Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Düsseldorf Local Chamber

UPC "CFI_1927/2025

Order

of the Court of First Instance of the Unified Patent Court, issued on May 7, 2026
concerning EP 3 001 984 B1

HEADNOTES:

1.
The applicant generally bears the burden of proof regarding the acquisition of knowledge of the existence of the contested embodiment, the potential infringement, and its prompt clarification. The relevant period extends from the time of becoming aware of the contested embodiment as a potentially infringing product until all the facts and evidence that must be obtained in order to be able to substantiate the full facts of the infringement are available.

2.
It must be presumed that the applicant was aware of the potentially infringing product if, according to conventional understanding and the ordinary course of events, the applicant should have been aware of the potentially infringing characteristics. This is followed by the obligation to continue investigating the facts of the case expeditiously. In this regard, all circumstances of the respective individual case are relevant. The respondents bear the burden of presenting and proving the evidence from which it can be inferred that the applicant must have had prior knowledge and from which hesitant conduct can be inferred. If such indications are substantiated by the respondents, it is then up to the petitioner to refute them or to explain why she could not have been aware of them and why she acted with sufficient promptness in this regard.

KEYWORDS:

Interim measures, necessity, urgency, unreasonable delay, knowledge, constructive knowledge, R. 211.4 Verfo

PETITIONER:

Ottobock SE & Co. KGaA, Max-Näder-Straße 15, 37115 Duderstadt, Germany, represented by Ottobock Management SE, at the same address, which is represented by the managing directors Martin Böhm, Dr. Arne Kreitz, Oliver Jakobi, and Arne Jörn,

represented by: Attorney Sören Dahm, Attorney Robert Knaps, Attorney Nicole Schopp, Attorney at Law, and Attorney at Law Christoph Heringlake, of the law firm Kather Augenstein, Bahnstraße 16, 40212 Düsseldorf, Germany

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supported by: Patent Attorney Kai Stornebel, Gramm, Lins & Partner Patent- und Rechtsanwälte PartGmbH, Frankfurter Strasse 3C, 38122 Braunschweig, Germany

RESPONDENTS:

1. **BrainPortfolio Inc.,** represented by its legal representatives, c/o Brian Long, 1826 Kramer Lane, Suite A/B, Austin, TX 78758, United States of America

2. **BrainRobotics Inc.,** represented by its legal representatives, c/o Brian Long, 1826 Kramer Lane, Suite A/B, Austin, TX 78758, United States of America

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m PATENT IN DISPUTE:

EUROPEAN PATENT NO. EP 3 001 984 B1

Decision-making body/Chamber:

2nd Panel of the Düsseldorf Local Chamber

JUDGES PRESENT:

The decision was rendered by Presiding Judge Dr. Thom as rapporteur, legally qualified Judge Dr. Rinken, legally qualified Judge Agergaard, and technically qualified Judge Michels.

LANGUAGE OF THE CASE: German

SUBJECT: Application for an order for provisional measures

ORAL HEARING: April 22, 2026

BRIEF STATEMENT OF THE FACTS:

1. The petitioner is suing the respondents for infringement of European Patent EP 3 001 984 B1 (Exhibit KAP 9, hereinafter: the patent-in-suit), of which it is the sole owner.

2. The patent-in-suit was filed on November 5, 2008, in the German language of the proceedings. It claims the priority of application DE 102007053389 dated November 7, 2011. The patent application was published on April 6, 2016. The notice of grant of the patent-in-suit was published on August 22, 2018. The patent-in-suit is currently in force in the Federal Republic of Germany, the French Republic, the United Kingdom of Great Britain and Northern Ireland, Iceland, the Italian Republic, and the Kingdom of the Netherlands. No opposition was filed with the European Patent Office (EPO) against the grant of the patent-in-suit.

3. The patent-in-suit relates to a method for controlling an orthopedic joint. Its claim 1 is worded as follows:

"Method for controlling an orthopedic joint of a lower limb in at least one degree of freedom using an adjustable actuator to adapt an orthopedicdevice, which comprises upper connection means to a limb and an orthopedic element arranged in an articulated manner distal to the connection means, to walking situations that deviate from walking on a flat surface, comprising the following steps:

a) Detecting multiple parameters of the orthopedic device via sensors,

b) comparing the detected parameters with criteria in which multiple parameters and/or parameter profiles have been summarized and which are stored in a computing unit,

c) selecting a criterion that is suitable based on the determined parameters and/or parameter curves, and

d) Adjusting movement resistances, ranges of motion, drive forces, and/or their profiles depending on the selected criterion to control special functions that deviate from walking on a flat surface, wherein the flexion damping is reduced in the special function."

4. In the course of these proceedings, the applicant has based its motion for preliminary injunctive relief on a limited version of claim 1 (boldface added by the court), which reads as follows:

***"A** method for controlling an orthopedic joint of a lower extremity in at least one degree of freedom using an adjustable actuator to adapt an orthopedic device, **which is a prosthetic knee joint** and **comprises** upper attachment means to a limb and an orthopedic element arranged in an articulated manner distal to the attachment means **and distal attachment means**for **a prosthetic foot**, to walking situations that deviate from walking on a flat surface, comprising the following steps:*

a) *Detecting multiple parameters of the orthopedic device via sensors,*

b) *comparing the detected parameters with criteria in which multiple parameters and/or parameter profiles have been summarized and which are stored in a computing unit,*

c) *Selecting a criterion that is appropriate based on the determined parameters and/or parameter profiles, and*

d) *Adjusting movement resistances, ranges of motion, driving forces, and/or their profiles depending on the selected criterion* to *control special functions that deviate from walking on a flat surface, wherein the special function involves reducing flexion damping,* ***and wherein the special function is alternating stair climbing."***

5. The applicant maintains a care network at over 400 locations. Within this care network, companies pursue the primary task of patient care. These include John + Bamberg GmbH & Co. KG and Pohlig GmbH. With regard to patient care, the companies in the Ottobock Care Network are customers of both the applicant and other competitors.

6. With its application, the applicant challenges the artificial knee system "Kneuro microprocessor [Model BR4B/BR4C]" (hereinafter: the contested embodiment). A slightly reduced illustration, taken from Annex KAP 2, is shown below.

7. Wilhelm Julius Teufel GmbH (Respondent 1 in the parallel proceedings UPC_CFI_1928/2025; hereinafter "WJT") markets the contested embodiment in the Federal Republic of Germany (see Annex KAP 2). Respondent 1 is listed as the manufacturer on the product packaging. Respondent 2 is additionally named as the manufacturer in the instructions for use of the contested embodiment. The respondents import the contested embodiment into the European Union.

