



**Order
of the Court of First Instance of the Unified Patent Court concerning
EP 3 805 415
Issued on April 28, 2026**

Plaintiff and Respondent in the nullity proceedings:

Dai Nippon Printing Co., Ltd., represented by its management, which is represented by its Chairman, Mr. Yoshinari Kitajima, 1-1-1, Ichigaya-Kagacho, Shinjuku-ku, Tokyo 162-8001, Japan

represented by:

Attorney Dr. Soenke Fock, Attorney Thorben Strich, Attorney Jan-Caspar Maiers, Attorney Alex-Christian Lesch, Wildanger Kehrwald Graf von Schwerin & Partner mbB Rechtsanwälte, Couvenstraße 8, 40211 Düsseldorf, Germany

Patent Attorney Dr.-Ing. Jochen Kapfenberger, Patent Attorney Georg Tully, Patent Attorney Dr. Frederik Tenholt, Cohausz & Florack Patent and Attorneys PartG mbB, Bleichstraße 14, 40211 Düsseldorf, Germany

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Defendants and Counterclaimants for Nullity:

1. **Zapp AG**, represented by the Executive Board, Dr. Stefan Seng (Chairman of the Executive Board) and Daniela Scheidsteger, Letmather Straße 69, 58239 Schwerte, Germany
2. **Zapp Precision Metals GmbH**, represented by the managing directors Malte Edward Dotzel, Edo Ollermann, Dr. Evelin Ratte, and Britta Van Beurden, Letmather Straße 69, 58239 Schwerte, Germany

Defendants 1) and 2) represented by:

Attorney Holger Stratmann, Attorney Dr. Henrik Vocke, Attorney at Law Philipp Zambelli, HOFFMANN EITLE Patent- and Law Firm mbB, Arabellastraße 30, 81925 Munich, Germany

PATENT IN CONTEST:

EUROPEAN PATENT NO. 3 805 415 DECISION-MAKING

BODY/CHAMBER:

Panel 1 of the Düsseldorf Regional Chamber JUDGES:

This order was issued by the legally qualified judge and rapporteur Dr. Zhilova.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT MATTER: Rule 9.2 of the Rules of Procedure – Failure to consider evidence or arguments Rule 36 of the Rules of Procedure – Further exchange of pleadings

SUMMARY OF THE FACTS:

1. In a brief dated April 23, 2026, the plaintiff filed a motion for relief from the effects of late filing pursuant to Rule 9.2 of the Rules of Procedure, combined with a precautionary motion to permit the exchange of further pleadings pursuant to Rule 36 of the Rules of Procedure.
2. The plaintiff and counter-defendant has argued that the defendants and counter-plaintiffs in the nullity proceedings included in their reply to the motion to amend in the nullity proceedings dated April 13, 2026, an entirely new and extensive statement of facts regarding the infringement claim and the main claim for nullification of the patent. This applies, on the one hand, to the defendants' entire statement in Sections B and C of the "reply" to the motion to amend, i.e., in paragraphs 14 through 149, because this statement relates specifically to the patent as claimed in the main claim but not to the auxiliary claims, whereby the defendants attempted to obscure this fact with their section headings for Section B ("Lack of enforceability of the auxiliary claims") and Section C. ("Lack of patentability of the auxiliary claims") attempted to mislead the court on this point. On the other hand, this applies in particular to the following sections of B. and C., which in any case contain new arguments not previously—as far as can be seen—included in the file:
 - Section B. concerning ascent speeds and ChatGPT calculations, paras. 15–20,
 - Section C.I.1. regarding raw data and redactions in paragraphs 24–28, including Note 158,
 - Section C.I.2.a) (i) regarding "no explicit confidentiality agreement with Ever-Display Optronics" in lines 39–42, including HE 159,
 - Section C.I.2.a) (iii) regarding material numbers in lines 46–50,
 - Section C.I.2.aa) (ii) regarding "special stress relieved vs. relaxed" in para. 58,

- Section C.I.2.ab) (i) regarding the “reflecting” surface in line 64,
- Section C.I.2.ab) (ii) regarding material number in line 66,
- Section C.I.2.ab) (iii) regarding weight in lines 70–72,
- Section C.I.2.ab) (iv) regarding storage locations in line 74,
- Section C.I.2.ac) regarding “reflecting” and “special stress-relieved” surfaces, lines 77–78,
- Section C.I.2.b) regarding Invar foil for production order number in paras. 84–85,
- Section C.I.2.bb) regarding deliveries to LG Innotek Co. Ltd. in paras. 104–106, including HE 160,
- Section C.I.3.a) regarding “analysis results plausible” in paras. 109–113,
- Section C.I.3.b) regarding “measurement results reliable” in lines 115–121, including HE 158,
- Section C.I.3.c) regarding “Statistical significance of the analysis results” in paras. 123–130, including HE 161,
- Section C.II.1. regarding characteristic 1 in paras. 135–140, including HE 162,
- Section C.II.2. regarding feature group 3 in paras. 144–149.

MOTIONS BY THE PARTIES:

3. The plaintiff moves

- 1) that this new statement of facts not be admitted pursuant to Rule 9.2 of the Rules of Procedure, or that it not be taken into account in the decision-making process (objection to late filing),

as a precautionary measure,

- 2) to allow the plaintiff, pursuant to Rule 36 of the Rules of Procedure, to submit a further brief within a period of three weeks.

REASONS FOR THE ORDER

4. The admissibility of the documents and arguments submitted by the parties is a question of fact and not a matter of procedural management. Whether the defendant’s submissions in its rejoinder regarding the motion to amend are relevant to the decision in the present case, and whether they were filed late and must therefore be disregarded, requires a thorough analysis. As regards the first instance,

such an assessment can only be made with certainty at the end of the oral proceedings (see UPC_CFI_850/2024, Mannheim Division, Order of January 13, 2026, ZTE v. Samsung; UPC_CoA_298/2024, UPC_CoA_299/2024, UPC_CoA_300/2024, Order of September 24, 2024, OPPO OPORE v. Panasonic).

5. Consequently, the admissibility of the defendant's arguments in its rejoinder to the motion to amend does not fall within the procedural authority of the rapporteur and must be decided by the full panel. For these reasons, the rapporteur considers it appropriate, pursuant to Rule 102.1 of the Rules of Procedure, to defer the decision on the plaintiff's objection to the late filing so that the full panel may decide on it during or after the oral hearing.
6. However, in accordance with the principle of equality of arms, the plaintiff should be granted a further opportunity to comment on the defendant's statement of facts, as a precautionary measure and without prejudice to the question of whether the defendant's additional arguments will be admitted. Since the oral hearing has been scheduled for September 17, 2026, the three-week period granted for comments does not result in an unnecessary delay of the proceedings and is to be considered reasonable.
7. Upon the expiration of the response period, the written proceedings shall be deemed concluded, Rule 36(2) of the Rules of

Procedure. ORDER:

1. The decision on the plaintiff's objection to the late filing of April 23, 2026, pursuant to Rule 9.2 of the Rules of Procedure, is deferred. The full panel will decide on this matter, if necessary, during or following the oral hearing.
2. The plaintiff has **until May 19, 2026**, to respond to the defendant's statements referred to in paragraph 2 of this order. Upon the expiration of this deadline, the written proceedings shall be deemed concluded.

NAME AND SIGNATURE:

Dr. Tatyana Zhilova
Legally Qualified Judge and
Reporting Judge

**Tatyana
Borisova
Zhilova** Digital signature
of Tatyana
Borisova Zhilova
Date: April 28, 2026
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