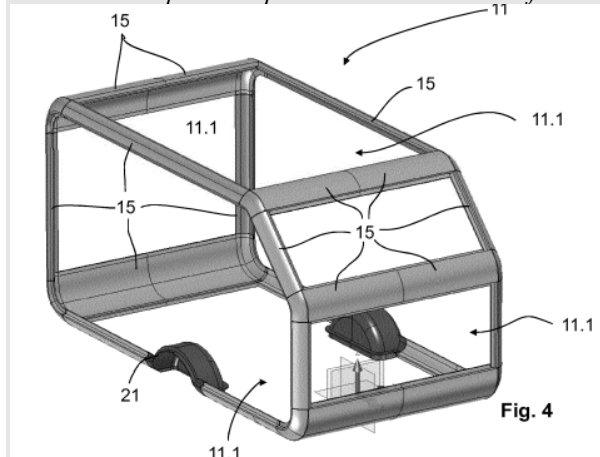


UPC Court of Appeal, 17 June 2025, Knaus Tabbert v Yellow Sphere

frame for a vehicle with at least one foam resin structural part and production method therefor



PATENT LAW – PROCEDURAL LAW

Inadmissible application (“Gegenvorstellung”) based on [R. 9.1 RoP](#) regarding the Court of Appeal’s order of 21 May 2025 in which the application for suspensive effect of the appeal against [the impugned order](#) was rejected ([Article 74 UPCA](#), [R. 223 RoP](#)).

- [This provision relates to the Court’s authority to issue procedural orders during ongoing proceedings. However, it does not give the Court the power to amend or revoke orders that conclude proceedings.](#)
- [The right to an effective remedy under Article 47 of the Charter of Fundamental Rights of the European Union \(CFREU\) does not afford a right of access to a second level of adjudication but only to a court or tribunal](#) (CJEU, judgment of 11 March 2015, C-464/13, C-465/13, ECLI:EU:C:2015:163, [European School Munich v Silvano Oberto, Barbara O’Leary, para. 73](#)).

Applicable law; autonomous UPCA law ([Article 24 UPCA](#))

- [The legal framework in Austria and Germany is not decisive for the interpretation of Art. 82\(2\) UPCA](#) because [Art. 82\(2\) UPCA](#) contains an independent provision that must be interpreted autonomously.

Source: [Unified Patent Court](#)

German language version: [Unified Patent Court](#)

UPC Court of Appeal,
17 June 2025

(Kalden, Simonsson, Rombach, van der Burg, Wismeth)

UPC_CoA_365/2025

APL_19216/2025 (Berufung)

UPC_CoA_413/2025 (Gegenvorstellung)

App_27069/2025

App_21951/2025

App_22825/2025

Order

of the Court of Appeal of the Unified Patent Court of 17 June 2025

concerning an objection to the rejection of an Application for suspensive effect

HEADNOTE:

An objection to the rejection of an application for suspensive effect pursuant to [R. 223 RoP](#), in which the applicant merely challenges the Court of Appeal’s opinion expressed in the order rejecting the application, is inadmissible.

KEYWORDS:

- Objection (“Gegenvorstellung”) against a Court of Appeal’s rejection of an Application for suspensive effect ([R. 223 RoP](#))

APPELLANT/APPLICANT AND DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

Knaus Tabbert AG, Jandelsbrunn, Germany
(hereinafter: Knaus Tabbert)

represented by: Attorney-at-law Dr. Rüdiger Pansch and other attorneys-at-law from the law firm Rospatt Rechtsanwälte PartGmbH, Düsseldorf, Germany

RESPONDENTS AND CLAIMANTS IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

1. **Yellow Sphere Innovations GmbH**, Cologne, Germany (hereinafter: Yellow Sphere)

2. **Erwin Härtwich**, Allmersbach, Germany (hereinafter: Härtwich)

represented by: Attorney-at-law Dr. Dirk Jestaed, Krieger Mes & Graf von der Groeben Partnerschaft mbB, Düsseldorf, Germany

THIRD-PARTY DEFENDANT OF THE COUNTERCLAIM IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

Alexander Christ, Cologne, Germany (hereinafter: Christ)

LANGUAGE OF PROCEEDINGS

German

PANEL AND DECIDING JUDGES

Panel 2

Rian Kalden, legally qualified judge and presiding judge

Ingeborg Simonsson, legally qualified judge

Patricia Rombach, legally qualified judge and judge-rapporteur

Marc van der Burg, technically qualified judge

Erwin Wismeth, technically qualified judge

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

Date: [10 April 2025, Düsseldorf Local Division](#)

[Action number attributed by the Court of First Instance: UPC CFI 50/2024, ACT 6665/2024, ORD 68984/2024](#)

PATENT AT ISSUE

[EP 3 356 109](#)

FACTS AND REQUESTS OF THE PARTIES

1. Yellow Sphere and Härtwich are the registered proprietors of the European patent 3 356 109 (patent at issue) which relates to a frame for a vehicle with at least one foam resin structural part and production method, therefore.