8. On October 6, 2025, the plaintiff ordered two contested embodiments through a third-party company, which were delivered on October 7, 2025. Both products arrived at the plaintiff's premises on October 21, 2025, and October 22, 2025. The installation of the Kneuro app was delayed due to missing login credentials and was finally completed on November 4, 2025. Immediately thereafter, the applicant organized the preparation of measurements in the gait laboratory, for which the corresponding sensor system had to be programmed. The tests in the gait laboratory took place on November 18, 2025, and November 19, 2025, and were conducted for seven potential intellectual property rights. The results were available on December 4, 2025, and were sent to the patent attorney on the same day. The application for provisional measures was filed on December 10, 2025, with the Düsseldorf Local Chamber of the Unified Patent Court.

9. The contested embodiment had already been exhibited at various trade shows in the United States in the fall of 2024 and early 2025, at which the applicant was either also present as an exhibitor or whose employees participated in a "technical workshop" (see Exhibits QE 12 through QE 16).

10. The contested embodiment had already been advertised in trade journals since February 2025 (in the trade journal for orthopedic technology; Exhibit QE 17).

11. The market launch in Europe took place at Expolife from March 20 to March 22, 2025, in Kassel at the WJT booth (see Exhibits QE 18, 19). At the trade show, WJT presented a product video showing the contested embodiment, and two patients demonstrated its use. A discussion took place at the trade show between WJT employees and an employee of the applicant regarding the contested embodiment.

12. Immediately after the trade show in Kassel, on March 25, 2025, WJT presented the contested embodiment to Pohlig GmbH in Traunstein and explained the function at issue—alternating stair climbing.

13. Furthermore, the contested embodiment was presented at the Eqwall Excellence in Motion trade fair in Cannes from April 14 to April 16, 2025, at which the applicant was also represented. The first delivery of the contested embodiment to German customers took place on May 24, 2025, following an order dated April 7, 2025. A review and explanatory video has also been available on YouTube since April 2025. The user manual for the contested embodiment has been freely accessible since May 2025 and available on the WJT website.

14. Another presentation in Europe took place at the ISPO World Congress in Stockholm from June 16 to June 19, 2025. Here, the employees from from WJT , Head of the Orthopaedic Technology Vienna department at Otto Bock Healthcare Products GmbH, for an extended period about the accused embodiment. He is responsible for development processes within the Otto Bock Group and was part of the core team at the applicant company responsible for developing the alleged direct competitor product, the Genium X4.

15. On July 4, 2025, four specialists from John+Bamberg GmbH & Co.KG in Hanover were certified. On July 21, 2025, an employee of Pohlig GmbH was certified during training

on the use of the accused embodiment for the trial fitting

. Another certification took place on August 8, 2025, at John+Bamberg GmbH & Co.KG, along with an adaptation of the contested embodiment for a female patient. On August 29, 2025, John+Bamberg GmbH & Co.KG ordered two additional embodiments, which WJT delivered on September 1, 2025 (Exhibit QE 32).

MOTIONS OF THE PARTIES:

16. The plaintiffs finally request:

I. that the respondents be ordered to

refrain from

devices suitable for performing a method for controlling an orthopedic joint of a lower extremity in at least one degree of freedom,

in the Federal Republic of Germany, the French Republic, the Italian Republic, and/or the Kingdom of the Netherlands for use in the Federal Republic of Germany, the French Republic, the Italian Republic, and/or the Kingdom of the Netherlands,

wherein the method comprises at least the following:

an adjustable actuator for adapting an orthopedic device, which is a prosthetic knee joint, to walking situations that deviate from walking on a flat surface,

upper attachment means to a limb and an orthopedic element arranged in an articulated manner distal to the attachment means, and distal attachment means for a prosthetic foot,

comprising the following steps:

detecting multiple parameters of the orthopedic device via sensors,

comparing the detected parameters with criteria in which multiple parameters and/or parameter curves have been summarized and which are stored in a computing unit,

selecting a criterion that is suitable based on the determined parameters and/or parameter curves, and

adjusting movement resistances, ranges of motion, driving forces, and/or their profiles depending on the selected criterion to control special functions that deviate from walking on a flat surface, wherein in the special function the flexion damping is reduced, wherein the special function is alternating stair climbing.

(indirect infringement of limited claim 1)

II. For each individual violation of the above order under Section I, the respondents shall pay a (where applicable, repeated) penalty of up to EUR 50,000.00 per device and/or, in the case of ongoing acts such as offers on the Internet, up to EUR 100,000.00 per day to the court.

III. The respondents are further ordered to surrender the devices described in Section I, which are suitable for performing a procedure to control an orthopedic joint, to a bailiff for the purpose of safekeeping, which shall continue until a final decision has been rendered on the existence of a claim for destructionbetween the parties has been finally decided or an amicable settlement has been reached, or the petitioner informs the court that custody is no longer necessary.

IV. The respondents are further ordered to provide the petitioner, within three (3) weeks of service of this order, in writing and in electronic form that can be evaluated by a computer, with a breakdown structured by month of the calendar year and by patent-infringing products, starting from August 22, 2018, information regarding the devices mentioned in Section I, which are suitable for performing a method for controlling an orthopedic joint, regarding

a) the origin and distribution channels of the devices listed under No. I that are suitable for performing a procedure for controlling an orthopedic joint, specifying

- the names and addresses of the manufacturers, suppliers, and other previous owners;
- the names and addresses of the commercial customers as well as the points of sale for which the devices suitable for performing a procedure to control an orthopedic joint were intended;

b) the identity of all third parties involved in the manufacture and distribution of the devices listed in Section I, which are suitable for performing a procedure to control an orthopedic joint.

V. The respondents are further ordered, in the event of a violation of and/or failure to comply with any of the orders listed under Section IV, to pay a penalty of up to EUR 50,000.00 per day of delay and/or non-compliance after a period of three (3) weeks after service of the court order, to pay the court a penalty of up to EUR 50,000.00 per day of delay and/or non-compliance, with any day that has already begun counting as a full day.

vi. The respondents are ordered to

1. bear the costs and expenses of the proceedings and the ordered measures;

2. to provisionally reimburse the petitioner for costs in the amount of EUR 47,300.00.

VII. The orders are effective and enforceable immediately.

17. The respondents move to

I. that the application for provisional measures be dismissed,

II. that the costs of the proceedings be borne by the applicant,

III. that the petitioner be ordered to pay the respondents a provisional reimbursement of costs in the amount of EUR 18,150.00 within 30 days of service of the decision on the petitioner;

IV. that the order for provisional measures be declared enforceable only if the applicant provides security in favor of the respondents in the form of awith the Unified Patent Court or with an authority competent for such deposits within the EU, or in the form of a bank guarantee governed by the law of an EU Member State and issued by a bank authorized to conduct business within the EU, in the amount of EUR 1,500,000.

FACTS AND LEGAL ISSUES:

1. Scope of Protection

18. The applicant argues that the parameters listed in the description of the contested patent are merely illustrative.

19. Feature 1.2b) (see feature breakdown in Section II. 1. b) aa)) requires a comparison of the captured parameters with criteria. The criteria are trigger criteria for special functions of the invention. Paragraph [0011] of the contested patent refers to trigger actions that deviate from a natural sequence of movements, not to trigger criteria. However, the contested patent makes no specifications regarding the recorded parameters (= trigger actions). A person skilled in the art recognizes that multiple measured values of a single parameter, recorded over a specific period of time, represent a single parameter curve. Within a criterion for multiple parameters, a specific range of values is defined, and this is compared with the parameters recorded by the sensors (paras. [0017], [0022], [0023] of the contested patent). The predefined values or value ranges against which the recorded parameters/sensor data are compared are stored. There is no restriction on initiating the special function while walking or standing.

