lies above its bottom level (cf. drawing from Reply, p. 40, and pictures from Reply, p. 41 (arrows and circle added by Claimant)):



88. As also discussed, it is irrelevant that juice remains in the groove which does not flow off automatically and is not pumped by the intermediate gear either. Finally, the screw gears are rotatably inserted in the groove as required. Again, the different views of the Defendant are based on a deviating claim construction.

Feature [1N] – longitudinally fixed

89. The housing of the contested embodiment sits in a longitudinal alignment on the drive unit and is fixed thereon by means of the circumferential edge and the protrusion therefrom (cf. picture from Reply, p. 45):



90. These means prevent the housing from rotating and moving sideways and falling off the drive unit when in use and therefore fix the housing to the drive unit according to feature [1N]. As discussed, it is of no relevance that the fixation does not prevent the housing from being vertically lifted and vibrating.

Subclaims

91. The subclaims are of no relevance. Since the Defendant did not file a counterclaim for revocation, the Claimant does not rely on subclaims (cf. Reply, para. 164). It can be left open, if, in such a situation, the Claimant could insist that the Court explicitly assesses the infringement of subclaims.

F. APPLICABLE SUBSTANTIVE LAW

92. The determination of the substantive law applicable to an alleged infringement is to be strictly distinguished from the jurisdiction to hear the case (cf. Kalden, GRUR Patent 2023, 178 mn. 52; McGuire, GRUR Patent 2024, 466 mn. 5).

93. In patent literature appears to be predominant agreement that, for infringing acts committed after the entry into force of the UPCA, i.e. after 1 June 2023, the UPC has to apply the substantive law as laid down in the UPCA, in particular in [Art. 25 et seqq. UPCA](#), to the facts of the case with regard to pre-existing traditional European bundle patents (cf. W. Tilmann, GRUR Patent 2025, 51 mn. 101; Tilmann/Plassmann/W. Tilmann, EPGÜ Einf. mn. 70, 89 et seqq.; cf. Tilmann/Plassmann/v. Falck/Dorn, EPGÜ Art. 34 mn. 2, 4, 24; Bopp/Kircher, EurPatentprozess-HdB/Sonntag § 147 mn. 147; Nieder, GRUR 2014, 627 (628)). As main argument these authors refer to [Art. 3 \(c\) UPCA](#) and [Art. 34 UPCA](#), respectively. According to this view, the territorial scope stipulated by [Art. 34 UPCA](#) presupposes an accordingly unified substantive law (cf. Tilmann/Plassmann/v. Falck/Dorn, EPGÜ Art. 34 mn. 15). For traditional European bundle patents, which are subject to the UPCA, Art. 25 et seqq. UPCA form the national law of the UPC member states within the meaning of [Art. 2 \(2\)](#), [Art. 64 \(1\)](#), [\(3\) EPC](#) (cf. Nieder, GRUR 2014, 627 (628)). According to another view, the traditional European patent is to be regarded as an independent international patent, the content of which, pursuant to Art. 2 (2), Art. 64 EPC, is defined by reference to national law. In this context, Art. 64 (3) EPC obliges the EPC member states to apply their national procedural law to infringements (cf. Tilmann/Plassmann/W. Tilmann, EPGÜ Einf. mn. 74 et seqq.). The UPCA would use the authorization pursuant to [Art. 142 EPC](#) to restrict the reference to national law pursuant to [Art. 64 \(1\) EPC](#) to the extent that the rights conferred by a European bundle patent are harmonized by provisions of the UPCA (cf. Tilmann/Plassmann/W. Tilmann, EPGÜ Einf. mn. 89). Art. 24 UPCA is considered to constitute a hierarchy of norms which places the UPCA above the EPC (cf. Haedicke, GRUR 2014, 119 (120); Schroer, GRUR int 2013, 1102 (1107)).

94. These views had recently been challenged with considerable arguments by McGuire advocating for an application of national patent law upon European bundle patents even if the infringing acts only reside after the entry into force, however – as a pragmatic solution to the problems arising from an application of manifold national patent laws – allowing for an application of the UPCA as harmonized law unless explicit reference is being made to deviating rules of national law (cf. McGuire, GRUR Patent 2024, 466, in particular mn. 33 et seqq.).

Law applicable to infringing acts after 1 June 2023

95. However, since [Art. 25](#) to [28 UPCA](#) refer to a “patent” (cf. [Art. 2 \(g\) UPCA](#)) without distinguishing between European (bundle) patents within the meaning of [Art. 2 \(c\) UPCA](#) and European patents with unitary

effect within the meaning of [Art. 2 \(f\) UPCA](#), the panel holds that the provisions (at least) apply to infringing acts committed after the entry into force of the UPCA with respect to both types of patents. There is no sufficient basis to find that the contracting member states of the UPCA did not aim at such harmonization of [European Patent Law](#). The fact that [recital \(6\)](#) of the European Patent Regulation (Regulation (EU) No 1257/2012 of the European Parliament and the Council of 17 December 2012 implementing enhanced cooperation in the area of creation of unitary patent protection, hereinafter “UPR”) establishing the European patent with unitary effect refers to [Art. 142 EPC](#), whereas the UPCA does not mention [Art. 142 EPC](#) – just as it does not mention [Art. 149a EPC](#) either – and may undisputedly be regarded as special convention on a common court in the meaning of [Art. 149a \(1\) EPC](#) (cf. McGuire, GRUR Patent 2024, 466 mn. 44), is not decisive. The same applies to the facts that the drafting history may suggest that [Art. 25](#) et seqq. UPCA are the result of a shift of the substantive law from the UPR to the UPCA, and that the extension of the UPC’s jurisdiction to traditional European bundle patents was the result of a policy decision to ensure sufficient case load (cf. McGuire, GRUR Patent 2024, 466 mn. 28). All these aspects, still, are not sufficient to assume that the contracting member states of the UPCA intended that the UPC should apply the national patent laws to future acts infringing traditional European bundle patents within the territories of said member states, and thus to consider the wording of [Art. 25](#) to [28 UPCA](#) to be a mere oversight. Such an assumption would result in an overly complicated fragmentation of law and would undermine the second recital of the UPCA, which clearly highlights “that the fragmented market for patents and the significant variations between national court systems are detrimental for innovation”. This aim is not – at least not explicitly – restricted to European patents with unitary effect. Moreover, the fact that [Art. 29 UPCA](#) governing exhaustion explicitly (and consequentially) refers to traditional European bundle patents only, because, for European patents with unitary effect, exhaustion is governed by [Art. 6 UPR](#), serves as a further indication that the contracting member states chose the wording intentionally and leads away from an assumption of a mere mistake in the wording of [Art. 25](#) to [28 UPCA](#). Similarly, [Art. 34 UPCA](#) again refers specifically to traditional European bundle patents only, because the effect of decisions concerning European patents with unitary effect is self-explanatory. Finally, the drafting history clearly contradicts the assumption that the applicability of [Art. 25](#) et seqq. UPCA to traditional European bundle patents is a mistake. In fact, the previous versions of [Art. 25](#) et seqq. UPCA did relate to traditional European bundle patents only and were extended to European patents with unitary effect afterwards (cf. Art. 2 (3), Art. 14c et seqq. UPCA draft version of 14 May 2008 (Council document 9124/08), Art. 2 (5), Art. 14f et seqq. UPCA draft version of 12 October 2012 (Council document 14750/12), (adopted) proposal by the then Presidency of the Council of the

European Union Cyprus of 17 October 2012 (Council document 14963/12)). Thus, there was from the outset a clear intention to harmonize the substantive law applicable to European bundle patents (cf. also W. Tilmann, GRUR Patent 2025, 51 mn. 101).