2. Knaus Tabbert sold caravans under the names "Travelino", "DESEO" and "AZUR". Yellow Sphere and Härtwich are of the opinion that the frames installed in the caravan models "AZUR" and "DESEO" (hereinafter: attacked embodiments) make use of the teaching of the patent at issue. They have therefore lodged an action against Knaus Tabbert for infringement of claim 1 of the patent at issue, seeking injunctive relief, information, recall, removal from distribution channels, damages and appropriate compensation.

3. Knaus Tabbert lodged a counterclaim for revocation against Yellow Sphere and Härtwich.

4. In the **impugned decision**, the Local Division Düsseldorf largely upheld the infringement action, whereas the counterclaim for revocation was unsuccessful on the merits. In section C. of the operative part, the Local Division ordered Knaus Tabbert to:

I. refrain from infringing acts with regard to the contested embodiments in the territory of the Federal Republic of Germany, the French Republic, the Italian Republic and the Republic of Slovenia;

II. pay a penalty payment of up to EUR 250,000 for each instance of non-compliance with the obligation to cease and desist;

III. provide information about the acts of infringement committed since 8 September 2018;

IV. recall from distribution channels and permanently remove from distribution channels, at Knaus Tabbert's expense, the contested embodiments which have been delivered since 9 April 2022, within a period of 30 days after service of the notice within the meaning of R. 118.8 sentence 1 RoP and, if applicable, the certified translation;

V. destroy, or hand over to a bailiff to be appointed by Yellow Sphere and Härtwich, the embodiments directly and/or indirectly [sic] directly and/or indirectly owned by Knaus Tabbert;

VI. pay, to Yellow Sphere and Härtwich, an amount of EUR 100,000 by way of an interim award of damages;

VII. compensate Yellow Sphere and Härtwich for all damages that they have suffered and will suffer as a result of the infringing acts in the period since 9 April 2022;

VIII. pay, to Yellow Sphere and Härtwich, appropriate compensation for patent infringing acts relating to the Federal Republic of Germany in the period from 8 September 2018 to 8 April 2022.

5. In point I of the operative part of the decision, the Local Division set the upper limit of the reimbursable representative costs for the action and for the counterclaim for revocation at EUR 112,000.

6. The decision states that the orders will be enforceable only once Yellow Sphere and Härtwich have notified the Court of which part of the orders they intend to enforce and have submitted a certified

translation of the orders into the official language of the Contracting Member State in which enforcement is to take place and Knaus Tabbert has been served with the notification and the (respective) certified translation.

7. Knaus Tabbert has lodged an appeal against the decision in relation to the infringement action (APL_19216/2025, UPC_CoA_365/2025) and a second appeal against the decision in relation to the counterclaim for revocation (APL_19338/2025, UPC_CoA_367/2025).

Parties' requests

8. In summary, on 8 May 2025 Knaus Tabbert applied for an order from the Court of Appeal to the following effect:

I. The appeal against the impugned decision (in relation to the infringement action) has suspensive effect.

II. In the alternative: the appeal against the impugned decision has suspensive effect with regard to orders C.IV (recall and removal from distribution channels), C.V (destruction), C.VI (interim award of damages) and I. (recoverable representation costs).

III. Further in the alternative: enforcement of Orders C.IV, C.V, C.VI and I. is made dependent on the provision of security at least in the amount specified by Knaus Tabbert.

IV. As a final alternative: the proceedings are stayed pursuant to the first sentence of [R. 266.5 RoP](#) and the following question is referred to the CJEU for a preliminary ruling pursuant to [Art. 21 UPCA](#) in conjunction with Art. 267 TFEU:

Does EU law, in particular Article 16 of the EU Charter of Fundamental Rights (freedom to conduct a business), Article 17 of the EU Charter of Fundamental Rights (right to property) and Article 47 of the EU Charter of Fundamental Rights (right to an effective remedy), require that the enforcement of decisions of the UPC at first instance, in particular orders for recall, removal from distribution channels, destruction and payment, be made subject in principle to the provision of security in accordance with Article 82(2) UPCA?

9. By [order of 21 May 2025 \(App. 21951/2025, ORD 24333/2025\)](#), the Court of Appeal rejected the requests.

10. Knaus Tabbert contests this with a "Gegenvorstellung" based on [R. 9.1 RoP](#).

PARTIES' SUBMISSIONS

11. Repeating and expanding on the arguments presented in the written statement of 8 May 2025, Knaus Tabbert argues essentially as summarised below:

- The application is admissible on the basis of the right to an effective remedy, as set out in Article 47 of the EU Charter of Fundamental Rights. There are no formal legal remedies. However, Knaus Tabbert continues to have a legitimate interest in an order for suspensive effect or at the very least, in an order whereby Yellow Sphere and Härtwich are obliged to provide security for enforcement.

- The Court of Appeal's order is legally incorrect.