20. A criterion is selected from among several criteria, and the special function is initiated whenever the respective detected parameters reach the specified values and value ranges of the criterion.

21. The claim contains no limitation to specific movement situations, so that artificial movements are also covered. Even if this solution leads to a less-than-optimal

implementation, it is encompassed by the scope of protection of the contested patent. The

contested patent acknowledges in several places that a backward movement can provide reliable parameters for initiating the special function. The movement of the foot backward and then upward also corresponds to a natural movement pattern for lifting the foot straight up and not getting it caught on the step. This is because if the prosthetic leg were lifted solely by hip flexion, the foot would be moved forward, since the passive knee joint cannot be actively controlled and would buckle. Therefore, the preceding horizontal movement of the prosthetic leg backward is natural and conducive to safely ascending a step.

22. Furthermore, feature 1.3 should not be understood to mean that the damping of flexion must be reduced overall across the entire range of flexion angles compared to walking on a flat surface.

23. The respondents argue that a person skilled in the art would infer from the contested patent that the special function is not activated by unusual or artificial movements. In this regard, the contested patent is intended to distinguish itself from the prior art. It is intended to enable automatic control without a conscious activation action.

24. Feature 1.2b) requires a comparison of the detected parameters with criteria.

25. The teaching of the patent in suit is based not only on a plurality of parameters that are summarized in a single criterion, but also on a plurality of criteria from which the appropriate criterion is selected following the comparison (feature 1 c). According to the patent, this is in the same functional context as the plurality of parameters, as is evident from paragraph [0047] of the contested patent. The plurality of parameters and the plurality of criteria increase the certainty regarding the estimation of the impending movement sequence and the subsequent adjustment to be made, because the human movement pattern and the corresponding indicative deviations are thereby described more precisely.

26. The selection from among several criteria requires a decision between several alternatives available for selection at the same time. In this context, the selection constitutes a separate procedural step.

II. Infringement

27. The applicant argues that the contested embodiment, at least for the mode of alternating stair climbing, would detect joint angle, extension and flexion resistance, load on the product, and spatial orientation. The rapid hip extension followed by the rapid hip movement triggers the special function “alternating stair climbing or step-over-step.” Logically, the selection can only occur by comparing the measured parameters with the requirements of the criterion. To this end, the criteria must be stored in the computing unit, and an adjustment takes place within the special function, because during the swing phase, flexion damping must occur to enable flexion of the prosthetic knee joint at all.

28. For the fulfillment of feature 1.2 b), it is sufficient that the contested embodiment provides a sequential IF function, by means of which three parameters are compared against a corresponding threshold value and combined via a logical AND operation. The IF function thus combines several parameters. The threshold values defined therein are predetermined, which necessitates storage. Both sequential comparison and simultaneous comparison are covered by the contested patent.

29. The parameters covered are also compared against multiple criteria, as there are a number of special functions (walking to running, anti-stumble protection, descending stairs, etc.).

30. Alternating stair climbing does not require any unusual movement sequences. Furthermore, the so-called “donkey step” is expressly described in paragraph [0038] of the contested patent. Additionally, it follows from the user manual that the special function can also be initiated from a natural walking motion, because each subsequent step requires less effort to initiate the special function.

31. Furthermore, it is not the case that the “stance mode,” as an allegedly required intermediate step, means that stair climbing can only be initiated from a standing position. The statement that the user must be in the stance phase for at least 0.5 seconds as a starting position merely means that the stance phase of the gait cycle alternates with the swing phase with each step. This simply means that the stair-climbing function cannot be initiated from the swing phase.

32. The respondents argue that the contested embodiment does not infringe features 1.2 a) and b).

33. The sequence of movements to initiate the stair-climbing function—which is undisputed as such—first involves the stance mode, in which the knee, thigh, and calf are positioned nearly vertically, followed by two successive partial movements (a gliding movement backward that extends the hip and a rapid forward movement that flexes the hip (rapid high-knee)). These recorded parameters are compared with the device’s database via an “if-yes-and” comparison. Logically linked individual comparisons of different parameters with threshold values for each parameter would be performed.

34. If all recorded parameters matched the respective stored threshold values, the contested embodiment would assume that the described and necessary combination of movements had been performed, so that the special function would subsequently be activated (via a then-link).

35. A realization of feature 1.2 b) is also ruled out because no comparison with multiple criteria takes place. As described, various parameters (such as calf angle, calf acceleration, and others) are recorded to determine these movement elements; these parameters, recorded by sensors, are then sequentially compared with stored threshold values (whose values represent the unnatural movement sequence just described); if

the test result for each of the parameters used is positive, the special function of the *"Step-Over-Step Stair Ascent"* is triggered. No comparison with further criteria takes place.

36. In the absence of the use of a criterion within the meaning of feature 1.2.b), no criterion in accordance with the contested patent is selected pursuant to process steps 1.2.c) and 1.2.d).

37. No selection in accordance with the patent in dispute takes place. The algorithm sequentially checks conjunctive sets of conditions—each distinct—that are assigned to a specific special mode. Only a single criterion is checked at a time.

38. Feature 1.3 is not realized because the damping of flexion is not reduced overall across the entire range of flexion angles compared to walking on a flat surface. However, in the swing phase of the stair-climbing mode, which begins with hip flexion, the flexion damping is not reduced at all in the contested embodiment; rather, the onset of hip flexion is one of the triggers for increasing the flexion damping to 85%. In the contested embodiment, the reduction is triggered by the "donkey kick," i.e., the reduction occurs as soon as the foot is moved backward with sufficient speed. If the foot and thigh are subsequently moved forward (i.e., toward the stairs), the flexion damping is increased again as soon as hip flexion begins. The flexion damping values achieved in this process are always at least as high as the maximum values during walking on level ground and—with the maximum flexion damping value of 99% rapidly reached during hip flexion—are even higher than these. The high flexion damping is intended to prepare the foot for stepping onto the step, so that the corresponding load on the knee prosthesis caused by the prosthesis wearer's weight does not lead to buckling of the prosthetic knee.

III. State of the Art

39. The respondents are of the opinion that the patent-in-suit, in its granted version, is not novel relative to WO 2007/128299 A1 (D1) or EP 1 494 626 B1 (D2), but is in any case suggested by D2. Furthermore, the patent-in-suit is also inadmissibly broadened.

40. In the limited version, the patent in dispute is unclear and inadmissibly broadened. Furthermore, it remains non-novel relative to D1. In any event, the additional features are obvious to a person skilled in the art based on D2 and/or based on US 2005/0283257 A1 (D3).