96. At first sight, the existence of two parallel regimes of national patent laws within the meaning of [Art. 2 \(2\), 64 \(1\), \(3\) EPC](#) calls for justification. However, what appears to be questionable at first is well advanced by the fact that, for one, [Art. 142 EPC](#) explicitly foresees the creation of two degrees of uniformity and, second, [Art 149a EPC](#) also allows a group of member states to the EPC to participate in international agreements having effect on their respective national patent laws. The language of [Art 149a\(1\) EPC](#) (“such as, in particular”) shows that its lit. (a) to (d) are not meant to be an exhaustive list. Therefore, the UPC contracting member states as member states of the EPC were not barred from also harmonizing aspects of their respective national patent laws by the UPCA next to creating the new Unified Patent Court and the creation of the European Patent with unitary effect by way of an EU Regulation. This is supported by the travaux préparatoires to the EPC 2000 which sets out that the projects addressed in lit (a) to (d) were the ones that had been discussed at that time and that such discussion would call for a solid basis in the EPC on a general basis which is not limited to the then existing projects (see Basic proposal for the revision of the European Patent Convention MR 2/00/e on Art 149a EPC, at page 203 para 4) further harmonizing patent laws or creating a special patent court. Therefore, additionally to [Art. 142 EPC](#) which forms the basis for the introduction of the European patent with unitary effect, [Art. 149a \(1\) EPC](#) reserves the right to any group of EPC contracting member states to conclude special agreements on any matters concerning European patent applications or European patents which under the EPC are subject to and governed by national law. These matters encompass a harmonization of national law with respect to traditional European bundle patents (cf. W. Tilmann, GRUR Patent 2025, 51 mn. 47 et seq.). Finally, the fact that the UPCA does not explicitly mention [Art. 149a UPCA](#) in its recitals is of no relevance as the EPC does not call for a formal citation of this provision in the international treaty making use of it.

97. The fact that national courts of UPCA member states may not apply [Art. 25](#) et seq. UPCA to infringing acts committed after the entry into force of the UPCA (cf. Oberlandesgericht Karlsruhe (Germany), Urteil vom 14.2.2024 – 6 U 232/22, GRUR-RS 2024, 4825 mn. 24 – Schneidmaschine; different opinion W. Tilmann, GRUR Patent 2025, 51 mn. 72, 84) would result in the claimant being able to determine the applicable substantive law by choosing either the UPC or the competent national court if the UPC applies [Art. 25](#) et seq. UPCA to such acts. There may be significant differences between the substantive law of the UPCA and the national law outside the UPCA (cf. McGuire, GRUR Patent 2024, 466 mn. 3 et seq. as well as Vissel GRUR 2015, 619 et seq. pointing inter alia at the

example of an indirect infringement which under section 10 German Patent Act only amounts to infringement in case of acts directed at the territory of Germany whereas according to [Art. 26 UPCA](#) acts in any contracting member state suffice so that there may be factual scenarios in which there is no indirect infringement under section 10 German Patent Act but under [Art. 26 UPCA](#)). However, the fact that the claimant would have the right to determine the content of the claim and to choose between different claims – at least in the transitional period – respectively is nothing unknown to European Union law (cf. e.g. Art. 3 of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees). Assuming such right, the claimant would make the choice by filing its statement of claim either with the UPC or the national court which then would find its basis in the legislative decision of the contracting member states allowing for two parallel regimes in the transitional period. In this case, the issues as to from what point in time the choice would be binding and which implication the withdrawal of an opt-out pursuant to [Art. 83 UPCA](#) may have in that context can be left open on the instant facts.

98. The application of substantive law of the UPCA to acts committed after the entry into force of the UPCA on 1 June 2023 is also not barred by the fundamental principle not to apply new rules of law to facts exclusively lying in the past with unconstitutional retroactive effect (cf. W. Tilmann, GRUR Patent 2025, 51 mn. 105 et seq.). This fundamental principle does not extend to the protection of expectations that the substantive patent law governing future acts of infringement remains unchanged. For instance, the measures prescribed by Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (enforcement directive) also apply, from the date of transposition into national law, to pre-existing intellectual property rights. Since the right to choose, if any, comes into existence with the entry into force of the UPCA for future acts only, neither its grant nor its exercise constitute a retroactive effect either.

Law applicable to infringing acts before 1 June 2023

99. With respect to acts committed before the entry into force of the UPCA, however, the fundamental principles governing retroactivity being enshrined and recognised in European Law and international law have to be respected.

100. According to the Vienna Convention on the Law of Treaties (VCLT), which applies to the UPCA as an agreement between VCLT contracting member states (cf. [Court of Appeal, Order of 16 January 2025, UPC CoA 30/2024, GRUR-RS 2025, 213 mn. 41](#); W. Tilmann, GRUR Patent 2025, 51 mn. 107), retroactivity of treaties is governed by Art. 28 VCLT which reads:

“Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.”

101. Accordingly, without a basis for assuming such intention, be it explicit or implicit, not only retroactivity between the parties to the treaty, but also retroactive application of any substantive law prescribed by the treaty is forbidden.

102. This principle on retroactivity referred to in the VCLT is also deeply embedded in the law of the European Union (cf. [ECJ, decision of 26 April 2005 – C-376/02 – Stichting „Goed Wonen”/Staatssecretaris van Financiën](#), paras. 32 et seqq. with further references) and therefore has to be respected by the UPC, [Art. 20 UPCA](#). First, in principle, a new rule of law applies from the entry into force of the act introducing it in the absence of express intertemporal rules dictating otherwise (cf. [ECJ, judgement of 22 June 2022, C-267/20, GRUR-RS 2022, 14015 mn. 32 – Volvo AB ua/RM; judgement of 21 December 2021, C428/20, BeckRS 2021, 39569 mn. 33 and the case-law cited – Skarb Państwa](#)). While the new law does not apply to legal situations that have arisen and become definitive under the old legal regime, it does apply to the future effects of a situation which had been established under the law being applicable before the change of law took place as well as to facts that had been established after the entry into force of the new law. In this context, the substantive rules of EU law must be interpreted, in order to ensure observance of the principles of legal certainty and the protection of legitimate expectations, as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, their objectives or their general scheme that such effect must be given to them (cf. [ECJ, judgement of 22 June 2022, C-267/20, GRUR-RS 2022, 14015 mn. 31 – Volvo AB ua/RM; judgement of 21 December 2021, C-428/20, BeckRS 2021, 39569 mn. 31 and the case-law cited – Skarb Państwa](#)). Second, any retroactive effect requires justification. For instance, the application, for the purpose of calculating fines imposed for competition infringements, of new guidelines and in particular of a new method of calculating the amount of a fine contained therein, even to infringements committed before the adoption or the amendment of those guidelines, does not breach the principle of nonretroactivity in so far as those new guidelines and that new method were reasonably foreseeable at the time when the infringements in question were committed (cf. [ECJ, judgement of 26 January 2017, C-604/13 P, BeckRS 2017, 100513 mn. 42 and the case-law cited](#)). The aforementioned principles are part of the primary Union law such as the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) (see ECJ as cited supra).