- Contrary to the Court of Appeal's findings, there is still a risk that enforcing the impugned decision would make the appeal irrelevant.

- The submissions on the financial situation of Yellow Sphere and Härtwich did not come too late. In light of Freitec Kunststoffe GmbH's insolvency following the oral hearing before the Düsseldorf Local Division, Knaus Tabbert could assume that the application for an order to provide security would stand a chance of success. It was only under these circumstances that it was necessary and reasonable for Knaus Tabbert to disclose the impending enforcement damage, having weighed up all the advantages and disadvantages.

- It is unclear why the Court of Appeal cannot issue a security order under [Article 82\(2\) UPCA](#) in the context of a [R. 223 RoP](#) application. The other party can be heard.

- In its [order of 21 May 2025](#), the Court of Appeal did not address the argument that, in Germany, first-instance judgments on the merits in patent disputes are, in principle, only provisionally enforceable against security pursuant to Sections 708 and 709 of the German Code of Civil Procedure (ZPO). In Austria, first-instance judgments in patent disputes are not provisionally enforceable at all pursuant to Section 1(1) of the Austrian Enforcement Code (EO). In view of these legislative assessments in Germany and Austria, which are diametrically opposed to the current legal situation in the context of the UPCA, there is no way to assume that there are no reasonable doubts as to the interpretation of [Article 82 UPCA](#) by the Court of Appeal, according to which security pursuant to [Article 82\(2\) UPCA](#) is not to be ordered as a matter of principle.

- The case law cited by the Court of Appeal on Article 46(3) of the Brussels I Regulation and [Art. 9\(6\) of the Enforcement Directive](#) would also not dispel these doubts, since the CJEU did not address the relevant question here: whether enforcement of a first-instance UPC decision must be dependent on security provision in accordance with [Article 82\(2\) UPCA](#).

- Against this background, the Court of Appeal is obliged, on the basis of the C.I.L.F.I.T. case law, to refer the present case to the CJEU for a preliminary ruling in accordance with Article 267(3) TFEU.

GROUNDINGS FOR THE ORDER

I. Admissibility

12. The Application ("Gegenvorstellung") based on [R. 9.1 RoP](#) is inadmissible. According to [R. 9.1 RoP](#), the Court may, at any stage of the proceedings, of its own motion or on a reasoned request by a party, make a procedural order such as to order a party to take any step, answer any question or provide any clarification or evidence, within time periods to be specified. This provision relates to the Court's authority to issue procedural orders during ongoing proceedings. However, it does not give the Court the power to amend or revoke orders that conclude proceedings.

13. Knaus Tabbert is right not to rely on [R. 335 RoP](#). This rule regulates the Court's power to vary an

order that has already been issued. However, this rule only applies to case management orders.

14. Knaus Tabbert unsuccessfully argues that the admissibility of the "Gegenvorstellung" arose from the right to an effective remedy under Article 47 of the Charter of Fundamental Rights of the European Union (CFREU). This does not afford a right of access to a second level of adjudication but only to a court or tribunal ([CJEU, judgment of 11 March 2015, C-464/13, C-465/13, ECLI:EU:C:2015:163, European School Munich v Silvano Oberto, Barbara O'Leary, para. 73](#)).

II. Merits

15. The Court of Appeal merely adds that the objection, if it had been admissible would not have succeeded. As the Court of Appeal already stated in its [order of 21 May 2025](#), the financial situation of Freitec Kunststoffe GmbH cannot be used to draw conclusions about Härtwich's and Yellow Sphere's financial situation. A deterioration in the financial situation of Freitec Kunststoffe GmbH therefore does not justify allowing new submissions regarding the financial situation of Härtwich and Yellow Sphere. In the first instance, submissions on Härtwich's and Yellow Sphere's financial situation were for Knaus Tabbert possible and reasonable. An order pursuant to [R. 262.2 RoP](#) as well as [R. 262A RoP](#) could have taken Knaus Tabbert's confidentiality interests into account.

16. The objection is furthermore based on a wrong understanding of the Court of Appeal's order. In its [order of 21 May 2025](#), the Court of Appeal merely ruled that where facts, such as the alleged poor financial situation of Yellow Sphere, could reasonably have been submitted during proceedings before the CFI, as is the case here, such facts shall be disregarded if submitted for the first time in the procedure for suspensive effect ([R. 222.2 RoP](#)). The legal framework in Austria and Germany is not decisive for the interpretation of [Art. 82\(2\) UPCA](#) because [Art. 82\(2\) UPCA](#) contains an independent provision that must be interpreted autonomously.

III. Conclusion

17. In view of the above, the request must be rejected.

ORDER:

The request ("Gegenvorstellung") of Knaus Tabbert is rejected.

Issued on 17 June 2025

Rian Kalden, legally qualified judge and presiding judge

Ingeborg Simonsson, legally qualified judge

Patricia Rombach, legally qualified judge and judge-rapporteur

Marc van der Burg, technically qualified judge

Erwin Wismeth, technically qualified judge

[...]