IV. Necessity of provisional measures

41. The applicant argues that it did not become fully aware of the facts of the infringement until December 4, 2025.

42. The product on the Chinese market is irrelevant, as it has not been able to demonstrate any infringement in a contracting member state. Fener also could not have been certain of the technical correspondence.

43. The applicant states that the acquisition of the contested embodiment was not readily possible, but could only be carried out by trained, manufacturer-certified orthopedic technicians within a medical supply store. A purchase without a real patient connection is not possible in the healthcare system without considerable effort. Creating a “fake profile” is time-consuming and requires that third parties ultimately lie on behalf of the applicant. The person who agreed to do so—whose identity the applicant does not wish to disclose—has suffered disadvantages in their business activities as a result.

44. Whether the statements in the user manual were actually correct could only be validated through the applicant’s own tests. The tests were necessary because essential movement parameters (lower leg orientation and knee angle) could only be determined in this way. Two test systems were used in parallel, and conducting the tests was organizationally complex and therefore took a corresponding amount of time (see Annex KAP 38).

45. The respondents argue that the plaintiff had had access to all relevant information since 2024 because it was familiar with the predecessor model on the Chinese market and had also purchased one. In any event, since May 2025, it could have obtained all information regarding the alleged infringement from the user manual.

46. The respondents assert that the certification is merely an introduction to the product’s functionality, which could also be provided by WJT as a distributor.

47. The respondents further argue that a contact had already been established through Innteo GmbH—founded by a former employee of Ottobock Health Care Deutschland GmbH—at the end of March 2025, and that the test purchase was not initiated until six months later. Even for this purchase, no certified orthopedic technician was required, and none was available at Innteo GmbH as of October 2025 either. Furthermore, a calendar entry without a specific date among the measurements (Exhibit KAP 44) indicates that the contested embodiment had already been acquired or was available in Göttingen prior to this purchase.

48. The creation of a detailed patient profile is irrelevant to the acquisition of the contested embodiment.

49. The respondents contend that the tests conducted by the petitioner in the walk laboratory were not necessary to establish an allegation of infringement. The fact of the reduction in flexion damping was already apparent from the YouTube video submitted as Exhibit KAP 17. Furthermore, the petitioner’s measurements did not provide any additional insight.

50. Furthermore, the plaintiff also acted hesitantly, as there was a further four-week interval between the distribution of the products on October 23, 2025, and the start of the tests.

51. The respondents dispute the applicant's statements regarding the effort, organization, and execution, essentially on the grounds of lack of knowledge, and ultimately also dispute that measurements were taken at all on certain days. Furthermore, the respondents argue that various parts of the measurements did not pertain to the alleged infringement but rather to other functionalities.

52. The plaintiff further argues that an injunction is objectively necessary because the contested embodiment competes with the Genium X4 prosthesis it markets and significantly undercuts its price, thereby causing price erosion and irreparable harm. The presentation of the contested embodiment is expected at another trade fair in Germany in May 2026, so that the petitioner is dependent on the issuance of a preliminary injunction.

V. Legal Consequences and Security

53. The petitioner argues that the first respondent, at the very least, has culpably created the legal appearance that the second respondent is acting as an independent company. Respondent 2) is named as the manufacturer in the user manual (Exhibit KAP 12, p. 70) and also provided an address (Suite A/B) that led to a delay in service. Consequently, the petitioner has a legitimate interest in a decision against Respondent 2) as well.

54. The respondents argue that Respondents 1) and 2) are one and the same legal entity. "Brain Robotics" is merely another name (DBA = doing business as) under which it operates in commercial transactions. Furthermore, there is no dual territorial connection with the respondents. Moreover, an outright ban is not justified, as the contested embodiment has other, uncontested modes.

55. The petitioner is of the opinion that it is entitled to claims for the surrender of funds and information in the proceedings for provisional measures.

56. The respondents contend that, in the event of an order for provisional measures, security in the amount of the value in dispute must in any case be provided.

57. For the parties' full submissions, reference is made to the pleadings and exhibits filed with the court, as well as to the minutes of the oral hearing.

MAJOR PROCEDURAL STEPS:

58. In her reply to the respondents' objection dated March 9, 2026, the applicant, in the alternative, supported her request for a limited form of Claim 1, which she made the main request during the oral hearing.

59. In their rejoinder of March 23, 2026, the respondents suggested amending the heading of the claim.

REASONS:

60. The admissible motion for an order of provisional measures is not successful on the merits. On the one hand, the infringement cannot be established with the requisite certainty; on the other hand, hesitant conduct on the part of the petitioner in enforcing the contested patent cannot be ruled out, which eliminates the need for an order of provisional measures.

I. Admissibility

61. The motion for a preliminary injunction is admissible.

1. Jurisdiction

62. The Düsseldorf Local Chamber has jurisdiction in any event pursuant to Art. 32(1)(c) and Art. 33(1)(a) of the European Patent Convention (EPC). The contested embodiment is offered and supplied within the territory of the Federal Republic of Germany. The question of what specific role the respondents play in the alleged infringement is not relevant to the admissibility of the order, but must be clarified in the context of the infringement examination on the merits.

2. Admissibility of the new claim

63. According to the case law of the Court of Appeal, an unconditional conversion of the original alternative claim into a principal claim is admissible in any event (see UPC_CoA_898/2025, Order of March 27, 2026, ONWARD v. Niche Biomedical, para. 38). In this respect, there are no concerns regarding the admissibility of the main claim originally filed as a subsidiary claim.

II. Infringement of the Patented Invention

64. It cannot be established with sufficient certainty (Rule 211.2 of the Rules of Procedure) that the contested embodiment infringes the patent in dispute.

1. Implementation of the claims

65. Upon summary review, the court is not convinced with the requisite certainty that the contested embodiment (indirectly) carries out the method claimed in the limited version of claim 1 of the patent in dispute.

a) Relevant person skilled in the art

66. The court is convinced that the skilled person comprises a team consisting of the following individuals: A person with a university degree in mechanical engineering or mechatronics, specializing in biomedical or medical technology, and several years of practical experience in the development and manufacture of prostheses or comparable biomechanical joints; and a person with a university degree in computer science/software engineering and several years of practical experience in processing sensor data from prostheses or comparable biomechanical joints. Since the claimed teaching is particularly focused on details of data processing, it appears appropriate that the expert be constituted as a team that also includes a person with corresponding knowledge in data processing. In this context, it is also appropriate that the computer scientist/software engineer have specific experience in data processing for prostheses and comparable biomechanical joints.