103. By virtue of [Art. 20 UPCA](#), which refers to Union law in its entirety, these principles of unwritten Union law apply to the interpretation of the substantive law of the UPCA. Since the UPC as a court common to the UPCA member states has no unwritten single national law, the unwritten Union law, which is based on common principles of law of the EU member states, fills the gap. The reference to Union law in its entirety clarifies that the UPC even in areas, which are reserved

to Union law, but where no written Union law exists, must not develop unwritten principles common to the law of the UPCA member states, which deviate from the principles common to all EU member states. Moreover, if the European Parliament and the Council created common rules on patent law pursuant to Art. 118 (1) TFEU, these rules would have to comply with the unwritten principles of the Union law in particular on retroactivity. As far as a group of EU member states creates such rules the same principles apply as EU member states may not by way of bilateral or multilateral treaties undermine the fundamental principles of EU law (cf. [ECJ, C-284/16 – Achme, ECLI:EU:C:2018:158](#)). Therefore, Art. 326 TFEU stipulates that any enhanced cooperation between EU member states shall comply with the Treaties in the meaning of Art. 1 (1) TFEU and Union law which includes the unwritten principles thereof. Hence, since and to the extent the UPCA is an enhanced cooperation in the meaning of Art. 326 TFEU, Art. 20 TEU, Art. 326 TFEU also calls for the application in particular of the fundamental principles of Union law on retroactivity.

104. Applying the principles on retroactivity outlined above, the UPCA already lacks the first requirement for an application of its substantive law to infringing acts committed before its entry into force (cf. W. Tilmann, GRUR Patent 2025, 51 mn. 107). There is no explicit nor implicit pointer to such retroactive applicability. There is no such language in the provisions of the UPCA, nor is there any basis contained in its objectives or its general scheme that such effect must be given to it. Furthermore, such retroactive application to facts which had solely been established in the past as past acts would run counter to the fundamental principles of EU law described above. Not only in the example of indirect infringement set out supra but also with respect to other aspects of law which govern past use the national patent law may differ significantly from the rules of the UPCA, e.g. with respect to the amount of recoverable damages. An alleged infringer who examined the legal situation at that time and – for example in a situation where there were good arguments against finding for infringement on the instant facts – calculated the risk to be held liable for patent infringement under the then applicable national law cannot be unforeseeably confronted with new rules of law possibly rendering much more severe consequences. It can also not serve as an argument that the entry into force of the UPCA were to be anticipated since its signature in 2013 as the long and winding development which unfolded thereafter not only once put the whole project into question and thus rendered its entry into force unforeseeable. Consequently, it is solely the relevant substantive national law, which has to be applied to acts committed and concluded before the entry into force of the UPCA on 1 June 2023.

Law applicable to infringing acts continued after 1 June 2023

105. However, it is in accordance with the principles outlined above, to apply the UPCA as a new rule of law also to future effects of facts that have arisen, but have not become definite before 1 June 2023 since such

application is not of retroactive effect at least in a strict meaning as referred to in the cited ECJ case law and therefore not counter to principles of European law (cf. in this sense: ECJ, Rs. 74/74, Slg. 1975, 533, Rn. 29/32 (CNTA)). Accordingly, the substantive law of the UPCA also applies to ongoing infringing acts that started before the entry into force of the UPCA and continued after the entry into force on 1 June 2023. When assessing whether infringing acts are in that sense “ongoing” and justify the application of the UPCA as a general rule, an overly formalistic approach which runs counter to the aims of the Agreement must not be applied. What is decisive is to categorize such acts not in a formalistic manner which only takes into account, if, when viewed from a purely natural perspective, such acts can be referred to as separable acts, but which looks at the scenario from a normative and therefore evaluative perspective. Before this backdrop it is justified to apply the UPCA as a harmonized set of national law of the contracting member states of the UPCA to ongoing acts, if the infringer continues its infringing behaviour although he could have stopped the infringement in the light of the entry into force of the new regime on 1 June 2023. Therefore, it is not decisive that the alleged infringer manually started its production line every day anew so that one could regard all infringing acts of manufacture separately on a daily basis as individual acts of past use before or after the entry into force of the UPCA. What is decisive is that from an evaluative perspective the alleged infringer could have stopped its ongoing production in the light of the entry into force of the UPCA but still made the decision to continue. An overly formalistic view would also have to differentiate between the different acts of use of the invention as it may be argued that a decision to offer the infringing product based on a marketing campaign which started before 1 June 2023 and continues thereafter is inseparable so that information concerning the campaign has to be rendered based on [Art. 67 UPCA](#) for all time periods alike, whereas for acts of manufacture it had to be differentiated between acts of manufacture before and after 1 June 2023. Under these circumstances, it appears to be justified to apply the rules of the UPCA and Rules of Procedure to, when viewed from an evaluative perspective, such ongoing acts which had been committed prior to the entry into force as well as to the acts committed after the entry into force. However, in order to avoid potential hardship, the party concerned may rely on the provisions of the respective national law in force prior to the entry into force of the UPCA with regard to acts of past use which lie before 1 June 2023. Thus, a defendant may defend itself by pointing to advantageous provisions of the respective national law as well as a claimant may base its claims on provisions of national law being favourable to its position compared to the provisions of the UPCA and the RoP. In both cases, the party which advances the argument based on national law has to elaborate on such rules of national law and set out with a sufficient degree of substantiation why that rule of national law supports its argument. It is not for the UPC to determine and analyse the legal