b) Determination of the Scope of Protection

67. Pursuant to Art. 69 EPC in conjunction with the Protocol on its interpretation, the patent claim is not merely the starting point but the decisive basis for determining the scope of protection of a European patent. The interpretation of a patent claim does not depend solely on its exact wording in the linguistic sense. Rather, the description and the drawings must always be consulted as aids to the interpretation of the patent claim and not merely used to resolve any ambiguities in the patent claim. However, this does not mean that the patent claim serves merely as a guideline and that its subject matter extends to what, after examining the description and the drawings, appears to be the patent owner's claim for protection. In applying these principles, appropriate protection for the patent owner should be combined with sufficient legal certainty for third parties. The patent claim must be interpreted from the perspective of a person skilled in the art (UPC_CoA_335/2023, Order of Feb. 26, 2024, Headnote 2 and p. 26 et seq. — 10x Genomics v. Nanostring; UPC_CoA_1/2024, Order of May 13, 2024, para. 26 — VusionGroup v. Hanshow; UPC_CoA_182/2024, Order of September 25, 2024, para. 82 — Mammut v. Ortovox).

aa) Subject Matter of the Patented Invention

68. The patent-in-suit generally relates to a method for controlling an orthopedic joint of a lower limb, wherein an adjustable actuator is used to adapt an orthopedic device to walking situations that deviate from walking on a flat surface. The orthopedic device comprises, on its upper side, means for connecting to a limb and an orthopedic element arranged in an articulated manner distal to the connecting means

(see paragraph [0001] of the contested patent; hereinafter, paragraphs (para.) without a source reference are those of the contested patent).

69. The prior art discloses the control of a passive prosthetic joint with adjustable damping from the subsequently published DE 10 2006 021 802, which adapts the prosthesis to stair climbing. In this process, the momentary lifting of the prosthetic foot is detected, and subsequently the flexion damping is reduced during the lifting phase to below a level suitable for walking on a flat surface (para. [0002].

70. US 2006/0224246 A1 and US 2007/0050047 A1 each describe a method for controlling an orthopedic joint, in which parameters that can provide information about the respective movement of the joint are measured, and the data thus obtained is used to control the joint and to recognize different movement sequences. The same applies to WO 2006/069264 A1 [para. [0003]).

71. Methods for detecting different phases of a gait cycle are known from WO 01/72245 A2, WO 2006/024876 A2, and EP 0 549 855 A2. The information determined in this way can be used to control flexion and extension damping and to release the knee for free pivoting (para. [0004]). DE 198 59 931 A1, US 2003/0120183 A1, and GB 2 367 753
A also deal with methods for controlling an artificial knee joint, in which, among other things, the damping of the knee joint can be adjusted based on measured parameters (para. [0005]).

72. Based on this prior art, the invention is directed to providing a method for controlling an orthopedic joint that makes it possible to take specific walking situations into account and ensure appropriate behavior of the orthopedic device (para. [0006]).

73. To solve this problem, the contested patent provides a method having the features of Claim 1, which the applicant asserts in the following limited version:

Claim 1

1. A method for controlling an orthopedic joint of a lower limb in at least one degree of freedom using an adjustable actuator to adapt an orthopedic device to walking situations that deviate from walking on a flat surface,

1.1. the orthopedic device is a prosthetic knee joint and comprises upper connection means to a limb, an orthopedic element arranged in an articulated manner distal to the connection means, and distal connection means for a prosthetic foot,

1.2 comprising the following steps:

a) Detecting multiple parameters of the orthopedic device via sensors,

b) comparing the detected parameters with criteria in which multiple parameters and/or parameter profiles have been summarized and which are stored in a computing unit,

c) selecting a criterion that is suitable based on the determined parameters and/or parameter curves, and

d) adjusting movement resistances, ranges of motion, driving forces, and/or their profiles depending on the selected criterion,

1.3 to control special functions that differ from walking on a flat surface, wherein the flexion damping is reduced in the special function, wherein the special function is alternating stair climbing.

bb) Interpretation

74. The court is of the opinion that the skilled person understands the parameters taken into account in the criteria to be those based on the natural movement pattern of a person with healthy limbs. This also encompasses movement patterns that are typical for wearers of (knee joint) prostheses and therefore deviate slightly from the natural pattern because, due to the lack of existing musculature/joints, the natural movement cannot be replicated exactly. However, no unusual movement patterns are recorded that constitute conscious activation movements arising from walking and are thus foreign to the movement pattern that occurs when deviating from walking on level ground.

75. This understanding by the skilled person is fundamentally covered by the broad wording of the claims. Feature 1.2b) requires a comparison of the parameters recorded by the sensors (Feature 1.2a) with criteria in which multiple parameters and/or parameter curves have been combined and are stored in a computer unit. In conjunction with feature 1, the skilled person learns that one purpose of the method is to adapt the orthopedic device (the prosthetic knee joint) to walking situations that deviate from walking on a level surface. In the narrowly claimed feature 1.3, this deviation is characterized as a special function, namely alternating stair climbing. The skilled person understands the walking situation of alternating stair climbing to be a normal sequence of movements of a prosthesis wearer that approximates the stair climbing of a person with healthy limbs.

76. Even if the wording of the claim is broader per se, the skilled person finds this understanding confirmed when considering the broader description of the patent specification in dispute and the figures. In this respect, there is no interpretation of the claim that falls short of its wording (in the sense of the literal meaning); rather, the patent specification as a whole shows that the claimed criteria include movement sequences that enable the prosthesis wearer to control the movement unconsciously.

77. Thus, the skilled person learns right at the beginning from the general part of the description that the claimed criteria assign specific movement or load conditions of the

orthopedic device to specific walking situations (see para. [0009]). Paragraph [0009] further states:

> *"[...] The sensors determine the parameters during walking, preferably while walking on a flat surface, so that the user of the orthopedic device has the opportunity to initiate the special functions without having to perform movements that do not correspond to the natural pattern. By recording minor deviations in individual parameters and evaluating them during walking in correlation with other parameters and deviations that have been grouped into criteria, it is possible to estimate upcoming movement sequences, allowing the special function to be initiated directly from the walking motion. While it is known in the prior art* to *activate special functions through unusual movement sequences while standing, e.g., by repeatedly and rapidly loading the forefoot or performing a wave-like motion through an atypical, alternating loading of the heel and forefoot, the method according to the invention allows for a switch to be made while walking, resulting in "intuitive" control that requires no conscious activation actions. This leads to increased wearing comfort and enhanced safety, particularly for prosthesis wearers, as operational errors are minimized or eliminated."*

78. The patent specification thus distinguishes itself from the prior art precisely through its solution, in which special functions could only be triggered by distinctive movements that do not occur in a normal gait pattern. The contested patent emphasizes that the user can intuitively control the special function while walking using the method of the invention, and that no conscious activation action is required. The advantages of the invention are increased wearing comfort and greater safety, because the risk of incorrect operation is reduced or eliminated.

79. The automatic control is then highlighted again in paragraph [0011], which states:

> *"[...] This enables automatic control of the joint without the user of the orthopedic device having to consciously perform any action that deviates from a natural movement pattern."*

80. Paragraph [0012] emphasizes that the prosthesis/orthosis wearer receives an orthopedic device that adapts to the respective situation without requiring a long period of adjustment to the expanded functionality. In doing so, the contested patent takes advantage of the fact that the relevant starting positions and walking situations exhibit a specific, significant load or sequence of loads, or sequence of parameters, which are suitable for establishing criteria to activate special functions and to effect a corresponding change in the degrees of freedom, in particular in damping such as flexion damping and/or extension damping (para. [0012]).