arguments based on various national laws *ex officio*. It were not only unrealistic to expect that the panels of the UPC even though consisting of judges from different jurisdictions mastered the national laws of all participating member states but it also does not amount to an undue burden to have the party which is now – based on a legislative decision of the member states – allowed to advance its case or defend itself in one unified forum to elaborate on provisions of different national laws where acts of infringement occurred in various territories. The same were true, if the case had been heard by one national court having jurisdiction to adjudicate upon infringement allegations based in multiple jurisdictions. Moreover, the UPCA and the Rules of Procedure foresee in various scenarios that the party concerned will have to elaborate on national law (see e.g. [Art. 32 \(1\) \(f\)](#), [24 \(2\) \(c\) UPCA](#) (compensation derived from the provisional protection conferred by a published European patent application), [Art 28 UPCA](#) (private prior use rights), [Art. 72 UPCA](#) (certain aspects of periods of limitation, cf. McGuire GRUR Patent 2024, 466 mn. 52). For these reasons, it is also not for the court in the first place to appoint a court expert to provide expertise on foreign law. According to [Art 57 UPCA](#) the court has a discretion whether or not to appoint a court expert (cf. Tilmann/Plassmann/v. Falck/Dorn, Einheitspatent, Art 53 EPGÜ para 45 et seqq.). As with finding of facts, it is for the party to submit its legal arguments on national law in the first place. In this context, a party may consider to either submit arguments on national law by its representatives and/or support these arguments by party-appointed expert opinions or suggest to furnish the court with such party-expert opinion in case the court deems this appropriate. Only where the legal opinions on national law submitted by the parties do not converge and the court itself is not able to evaluate the question of national law appropriately, the court will have to consider, if a court-appointed expert will have to be appointed, which may be suggested by the party concerned (cf.: Bopp/Kircher/Böttcher, Handbuch Europäischer Patentprozess, 3 ed., § 23 paras 175 et seqq.; Ahrens GRUR 2017, 323, 325, Haft/Lohr, GRUR Patent 2023, 69, 71).

106. Taking into consideration that the national laws are to a considerable extent harmonized by European Law (esp. with regard to available remedies by the enforcement directive) and the EPC, it is justified to apply the UPCA as a harmonized law common to the contracting members states, the latter being bound by both layers of international law, the EPC and European law (cf. McGuire GRUR Patent 2024, 466 mn. 47 et seqq.: “presumption of similarity” citing at para 47 OGH of Austria 23 May 2013, 4Ob29/13p).

Ordering information to be rendered and finding for liability for damages

107. The extent to which information has to be rendered under [Art. 67](#) et seq. UPCA requires special consideration in this context. According to [Art. 67 \(1\) UPCA](#), the court may order an infringer to inform the claimant about the aspects listed therein. Furthermore,

Art. 68 (3) (a) (b) UPCA in conjunction with **R. 191** sentence 1 alternative 2 RoP grants the claimant a right to information needed to verify the information and to calculate the damage (cf. **Local Division Mannheim, decision of 22.11.2024, UPC CFI 210/2023**, mn. 179; **Local Division Düsseldorf, decision of 03.07.2024, UPC CFI 7/2023**, GRUR-RS 2024, 17732 mn. 136 et seqq.). It can be left open whether **Art. 67, 68 UPCA** give a mere procedural right to information. Even if this were the case and if procedural rights provided by these provisions were not underpinned by unwritten corresponding substantive rights, in accordance with the statements above, **Art. 67, Art 68 (3) (a) (b) UPCA** require an infringing act committed after the entry into force of the UPCA. However, the question of intertemporal applicability of a right to information and the question of the scope of the period, for which information has to be provided, have to be distinguished. By its nature, rendering information concerns acts of past use and aims at providing the infringing party with sufficient details to be able to protect its patent rights. As far as such information serves as a basis to calculate damages it is furthermore imminent to the right to information that details may have to be laid open which may not be used to calculate damages in subsequent proceedings as it may turn out that the details relate to acts which do not constitute an infringement of patent rights or do not result in damages. However it is not for the infringer to predetermine which acts are to be regarded as infringing or resulting in damages or not. Therefore, information may have to be rendered in consequence of the infringement found which after evaluation by the claimant and/or the court do not relate to such infringing acts and may not be used to calculate damages. E.g. it may not be for the infringer to finally assess, if certain items offered or delivered, which qualify as means relating to an essential element of the invention, were used for a subsequent direct infringement by arguing they were not and therefore not to render the respective information. The same holds true for the information to be rendered according to **Art. 67 UPCA** which may be used in subsequent proceedings in which damages are being determined (**R. 125 et seqq RoP**). This approach is also advancing the interest of the member states to mitigate the disadvantages of a fragmented market for patents and the significant variations between national court systems which are deemed to be detrimental for innovation (recital No2 to the UPCA). In most cases where a claimant seeks to enforce its patent rights it will only be bound to do so for lack of knowledge to which extent infringement occurred in the different territories. Once in possession of sufficient information it will then concentrate on the most important territories and will only embark upon the tedious task of the determination of damages caused in the economically most important countries and thereby alleviate the disputants as well as the court from examining various national laws. Furthermore, the claimant will in many instances not know in which temporal scenario his case resides. It may be uncertain, if infringement only occurred prior to the entry into force

of the UPCA, or if the case concerns a scenario extending beyond 1 June 2023 or if claimant is faced with a scenario where all relevant facts only lie after 1 June 2023 so that solely the UPCA and RoP apply. Hence, it is only after the information under Art. 67 UPCA had been rendered that claimant will know if and to what extent rules of national law play a role and may limit or extend claimant's claims compared to the rules enshrined in the UPCA and the RoP and are worth being litigated upon. In consequence, it is not for the operative part of the decision on the merits according to R. 118 RoP to limit the extent of information time-wise up-front based on arguments of national law applicable to acts lying before 1 June 2023. Rather information is to be rendered in accordance with the requests of the claimant and is limited by the date of the grant of the patent or the publication date of the patent application respectively on the one hand and, as applicable, by Art. 72 UPCA on the other hand.

108. The same applies to the operative part of the decision as far as it holds the infringer in principle to be liable to pay damages – the determination of the amount of damages and the time periods to be taken into account are to be determined in subsequent proceedings under **R. 125 et seqq. RoP**.

G. INFRINGING ACTS

109. Defendant does not dispute that its French distributor Warmcook and its German subsidiary NUC Electronics Europe GmbH offer and sell the contested embodiments in their home country France and Germany respectively. Both undisputedly are part of Defendant's distribution network (cf. the list of its global subsidiaries and distributors on its Korean webpage, exhibit P15/15a. which undisputedly refers and links to NUC Electronics Europe GmbH as the "Europe Branch" and links to Warmcook for France). According to its own statement, the Defendant delivers and hands over the contested embodiments to third parties, e.g. its subsidiary NUC Electronics Europe GmbH, within Korea, e.g. at the port of Busan, for shipment (SoD, para. 318). As discussed above, since the acts are committed after the entry into force of the UPCA, the substantive law as laid down in the UPCA applies. Contrary to the Defendant, these acts constituted an infringement. When determining whether a defendant is responsible for an infringement, in the first step, a distinction must be made between infringement by own acts (hereinafter referred to as perpetration) and participation in third parties' infringing acts. Since the substantive law as laid down in the UPCA governs in itself at least perpetrating acts with regard to an infringement of European patents in their entirety (like it does with regard to the European patent with unitary effect), it is exhaustive for all kinds of perpetration without leaving aspects thereof to substantive national law. Thus, the substantive law as laid down in the UPCA in particular determines when acts contributing to third parties' direct acts of infringement are to be considered acts of perpetration. Whether this is the case has to be determined by an autonomous interpretation of the UPCA (cf. with regard to this principle W. Tilmann, GRUR Patent 2025, 51 mn.

68 et seqq.; Dornis, GRUR Patent 2024, 337 mn. 14 et seqq.)). In this regard, **Art. 25 UPCA** and consequently **Art. 63** et seqq. UPCA do not call for own acts within the territory of the UPCA member states in order to establish an infringement committed as perpetrator. Depending on the circumstances of the individual case, acts in the meaning of **Art. 25 UPCA** also encompass acts which make the infringement possible and support it. This is true at least for such acts which give the potential perpetrator control over the infringement. Otherwise, the protection would fall short of the protection by traditional national law without any indication that the UPCA intends to provide less protection in itself. At least under the circumstances of the present case, where a defendant hands over the contested embodiments to its distributors outside the territory of the UPCA member states with the intention of distributing them within said territory, these supporting acts give the defendant control over the infringement and thus constitute own infringing acts committed by the defendant as perpetrator.

110. Due to insufficient denial, it is has to be held to be true that the supporting acts encompass the support of offering, placing on the market and using as well as storing and importing for those purposes(R. 171.2 RoP). Since NUC Electronic Europe GmbH and Warmcook offer and sell the contested embodiment within the territory of an UPCA member state, Claimant's assumption that such distributors also use the contested embodiment (at least for test or demonstration purposes) and import and store the contested embodiment for the purpose of offering, placing on the markets and using is regularly justified. NUC Electronic Europe GmbH is even designated as importer on the CE mark of the test purchase (exhibit P21), which, however, does not exclude other parties being involved in the import process. Therefore, Defendant should have specifically contested that its distributors carry out the aforementioned acts within the relevant UPC territory or that Defendant has to be aware of such acts. The objection of lack of substance or evidence is no denial of the allegation, let alone specific contesting of facts as required by R. 171.2 RoP.

111. Contrary to Claimant, infringing acts with regard to France and Germany respectively do not suffice to extend the remedies sought to other UPCA member state. **Art. 34 UPCA** is no provision of substantive law. This follows from its wording and its systematic position in Chapter VI "International jurisdiction and competence" of the UPCA. With regard to traditional European bundle patents, the UPCA only harmonizes the substantive national law, but does not create a new patent right with unitary effect. Thus, Art. 34 does not extend the territorial scope of the remedies to other relevant UPCA member states once an infringement is established for one member state only, but relates to the scope of the effect of the decisions (different opinion Tilmann/Plassmann/v. Falck/Dorn, EPGÜ Art. 34 mn. 20 et seqq.).

112. However, the fact that the infringing acts also relate to Denmark, Italy and The Netherlands has to be

assumed because the Defendant did not specifically contest corresponding infringing acts (**R. 171.2 RoP**). In this context, it is not decisive that the list of Defendant's global subsidiaries and distributors from its Korean website (exhibit P15/15a) and the overview "Europe with Kuvings" from the website eu.kuvings.com do not mention Italy and Denmark. Since the contested embodiment undisputedly is a "flag ship" product of the Defendant (SoC, para. 334) and NUC Electronic GmbH is undisputedly designated as Europe branch (exhibit P15/15a), the Claimant stated infringement and threatened infringement respectively in said UPCA member states with good reason so that its statement is no pure speculation and thus relevant. As far as the Defendant criticizes lack of substantiation and evidence, this does not constitute an effective denial. Apart from that, since the Claimant has alleged shipments to all EU member states with good reasons, an effective denial calls for the clear and specific statement (R. 271.2 RoP) that there never was and will be a shipment to Denmark, Italy and The Netherlands by Defendant's distributors (in particular Warmcook and NUC Electronic Europe GmbH domiciled in neighbouring countries), thereby specifying the basis of such statement, for instance, because they checked the books or installed effective measures which block shipment to Denmark, Italy and The Netherlands.

113. Contrary to the Defendant, R. 13.1 (I) (i) RoP does not lead to another result. The provision prescribes that a Claimant has to specify the date and place of an alleged or threatened infringement already in the statement of claim provided he wishes to rely on such date and place. The provision does not stipulate any substantive requirement that an alleged infringement could be established only if a claimant is able to refer to a specific single date and a specific place. Due to norm hierarchy, R. 13.1 (I) (i) RoP cannot change the substantive law as laid down in the UPCA anyway. The UPCA does not require any test purchase in order to establish the offering and placing on market of the contested embodiment.

H. REMEDIES

114. The established infringement justifies Claimant's request only in part.

REQUEST OF DECLARATION OF INFRINGEMENT (A.I.)

115. The request to hold that the Defendant infringes the patent-in-suit has its basis in Art. 64 (2) (a) UPCA. Since the Claimant did not further elaborate on the request, but, later on, clarifies that the additional features of the subclaims do not appear relevant in the absence of a counterclaim for revocation (cf. Reply, para. 164), the request has to be interpreted to aim at claim 1 only. To that extent, the declaration of the infringement serves the legitimate interest of Claimant to have it confirmed in the operative part of the decision that infringement has been found, in particular towards Defendant's distributors.

REQUEST FOR PERMANENT INJUNCTION (A.II., A.III.)

116. The requested injunctive relief has its basis in Art. 25 (a), Art. 63 (1) UPCA. The request is to be granted with regard to the acts of offering, placing on the market and using and the acts of storing and importing for those purposes, each within Denmark, France, Germany, Italy and the Netherlands, because the infringement in the past constitutes a risk of repetition for those UPCA member states. As far as the Claimant requested the act of importing without the limitation to said purposes, the request has to be dismissed since the act of importing is reserved to the patent proprietor only for said purposes according to Art. 25 (a) UPCA. In addition, the request is to be dismissed with respect of the act of mere exporting without committing infringing acts, since such act is not listed in the exhaustive provision of Art. 25 (a) UPCA. There is no need for explicitly deciding upon Claimant's "in particular"-requests relating to the subclaims, because they are merely exemplary specifications of acts already covered by the decision relating to main claim 1. As already discussed supra, contrary to Defendant, it suffices to designate the contested embodiment in general terms.

117. Since the court has discretion to grant the permanent injunction (Art. 63 (1) UPCA "may") the circumstances of the individual case can be taken into account, in particular whether an injunction would be disproportionate (Art. 42 UPCA, Art. 3 (2) Enforcement-Directive). However, since any restriction affects the patent owner's exclusive right pursuant to Art. 25 UPC which, moreover, is granted for a limited time period only, such a restriction on the grounds of disproportionality has to be limited to exceptional cases where the interest of the infringer clearly outweighs the interest of the patent owner. In accordance with general rules, the burden of demonstration and proof lies on the infringer relying on disproportionality. The Defendant has not brought forward any relevant fact which could support the assumption of disproportionality. The alleged (but not given, cf. supra) lack of substance and evidence with regard to infringing acts would, if given, not establish disproportionality from the outset but would concern the foundation of the statement the claim only.

118. The threat of a penalty payment for non-compliance for each violation of the injunction is justified under Art. 63 (2) UPCA. Considering a sales price between EUR 699 and 749 (SoC, para. 336), a penalty payment of EUR 2.000 per infringing unit as requested is necessary and sufficient to prevent the Defendant from continuing the infringement by placing contested embodiments on the market. For other acts of infringement, the determination of the appropriate amount remains subject to enforcement proceedings, thereby retaining the necessary flexibility to consider the manifold cases in which such infringement may occur.