81. Paragraph [0018] specifically addresses the different walking situation of climbing stairs with an orthopedic device. It states:

> "(.../ *When climbing stairs with an orthopedic device, it has been shown that during walking, the lower leg provides unreliable signals directed backward, i.e., against the direction of walking*

provides reliable signals. In this case, the knee is positioned significantly ahead of the ankle joint in the direction of travel."

82. This makes it clear that the contested patent deals specifically with walking situations of prosthesis wearers, i.e., it does not merely summarize parameters of walking situations as they occur in people who do not use an orthopedic device. Even though the movement patterns of prosthesis wearers cannot be completely equated with those of people without this disability due to the loss of certain muscle groups, it can be inferred from the specification of the contested patent that it aligns as closely as possible with normal movement patterns when determining parameters. Thus, paragraph [0019] states, regarding the purpose of summarizing multiple parameters, that this is intended to account for the fact that alternating stair climbing may involve different walking speeds, positions, or may begin with either the prosthetic or non-prosthetic leg. This reflects various everyday conditions, which are intended to enable the user to achieve automatic control or movement.

83. This understanding also runs through the specific part of the description.

84. Paragraph [0048] states:

"[...] Whereas previously, particularly distinctive movements were performed to set a special function S—for example, repeatedly rocking the forefoot—the present method allows for automatic adjustment of the damping behavior to the respective gait situation."

85. The embodiment in paragraph [0038] also deals with climbing stairs. Provided that active hip flexion supports passive knee flexion here, as indicated by arrow 7 in Figure 2—where a (slight) backward movement of the prosthetic foot is also mentioned as a suitable detection parameter—this embodiment captures the natural movement sequence of a prosthesis wearer upon reaching the next higher step. The slight backward movement is due to the fact that, in the absence of existing musculature in the passive knee joint, the joint could buckle due to the hip movement. However, neither the arrow movements in Figure 2 nor the descriptions in paragraph [0038] indicate that this is a conscious and distinct activation movement or even a swinging/stepping movement. The movement depicted falls within the natural range of motion possible for a prosthesis wearer.

86. All descriptions in the contested patent therefore show that the criteria correspond to a natural pattern and, in contrast to the prior art, emphasize in various places that no unusual movement sequences are necessary to activate the special function, but rather that "intuitive control," "automatic control," or "automatic adjustment" takes place. The

summary of the parameters into criteria for comparison with the recorded parameters is, after all, not described as optional anywhere.

cc) Infringement

87. Based on such an understanding, the Court cannot currently establish with the certainty required for the issuance of a preliminary injunction that the contested embodiment constitutes an essential means that is objectively suitable for carrying out the limited claim 1 of the contested patent. The court cannot determine that the contested embodiment performs the process step in feature 1.2b). It is not apparent that criteria are stored in the computer unit of the contested embodiment that summarize parameters reflecting a sequence of movements that is typical for prosthesis wearers and oriented as closely as possible to a natural movement pattern of stair climbing.

88. To initiate the alternating stair-climbing function, the stance mode is first established, in which the knee, thigh, and calf are positioned nearly vertically; following this, two successive partial movements must occur: a gliding movement backward that extends the hip, and a rapid forward movement that flexes the hip (rapid high-knee). These movements are referred to as a “donkey kick” and trigger the flexion of the knee joint in the embodiment described. The video submitted to the file (Exhibit KAP 32) shows that this movement appears like a backward kick before the supported leg can be lifted onto the step. This is a deliberate and distinctive initial movement that does not suggest intuitive control by the wearer. An infringement is therefore ruled out.

89. Insofar as the petitioner further argues that the user manual (Exhibit KAP 12) for the contested embodiment indicates that each subsequent step requires less effort to initiate the ascent of the stairs step by step, this argument also fails to support her petition.

90. She submitted the video as Exhibit KAP 33 to demonstrate alternating stair climbing of multiple steps. The respondents objected that these triggering movements did not differ qualitatively from the initial triggering movements. Triggering movements occurring in close succession still required rapid backward movements of the foot. Rather, the only requirement waived is that the user must remain in the stance phase for 0.5 seconds. Furthermore, experienced users are more likely to conceal movements that are unusual in this respect. Taking into account the submitted documents and videos, the Board cannot determine whether the summarized movement parameters for alternating stair climbing that has already begun represent movements typical for prosthesis wearers. A backward movement of the foot, comparable to a kick, is still discernible. In particular, the Board is unable to determine with the conviction required for issuing an order whether this already constitutes a typical movement of a prosthesis wearer, which thereby already enables intuitive control of the knee joint and therefore merely represents a poorer execution of the method step according to the contested patent.

2. Further Discussion of Infringement and Legal Status

91. As it is not relevant to the decision, no further comments are required regarding the interpretation and implementation of the remaining features of limited claim 1 or regarding the legal situation.

III. Necessity of provisional measures and balancing of interests

92. Pursuant to Art. 62(2) EPGÜ and R. 211.3 VerfO, the court weighs the interests of the parties at its discretion, taking into account, in particular, the potential harm that would be caused to one of the parties by the granting or denial of provisional measures.

93. According to the Rules of Procedure, both temporal and factual circumstances are relevant to the necessity of ordering interim measures. The relevance of temporal circumstances arises from Rule 209.2(b) of the Rules of Procedure ("Urgency") and, in particular, from Rule
211.4 VerfO, according to which the court takes into account any unreasonable delay in applying for interim measures. The fact that factual circumstances must also be taken into account in the decision on the order of provisional measures follows, for example, from Rule 211.3 of the Rules of Procedure, according to which, in particular, the potential harm that may be incurred by the applicant must also be taken into account when deciding on the application for an order. In contrast, potential harm to the respondent must be taken into account in the balancing of interests (UPC_CFI_2/2023 (Munich Regional Court), Order of September 19, 2023, p. 84 — Nanostring v. 10x Genomics; UPC_CFI_452/2023 (Düsseldorf Regional Court), Order of April 9, 2024, p. 27 — Ortovox v. Mammut).

1. Unreasonable Delay

94. In the present case, it cannot be ruled out that the applicant waited an unreasonable amount of time before filing its application, thereby negating the urgency, which—for the reasons explained in more detail below—is to the detriment of the applicant.

a) Principles

95. In weighing the interests, the court takes into account any undue delay in applying for provisional measures pursuant to R. 211.4 VerfO in conjunction with
Rule 209.1(b) of the Rules of Procedure. This is based on the fact that the patent holder, through his conduct, demonstrates that the enforcement of his rights is no longer urgent for him. In such a situation, there is no need to order provisional measures.

96. The temporal urgency required for the ordering of provisional measures is lacking only if the injured party has pursued its claims so negligently and hesitantly that it can be objectively assumed that it has no interest in the prompt enforcement of its rights and it therefore does not appear appropriate to order provisional measures (UPC_CFI_347/2024 (Düsseldorf Division), Order of October 31, 2024, p. 42 — Magna v.