REQUEST FOR DECLARATION ON DAMAGES (C.I.)

119. The declaration of entitlement to damages on the merits is based on Art. 68 (1) UPCA and justified by the established infringement. The Defendant, with reasonable grounds, at least should have known that it

engages in a patent infringing activity as it is obliged to monitor the IP rights of its competitors so as not to infringe upon them. Accordingly, it is not a prerequisite that the Defendant had been alerted of a possible infringing behaviour. Such doctrine would support careless behaviour and protect patent infringers without sufficient justification. Even more than with regard to material property, intellectual property rights are to be protected due to their ubiquity and the resulting danger of unjustified use (cf. recital 3 enforcement directive pointing as well to the obligations arising from the TRIPS agreement and recital 25 which foresees monetary compensation even where an infringement is committed unintentionally and without negligence as well as Art. 13).

120. As discussed supra under "applicable law", the determination of the amount of damages and the time periods to be taken into account are reserved for subsequent proceedings under R. 125 et seqq. RoP. Accordingly, the panel has not to adjudicate on whether, pursuant to the laws of The Netherlands, if there was any past use prior to 1 June 2023 governed by the substantive national law of The Netherlands, negligence would have to be denied. Furthermore, it can be left open at this stage, whether the Defendant's objection is justified that the assignment of the patent in suit was only later registered with the relevant national patent registers and therefore certain time periods would have to be exempted from the calculation of damages. Apart from that, since the assignment encompasses claims for compensation for the past use, the date from which the patent in suit is enforceable for the Claimant towards third parties is at the most relevant only for the relevant person on whom the damage calculation has to be based on, which can be determined even more so in the subsequent proceedings on the amount of damages anyway.

121. Contrary to the Defendant, the damages are not restricted to a certain calculation method on the instant facts. As far as the Claimant has chosen a certain method to estimate the amount for the requested interim award of damages, the method serves the purpose of estimation only, thereby not establishing a binding and final choice of the calculation method to be applied for the calculation of damages.

122. As far as the requests extends back to 14 April 2009 with regard to Germany, in the light of the reasoning given in the statement of claim, the request has to be interpreted to relate to compensation pursuant to Art. 67 EPC the amount of which is to be determined in subsequent proceedings under R. 125 et seqq. RoP as well. Therefore, at this stage, the panel does not have to adjudicate on potential time periods to be left out in this regard either.

REQUEST TO PAY DAMAGES IN COMPENSATION FOR MORAL PREJUDICE (C.II.)

123. The request for damages in compensation for moral prejudice finds its basis in Art. 68 (3) (a) UPCA specifying some appropriate aspects which the Court has to take into account when setting the damages. Contrary

to the Defendant, the method for calculating damages laid down in Art. 68 (3) (a) UPCA is not excluded on the instant facts because the Claimant calculated the amount for the interim award of damages according to the license analogy. As discussed, the use of the licence analogy clearly served estimation purposes only, thereby not establishing a binding and final choice of the calculation method to be applied for the calculation of damages. However, pursuant to Art. 68 (3) (a) UPCA, moral prejudice is only one among other aspects which have to be taken into account. Thus, it could already be questionable whether Art. 68 (3) (a) UPCA allows an award of damages in compensation for moral prejudices up-front and separately from the setting of the overall damages. In any case, the award of compensation for moral prejudice requires special circumstances which goes beyond the usual consequences of an infringement suffered by the patent holder and which are not fully compensated by the other remedies. The Claimant did not bring forward any specific fact which would justify such compensation. As far as substantive national law applies, the Claimant did not underpin such claim either.

REQUEST FOR INTERIM AWARD OF DAMAGES (C.IV.)

124. Claimant seeks an interim award of damages according to R. 119 RoP, estimating the – to Claimant’s mind – minimum amount of damages by focusing on the period from the second half of 2023 to the first quarter of 2025. R. 119 RoP gives the court discretion (“may”). When exercising its discretion the court has to take all relevant circumstances into account including the interest of the parties to obtain or avoid, respectively, an interim award of damages. The granting of such interim award does not follow the establishment of an infringement automatically but calls for justification. The Claimant did not demonstrate any facts justifying the requested interim award. In particular, the Claimant did not elaborate on why obtaining the requested amount of EUR 30.000 (totalling to EUR 55.000 when taking into account the parallel proceedings) up-front would be an essential element of compensation in the light of the infringement found on the instant facts. This is all the more true considering the fact that Claimant bases its estimation on a weak reasoning by merely stating that the contested embodiment probably accounts for 20 % of the total export turnover of Defendant to European countries without sufficiently elaborating on the basis for such assumption.

REQUEST FOR INFORMATION (C.III.)

125. The request for information finds its basis in Art. 67 (1) UPCA and Art. 68 (3) (a) (b) UPCA in conjunction with R. 191 sentence 1 alternative 2 RoP, respectively (cf. supra under applicable law). The right to information is comprehensive even if the infringer committed a single act out of the several acts of use under Art. 25 (a) UPCA only. Thus, the infringer owes information in particular about all aspects listed in Art. 67 (1) UPCA regardless of which infringing act was established. Since and to the extent the patent holder – as regularly – needs the information to identify third infringers, to determine and calculate damages and to

verify information obtained from the infringer, such right regularly is not disproportional. In particular, the infringer’s commercial interests are sufficiently protected because the information obtained must not be used for any other purpose than the purposes mentioned above. In case of an indication of a specific risk of misuse, the information can be further protected by protective orders pursuant to R. 262A RoP.

126. Although Defendant states that it does not manufacture the contested embodiments in Europe, the right to information is not fulfilled in this regard. First, Defendant did not make it sufficiently clear that its statement in its briefs is meant to fulfil Claimant’s right to information in this regard and does not serve as legal defence only. In addition, Claimant has the right to comprehensive information, so that he does not have to accept partial information as partial fulfilment. Moreover, since such information is necessary or at least useful to verify sales figures reported for the territory of the relevant UPCA member states by comparing them to the overall manufacturing numbers, the information about the number of manufactured products also relates to own manufacturing (including commissioned production) outside the territory of the UPCA member states relevant for the proceedings at hand.

127. In order to protect Defendant’s relationship to its non-commercial costumers, it suffices that the Defendant reserves the right to disclose the names of its non-commercial customers to an impartial auditor only, chosen by Claimant and paid by Defendant, who, upon Claimant’s request, confirms or denies whether a specific non-commercial customer is contained in the disclosure and who, in all other cases, is subject to confidentiality towards the Claimant. The Defendant rightfully points out that, according to Art. 67 (c) UPCA, the disclosure of the identity of third persons relates to persons only who are involved in the production or distribution of the infringing products or in the use of the infringing process. Thus, the provision does not apply to non-commercial costumers who, according to Art. 27 (a) UPCA, are not capable of committing and taking part in infringing acts. However, as outlined supra, the patent holder is entitled to information which allows him to verify whether the information obtained from the infringer is true. Therefore, he must have the right to check whether non-commercial customers he knows of are included in the sales and offers reported by the infringer. The defendant’s right to disclose non-commercial customers to an auditor according to the procedure outlined above takes due account of the interests of both parties. The auditor’s costs if the infringer makes use of this option are part of the costs of providing information, which must be borne by the infringer.