Valeo; see also UPC_CFI 2/2023 (Munich Division), Order of September 19, 2023 — 10x Genomics v. Nanostring; UPC_CFI_452/2024 (Düsseldorf Division), Order of April 9, 2024,
p. 27, para. 126 — Ortovox v. Mammut; UPC_CFI_151/2024 (Hamburg Regional Court), Order of June 3, 2024 — Ballinno v. UEFA).

97. Pursuant to Rule 213.2 VerfO, the court may, in the course of its decision-making, request the applicant to submit all evidence at his disposal in order to satisfy itself that the applicant is entitled to initiate proceedings under Art. 47 EPGÜ, that the patent in question is valid, and that his right is being infringed or is at risk of being infringed. In summary proceedings, the applicant must generally respond to such an order within a short period of time, which requires adequate preparation for the proceedings. The applicant must therefore only apply to the court if he has reliable knowledge of all the facts that make legal action in the proceedings for provisional measures appear promising, and if he can substantiate these facts. They can prepare for all possible procedural scenarios that may arise based on the circumstances in such a way that, upon the court's order, they can submit the requested information and documents and successfully refute the opposing party's arguments. In principle, the applicant cannot be required to conduct the necessary investigations only during the ongoing proceedings and, if necessary, to obtain the required documents retroactively. On the other hand, the applicant must not unnecessarily delay the proceedings. As soon as he becomes aware of the alleged infringement, he must investigate it, take the necessary measures to clarify it, and obtain the documents required to substantiate his claims. In doing so, they must carefully initiate and complete the necessary steps at every stage (UPC_CFI_452/2023 (Düsseldorf), Order of April 9, 2024, para. 128 — Ortovox v. Mammut; UPC_CFI_151/2024 (Hamburg Division), Order of June 3, 2024—Ballinno v. UEFA; UPC_CFI_347/2024 (Düsseldorf Division), Order of October 31, 2024, p. 42 — Magna v. Valeo).

98. On this basis, the time limit within the meaning of Rule 211.4 of the Rules of Procedure is to be calculated from the date on which the applicant knew or should have known of the infringement, which would have enabled the applicant to file a well-founded application for interim measures pursuant to Rule 206.2 of the Rules of Procedure. Whether a delay within the meaning of Rule 211.4 of the Rules of Procedure is unreasonable depends on the circumstances of the individual case (UPC_CoA_182/2024, Order of September 25, 2024, paras. 228 and 232 — Mammut v. Ortovox; UPC_CFI_347/2024 (Düsseldorf Division), Order of October 31, 2024, p. 42 — Magna v. Va-leo). Ultimately, it must always be examined whether the applicant's conduct as a whole justifies the conclusion that the enforcement of his rights is not urgent.

b) Application to the Case at Hand

99. Based on these principles, it cannot be ruled out that the applicant's conduct in the present case was unreasonably hesitant, because, given all the circumstances, she should have known at an earlier stage that the contested embodiment could potentially infringe the patent in dispute, and she could therefore have made more prompt efforts to further clarify the facts of the case.

100. The applicant generally bears the burden of proof regarding the acquisition of knowledge of the existence of the contested embodiment, the potential infringement, and its prompt clarification. The relevant period extends from the time of becoming aware of the contested embodiment as a potentially infringing product until all the facts and evidence required to substantiate the full scope of the infringement have been obtained. It must be assumed that the applicant should

have been aware of the potentially infringing product if, according to the conventional understanding

and the ordinary course of events, the applicant should have been aware of the potentially infringing characteristics. This is followed by the obligation to continue investigating the facts of the case expeditiously. In this regard, all circumstances of the respective individual case are relevant. The respondents bear the burden of presentation and proof regarding the indications from which it can be inferred that they must have had prior knowledge and from which hesitant conduct can be inferred. If such indications are substantiated by the respondents, it is then up to the applicant to refute them or to explain why she could not have been aware of them and why she acted with sufficient promptness in this regard. The applicant has not succeeded in doing the latter.

101. The applicant had been monitoring the market since the beginning of 2025. While it is correct that any product launches in China and the presentations in the U.S. in late 2024/early 2025 are not relevant to the design of the contested embodiment, as these products were not available on the European market until spring 2025. However, this does not alter the fact that the applicant had already developed an awareness of the contested embodiment. This is also evidenced by the written statement of Mr. [Annex KAP 37], an employee of Otto Bock Healthcare Products GmbH who is entrusted with the Ottobock Group's entire lower limb prosthetics portfolio. Thus, an initial internal inquiry regarding the procurement of the contested embodiment had already been made to Ottobock Health Care Germany in January 2025. Ottobock Health Care Germany is the sales organization within the Ottobock Group responsible for purchasing and sales. This procurement attempt was unsuccessful.

102. The applicant became aware of the introduction of the contested embodiment in Europe following the Expolife trade fair in Kassel in March 2025. It is undisputed that a discussion took place between Mr., who is responsible for strategic purchasing of the prosthetics product group at the petitioner, and the respondents' employees regarding the contested embodiment. For the sake of the petitioner, it may be assumed here that Mr.
did not report any technical details to the applicant (see Annex KAP 40). In response to the respondents' justified objection that Mr. certainly reports his observations of new products at trade fairs to the applicant, the applicant has not commented on any reporting obligations or on the flow of information to the relevant organizational units within its corporate structure.

103. At the latest, however, following the trade fair in Stockholm in June 2025, at which an exchange took place between WJT and the Ottobock employee , the applicant should have obtained sufficient technical information to further investigate the potential infringement and to initiate the procurement of an accused embodiment.

104. Herbist is the Head of the Orthopaedic Technology Vienna department at Ottobock Healthcare Products GmbH. The latter is a subsidiary of the applicant, where IP-related activities and development processes of the Ottobock Group are based. During the oral hearing, the petitioner neither objected to this description of the company's purpose—which the court had outlined for the parties in its opening remarks—as incorrect nor commented on it in any other way. Herrnhat, as an employee of the research and development group who was also simultaneously

entrusted with the development of the allegedly directly competing product (Genium X4), saw the contested embodiment

at the trade fair. Even though, according to his testimony (Exhibit QE 49), no technical implementation of individual functions was discussed and he could not recall any discussion of a "walk-to-run" function (which is not at issue here), he essentially took note of the technical design of the contested embodiment at the time. Even if one assumes, in favor of the petitioner, that not all functionalities were discussed in detail, it stands to reason that he he (also) passed on his assessment of the contested embodiment to the IP managers. The applicant makes no submissions on this point. In particular, it does not explain why, from that point on, it did not have sufficient information to further investigate the suspected infringement of the patent in dispute and to initiate a purchase. It does not specify a date or time period from which it specifically attempted again to procure the contested embodiment (following the unsuccessful attempt in January 2025).

105. In this context, the respondents have presented further evidence as to why the petitioner should have been aware of the full alleged facts of the infringement earlier and acted hesitantly in this regard:

106. The user manual, which explains the disputed function of alternating stair climbing and which the plaintiff submitted as Exhibit KAP 12, was available on the WJT website starting in May 2025. The plaintiff has not commented on this either, as to whether, when, or how it became aware of this.

107. Furthermore, the respondents have demonstrated that, during the period from early July 2025 to late August 2025, various certifications of specialists for the contested embodiment took place in companies belonging to the applicant's own care network. In August 2025, an adjustment was even performed on a patient. In this regard, the applicant could have undertaken or attempted to acquire or conduct further investigations within its own network.

108. The applicant is unable to demonstrate whether it even attempted to do so, and if so, when or why any such attempts failed. Her initial objection that the acquisition of the contested embodiment was not readily possible, but rather could only be carried out by trained, manufacturer-certified orthopedic technicians within a medical supply store, does not hold up in this regard, because such trained specialists were available within her own supply network. The applicant further unsuccessfully relies on the general argument that acquisition without a real patient connection in the healthcare system is not possible without considerable effort. Creating a fake profile is time-consuming and requires that third parties ultimately lie on behalf of the applicant. However, the applicant fails to specify when and how she undertook such efforts. Rather, it can be inferred from the written witness statement of Mr. [Annex KAP 37] that the "procurement" process did not begin until September 22, 2026.

109. Even though the petitioner stated during the oral hearing that she would not disclose the identity or details of the person who ultimately arranged the procurement on her behalf—because that person had suffered disadvantages in their business activities as a result—this is not strictly necessary. First, for a substantiated rebuttal as to why she was unable to acquire and further examine the contested embodiment between June 2025 and September 2025, it would have sufficed to describe her efforts and why they failed. This has not yet

not been done. Even if a specific third party would have had to be named in the event of further denial by the respondents, the Rules of Procedure provide for corresponding confidentiality rules that can reduce the circle of persons with access to confidential information among the respondents to a minimum. In this respect, the applicant's silence works to its disadvantage.

110. After all, she no longer disputed that the acquisition through Innteo GmbH took place in October 2025 and that, at that time, no orthopedic technician there was certified for the contested embodiment, which in any case undermines the persuasiveness of her argument based on the necessity of certification.

111. The applicant was therefore unable, on the whole, to explain why it should not have been aware of the potentially infringing characteristics as early as the beginning of July 2025 and should have sought to acquire the necessary certification from that point onward. It does not state what actions it took, nor why—if it did not act during the summer months—it was not required to do so. In view of all the circumstances, the court cannot rule out that the petitioner should have attempted, as of early July 2025, to further investigate the potential infringement or to acquire an alternative embodiment. Even if one assumes, in favor of the applicant, that further investigations were necessary after the acquisition and were also conducted expeditiously, the applicant could and should have filed the application with the court by mid- to late October 2025 at the latest, not as late as mid-December 2025. Therefore, hesitant conduct cannot be ruled out.

2. Objective Necessity and Balancing of Interests in the Strict Sense

112. In the absence of a finding of infringement and of temporal urgency, no further discussion is required regarding objective necessity and balancing of interests in the narrower sense.

IV. No correction of the heading

113. The court sees no reason for a correction of the heading.

114. The petitioner correctly argues that, taking all circumstances into account in legal transactions, the respondents have created the legal appearance that Respondent 2) is an independent legal entity. Thus, Respondent 1) appears as the manufacturer with its address on the product packaging, whereas the name of Respondent 2) is marked only as TM (trademark) (Exhibit KAP 3). Both respondents are listed in the instructions for use (Exhibit KAP 12), and the address designations are not entirely identical (Suite A; Suite A/B). All in all, the totality of the circumstances works against the respondents because the (legal) identity of both is not clearly evident in legal transactions. There is therefore no basis for a correction of the heading.

V. Provisional Reimbursement of Costs

115. Pursuant to Art. 69 EPC in conjunction with Rule 211.1(d) of the Rules of Procedure, the respondents may request a provisional reimbursement of costs.

116. A provisional order for costs in favor of the defendant may also be issued. The fact that Rule 211.1(d) of the VerfO, unlike Rule 150.2 VerfO, does not expressly provide for a provisional order for costs in favor of the prevailing party does not preclude this, but is justified on grounds of equality of arms. This enables the prevailing party to provisionally recover at least a portion of the costs incurred from the losing party until the subsequent separate proceedings for a decision on costs pursuant to R. 150 et seq. VerfO has commenced and been finally concluded (see UPC_CoA_317/2025, Order of November 28, 2025, Barco v. Yealink, para. 96 et seq.).

117. The respondents have calculated their provisionally claimed costs in accordance with the Lawyers' Fees Act. There are no objections to this.

VI. Costs

118. A preliminary decision on costs must be rendered. This follows the guidelines of the Court of Appeal, according to which a preliminary decision on costs shall be issued in proceedings for the issuance of interim measures conducted inter partes (UPC_CoA_523/2024, Order of March 3, 2025, para. 117 — Sumi Agro v. Syngenta). Pursuant to Art. 69(1) EPGÜ, the reasonable and proportionate costs of the litigation and other expenses of the prevailing party are, in principle, to be borne by the losing party, unless equity dictates otherwise. Therefore, in the present case, the applicant is liable for the costs.

ORDER:

I. The motion for provisional measures is denied.

II. The applicant shall bear the costs of the proceedings.

III. The applicant shall pay a provisional reimbursement of costs in the amount of €18,150.00 to the respondents within 30 days of service of this order on the applicant.

IV. The value in dispute is set at €1,500,000.00.

Düsseldorf, May 7, 2026

NAMES AND SIGNATURES

Presiding Judge Dr. Thom	Anna Bérénice Dr. THOM Digitally signed by Anna Bérénice Dr. THOM Date: 05/02/06 14:15:55 +02:00
Legally qualified judge Dr. Rinken	Ingo Rinken Digitally signed by Ingo Rinken Datum: 2026.05.06 14:22:16 +02'00'
Legally qualified judge Argergaard	Peter Juul Agergaard 05/06/2006 Digitally signed by Peter Juul Agergaard Dato: 2026.05.06 14:30:49 +02'00'
Technically Qualified Judge Michels	Digitally signed Michels Simon Stephan 20264-06 14:39:27 +0200 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet
For the Assistant Registrar	LAURA CHANTAL DANIEL Digitally signed von LAURA CHANTAL DANIEL Datum: 05/07/2026 07:12:03 +02'00'

Information regarding the appeal:

The losing party may appeal this order within 15 days of its service (Art. 73(2)(a), 62 EPGÜ, R. 220.1(c), 224.2(b) VerfO).

Information on enforcement (Art. 82 EPC, Art. 37(2) EPGS, R. 118.8, 158.2, 354, 355.4 VerfO):

A certified copy of the enforceable decision or the enforceable order shall be issued by the Assistant Registrar upon request of the enforcing party, R. 69 RegR.