128. The panel exercises its discretion not to determine a fixed time period for the provision of the information and not to set an amount of penalty in case of non-compliance upfront, thereby retaining the flexibility to take into account the circumstances of the failure if the Defendant should fail to provide proper information in due time. There is no reason for a grace period on the

instant facts. As regularly, the infringer has to provide the information as soon as possible without undue delay.

REQUEST FOR DESTRUCTION (C.V.), REQUEST FOR RECALL (C.VI), REQUEST FOR REMOVAL (C.VII.)

129. The request to destroy the infringing embodiments is based on Art. 64 (1), (4), (2) (e), (b) and (d) UPCA, respectively. In exercising its discretion (cf. Art. 64 (1) UPCA “may”) the court has to take into account the circumstances of the single case and to balance the interests of the parties considering the principle of proportionality (Art. 64 (4) UPCA). In order to effectively avoid further acts of infringement, the requests shall be granted on a regular basis. The burden of demonstration and proof of any circumstance justifying to refrain from such grant is for the infringer objecting to the grant of corrective measures, e.g. on grounds of disproportionality. The Defendant did not state such circumstances in the proceedings at hand.

130. Contrary to the Defendant, the fact that the destruction of unfaulty products may not be sustainable with regard to environmental aspects is a regular consequence of any destruction of products and does not by itself justify a dismissal. Apart from that, a defendant reserves the right to object on the grounds of disproportionality that a modification suffices to deprive the product from its infringing property (Art. 64 (2) (c), (4) UPCA) and, in any case, is free to recycle the destroyed products. On the instant facts, the Defendant’s objection that the infringing products could be modified is not sufficiently substantiated. The Defendant did not state a single specific way how the products could be modified in order to deprive them of their infringing properties effectively. Contrary to the Defendant, the fact that the infringing products are sold to private end users does not suffice to constitute a disproportionality either. In order to enable the patent holder to verify the destruction, the infringer has an obligation to prove the execution of the destruction towards the claimant. However, there is no need to order such obligation separately because it lies in the vital interest of the infringer to indicate the fulfilment of its obligation beyond any reasonable doubts towards the claimant in order to avoid an enforcement proceedings. The way how the infringer achieves this is for the infringer. The claimant regularly has no right to have the evidence presented through a bailiff. Such right would presuppose special circumstances, e.g. in the event of established unreliability on the infringer’s part. Such special circumstances, for which the burden of demonstration and proof lies on the claimant, are not brought forward on the instant facts.

131. The Defendant rightfully points out that the recall is restricted to commercial recipients only, because private end users are not part of the channels of commerce (cf. Local Division Düsseldorf, decision of 3 July 2024, UPC_CFI_7/2023, GRUR-RS 2024, 17732 mn. 143). However, Claimant’s request takes this into account by restricting the requested recall to the channels of commerce. Again, the Defendant did not state any specific fact which calls for the assumption of

disproportionality. The fact that the infringement may not be seen from the outside and may be of no relevance for the purchasing decision does not suffice. Contrary to the Defendant, the request does not lack specificity with regard to the modalities of the measures to be taken. It is for the infringer to take the appropriate measures to be taken to make an appropriate recall. Similarly as for the destruction, it lies in the infringer’s own vital interest to indicate the fulfilment of its recall obligation beyond any reasonable doubts towards the claimant in order to avoid an enforcement proceedings. However, contrary to Claimant’s request at hand, there is no need to order the infringer to provide a list of the recipients of the recall letter.

132. In accordance with the wording of Art. 64 (2) UPCA, the definite removal of infringing products from the channel of commerce is a separate corrective measure additional to the recall (cf. Local Division Mannheim, decision of 22 November 2024, UPC_CFI_210/2024 mn. 177). The Defendant did not state any specific fact which would turn the removal disproportionate. Contrary to Defendant, the request does not lack specificity. In the opinion of the panel, it suffices to request and order the definite removal without specifying the modalities thereof (different opinion Local Division Düsseldorf, decision of 3 July 2024, UPC_CFI_7/2023, GRUR-RS 2024, 17732 mn. 147). The reason is that Art. 64 (d) UPCA calls for the success of the definite removal. In this context, it is the infringer’s responsibility how he achieves such success in order to fulfil his obligation. Therefore, the order of the general-held measures requested by Claimant at hand is neither justified nor necessary either.

133. According to the principles on applicable substantive law outlined above, substantive national laws may be applicable to the recall and removal of infringing products placed on the market before the entry into force of the UPCA. However, on the instant facts, there is no reason to state any restriction in the decision at hand. The Defendant did not state that it placed infringing products on the market prior to that date. In addition, Art. 64 UPCA largely corresponds to Art. 10 Enforcement-Directive without the Defendant showing any essential deviation in potentially applicable substantive national laws.

REQUEST FOR PUBLICATION (C.VIII.)

134. The requested publication of an own declaration by the Defendant on its webpage may find its basis in Art. 64 (1), Art. 80 UPCA in the event of special circumstances which call for such a publication as corrective measure due to ramifications of an infringement which cannot be undone or sufficiently compensated otherwise (cf. Local Division Düsseldorf, decision of 31 October 2024, UPC_CFI_373/2023, p. 25). Such special and specific circumstances are not shown by the Claimant on the instant facts. The fact that the products are also sold by distributors to end consumers does not suffice. The same applies to the rectification letters understood as a separate remedy. As far as the rectification letters form part of the recall, it is

for the Defendant how to formulate the recall letter in order to fulfil the obligation (cf. supra).

REQUEST FOR INTERIM AWARD OF COST (C.IX.)

135. The request finds its basis in Art. 69 UPCA, R. R. 118(5), 119, R. 150(2) RoP. The panel exercises its discretion to grant the interim award as requested. The amount is well below the sum of the recoverable court fees and the maximal costs recoverable for the value in dispute. The panel has not doubt that Claimant incurred costs at least in the amount requested as interim award on cost. Contrary to the Defendant, the fact that Claimant does not send a warning letter before filing the statement of claim does not justify to exclude the interim award of costs. The Defendant did not demonstrate how it would behave differently if Claimant sent a warning letter and why this would have any influence on the costs. 136. Since the statement of claim was successful in its essence, the panel exercises its discretion not to grant the Defendant an interim award on parts of its costs.

I. ENFORCEMENT SECURITY

137. Art. 82 (2) UPCA, R. 118.8 RoP give the court the discretion to make any order subject to the provision of a security for its enforceability. When exercising its discretion the court has to take into account the circumstances of the single case at hand and has to balance the interest of the parties involved including the claimant's interest to enforce its property rights effectively and the defendant's to enforce possible claims for damages effectively as well in the event the enforced decision is reverted later on. The enforcement of possible claims damages against a claimant could be put in jeopardy by the financial situation of claimant, his unwillingness to compensate defendant and by any circumstances at the places where potential claims for damages may have to be enforced that render the enforcement impossible or unreasonably burdensome. Whether and to what extent such factors are present is to be determined on the basis of the facts and arguments put forward by the parties, in the same way as in the case of an application for security under Rule 158 RoP. Since the ordering of a security for the enforceability serve the purpose to protect defendant, it is, first, for defendant to demonstrate and justify (and, if necessary, prove) as to why it appears appropriate in the specific case at hand to make the order or measure subject to a security in accordance with R. 118.8 RoP. Afterwards, it is for claimant to dispute these facts in a substantiated manner, especially because claimant generally has knowledge and evidence regarding his financial situation. In addition, it is for the claimant, if necessary, to demonstrate and justify (and, if necessary, prove) why, despite the reasons put forward by defendant, his interest in the enforceability of the order or measure without a security takes precedence over defendant's interest (cf. Local Division Düsseldorf, decision of 31.10.2024, UPC_CFI_373/2023, p. 26).

138. Applying these principles, the panel exercises its discretion not to make the enforceability subject to the provision of a security by Claimant. The Defendant did

not bring forward any facts justifying such order, in particular constituting a risk that potential damage and costs are not recoverable in the event the decision at hand is reverted. On the contrary, the fact that both Claimant and Defendant are domiciled in the same country should facilitate the recovery of any damage or costs.

J. COSTS

139. The decision on costs is based on Art. 69 (1) UPCA, R. 118.5 RoP. Since the statement of claim was unsuccessful to a minor part only, the panel exercises its discretion that the Defendant has to bear the recoverable costs in full.

K. VALUE IN DISPUTE

140. In the absence of any deviating indication, the panel follows the concurring statements of the parties and considers the value in dispute to be EUR 750.000 before separation. Since the panel sees the absolute economic focus to lie in the part at hand, it allocates 90 % thereof to the proceedings at hand after separation and thus sets the value in dispute to be EUR 675.000.

DECISION:

A.

I. It is held that Claimant has demonstrated that the Defendant infringed the claim No. 1 of the European patent No. EP 2 028 981;

II. The Defendant is ordered to refrain from

offering, placing on the market, using a juicer within Germany, Denmark, France, Italy and The Netherlands or importing or storing it for those purposes within said countries, that has the following features

A juice extractor comprising:

a cover (100) having an inlet port formed on one side of an upper part thereof and a rotary shaft hole (120) formed in the center of an inner part thereof;

a housing (500) installed on a lower part of the cover, and having a guide jaw formed on a bottom of the housing, a draff outlet port (570) and a juice outlet port (560) formed apart from each other on a lower end part of the housing, a waterproof cylinder having a through hole and formed in the center of the lower end part of the housing, and a pressure discharge passage formed around a lower part of the waterproof cylinder;

a screw (200) having an upper rotary shaft formed on an upper part of the screw (200) to be rotatably inserted into the rotary shaft hole, a plurality of screw spirals formed on an outer surface of the screw, an inner ring formed at a lower end of the screw to project downward and having a plurality of screw gears rotatably inserted into the pressure discharge passage, a lower space formed inside the inner ring to receive the waterproof cylinder therein, and a lower rotary shaft formed in the center of a lower part of the screw and a polygonal shaft hole formed thereon;

a mesh drum insertable into the guide jaw of the housing, the mesh drum (300) having a mesh structure formed on an outer wall of the mesh drum (300) to discharge juice to the juice outlet port, and a plurality of wall blades longitudinally formed on an inner surface of the mesh drum; a rotary brush installed (400) between the housing and the mesh drum (300) to be rotated, and having a brush holder in which a brush for continuously sweeping the mesh drum and the housing is installed; and

a drive unit having (600) a polygonal shaft that is inserted into the polygonal shaft hole through the through hole of the waterproof cylinder, and rotating the screw at (200) a low speed;

wherein the housing accommodating the screw is longitudinally fixed to an upper side of the drive unit (600) so as to press, grind and extract juice from materials put into the inlet port and to discharge the draff.

- direct infringement of claim 1 EP 2 028 981 B1 –

III. It is ordered, that in the event of any violation of the injunction in accordance with no. II above, Defendant shall pay to the Court a penalty payment of EUR 2.000 per infringing unit.

B.

I. It is held that the Defendant shall pay damages to the Claimant arising from the infringing acts of EP 2 028 981 in France, Germany, Italy, The Netherlands, Denmark and Romania and pay compensation pursuant to Art. 67 EPC in Germany.

II. The Defendant is ordered to inform Claimant to the extent of which it has committed infringing acts referred to under A.II., stating

i. the origin and distribution channels;

ii. the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained; in particular

o manufacturing quantities and times;

o the individual deliveries, broken down by delivery quantities, times and prices and the respective product designations as well as the names and addresses of the customers;

o the turnover, the gross margin and the contribution margin generated by the Defendant with the sale of these products;

o the individual offers, broken down by quantities, times and prices and product designations as well as the names and addresses of the commercial offer recipients;

o the advertising carried out, broken down by advertising media, their circulation, distribution period and distribution area, and in the case of internet advertising, the domain, access figures and placement periods of each campaign;

o the identity of all third parties involved in the distribution, in particular the names and addresses of the commercial buyers and the sales outlets for which the products were intended;

whereby the Defendant reserves the right to disclose the names of its non-commercial customers to an impartial auditor only, chosen by Claimant and paid by the Defendant, who, upon Claimant's request, confirms or denies whether a specific non-commercial customer is contained in the disclosure and who, in all other cases, is subject to confidentiality towards the Claimant.

III. The Defendant is ordered to destroy at its own expense the products, material and/or implements referred to under A. II. which are in its possession and/or ownership within Germany, Denmark, France, Italy, The Netherlands;

IV. The Defendant is ordered to recall the products referred to under A. II. which have been placed on the market from the channels of commerce, with reference to the infringement determined by a court of law (Unified Patent Court, Local Division Mannheim, decision of 11 March 2025);

V. The Defendant is ordered to definitively remove the products referred to under A. II. from the channels of commerce, at its own expense;

VI. The Defendant is ordered to pay the Claimant the sum of EUR 56.000 as an interim award on the legal costs and other expenses.

C.

I. As to the rest of the requests, the action is dismissed.

II. The Defendant has to bear the costs of the litigation.

III. The value in dispute is set at EUR 675.000.

IV. The Orders B.II. to B.VI. shall be enforceable only after the Claimant has notified the Court which part of the orders it intends to enforce, this notification has been served on the Defendant and a certified translation of the orders in the official language of a Contracting Member State in which the enforcement shall take place has been provided by the Claimant and served on the Defendant.

DECISION DETAILS

Order no. ORD_68864/2024 in ACTION NUMBER: ACT_17365/2024

UPC number: UPC_CFI_162/2024

Action type: Infringement Action

Delivered in Mannheim on 11 March 2025

NAMES AND SIGNATURES

Presiding judge Tochtermann
Legally qualified judge Böttcher
Legally qualified judge Perrotti

[...]
