Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Local Division Düsseldorf
UPC_CFI_1747/2025

Order
of the Court of First Instance of the Unified Patent Court
issued on 12 May 2026
EP 4 295 806 B1

KEYWORDS:

application for provisional measures; burden of proof

APPLICANT:

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DEFENDANTS:

1. **Angelalign France Technology SASU**, 147 Avenue de Malakoff, 75116 Paris, France
2. **Europe Angelalign Technology B.V.**, Herikerbergweg 292, 1101 CT Amsterdam, the Netherlands
3. **Angelalign Technology (Germany) GmbH**, Wankelstrasse 60, 50996 Cologne, Germany
4. **Italy Angelalign Technology S.R.L.**, Corso Vercelli 40, Milan CAP 20145, Italy

Represented by: Arno Rißе, Tim Smentkowski and Julius Winkler, Rechtsanwälte and UPC Representatives, Arnold Ruess Rechtsanwälte Part mbB, Königsallee 59a, 40215 Düsseldorf, Germany

and

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PATENT IN SUIT:

EUROPEAN PATENT NO EP 4 295 806 B1

PANEL/DIVISION:

Panel 2 of the Local Division in Düsseldorf

DECIDING JUDGES:

This order was issued by Presiding Judge Thomas, who was stepping in for Presiding Judge Dr Thom, legally qualified Judge Dr Rinken, legally qualified Judge Visser acting as judge rapporteur and technically qualified Judge Dr Papa.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT: R. 209.1 RoP – Application for provisional measures

DATE OF ORAL HEARING: 31 March 2026

SUMMARY OF THE FACTS:

1. By way of an application for provisional measures, the Applicant seeks a preliminary injunction and further provisional measures against the Defendants in respect of an alleged infringement of EP 4 295 806 B1 (hereinafter: the patent in suit).

2. The Applicant is the registered proprietor of the patent in suit. The patent in suit was filed on 30 August 2023 under the application number 23194336.6. It was filed as a divisional application to application 1670244.4, filed on 5 January 2016. The patent in suit claims the priority of US 201562099965 P (5 January 2015) and US 202514985904 (31 December 2015). The date of publication and mention of the grant of the patent is 26 November 2025. Unitary effect was registered on 2 December 2025. No opposition has yet been filed.

3. The patent in suit is titled "A METHOD OF DESIGNING AN ORTHODONTIC APPLIANCE FOR MOVING ONE OR MORE TEETH OF A PLURALITY OF TEETH, AND SYSTEM TO GENERATE A PLURALITY OF SUCH APPLIANCES". Its claim 1 reads as follows:

> 1. A method of designing an orthodontic appliance for moving one or more teeth (10) of a plurality of teeth, comprising:
> providing, by a processor, a shape profile (50, 55, 60) of an appliance comprising a polymeric shell (1),
> the appliance being shaped for placement on the plurality of teeth, the appliance comprising a plurality of tooth receiving cavities (101) shaped to receive each of the plurality of teeth and provide a differential moment to the plurality of teeth in order to move one or more teeth (10) of the plurality of teeth, the plurality of teeth comprising a first one or more teeth and a second one or more teeth, wherein the plurality of tooth receiving cavities (101) comprises a first one or more cavities shaped to receive the first one or more teeth and a second one or more cavities shaped to receive the second one or more teeth,

wherein the shape profile of the appliance is configured such that the first one or more tooth receiving cavities generate a first counter moment to the first one or more teeth received by the first one or more tooth receiving cavities and the second one or more tooth receiving cavities generate a second counter moment to the second one or more teeth received by the second one or more tooth receiving cavities, with the first counter moment opposite the second counter moment,
wherein the plurality of tooth receiving cavities comprise one or more engagement structures shaped to receive one or more attachments and urge the first one or more teeth away from the second one or more teeth with a counter force in order to facilitate movement of the first one or more teeth toward the second one or more teeth.

Claim 10 reads as follows:

10. The method of any preceding claim, further comprising fabricating the orthodontic appliance.

Claim 14 reads as follows:

14. An orthodontic appliance for moving one or more teeth of a plurality of teeth (10), the appliance having a shape profile (50, 55, 60) and comprising a polymeric shell (1)

the appliance being shaped for placement on the plurality of teeth, the appliance comprising a plurality of tooth receiving cavities (101) shaped to receive each of the plurality of teeth (10) and provide a differential moment to the plurality of teeth (10) in order to move one or more teeth of the plurality of teeth, the plurality of teeth comprising a first one or more teeth and a second one or more teeth,
wherein the plurality of tooth receiving cavities (101) comprises a first one or more cavities shaped to receive the first one or more teeth and a second one or more cavities shaped to receive the second one or more teeth,
wherein the shape profile of the appliance is configured such that the first one or more tooth receiving cavities generate a first counter moment to the first one or more teeth received by the first one or more tooth receiving cavities and the second one or more tooth receiving cavities generate a second counter moment to the second one or more teeth received by the second one or more tooth receiving cavities, with the first counter moment opposite the second counter moment,
wherein the plurality of tooth receiving cavities comprise one or more engagement structures shaped to receive one or more attachments and urge the first one or more teeth away from the second one or more teeth with a counter force in order to facilitate movement of the first one or more teeth toward the second one or more teeth.

4. With regard to the wording of claims 2, 3, 4 and 9, which are only asserted by way of “in particular if” motions, reference is made to the patent specification of the patent in suit.

5. The following scaled-down figure, taken from the patent in suit, illustrates an embodiment of the invention. According to the description of the patent in suit, figure 2 shows components of an alignment apparatus and corresponding forces.

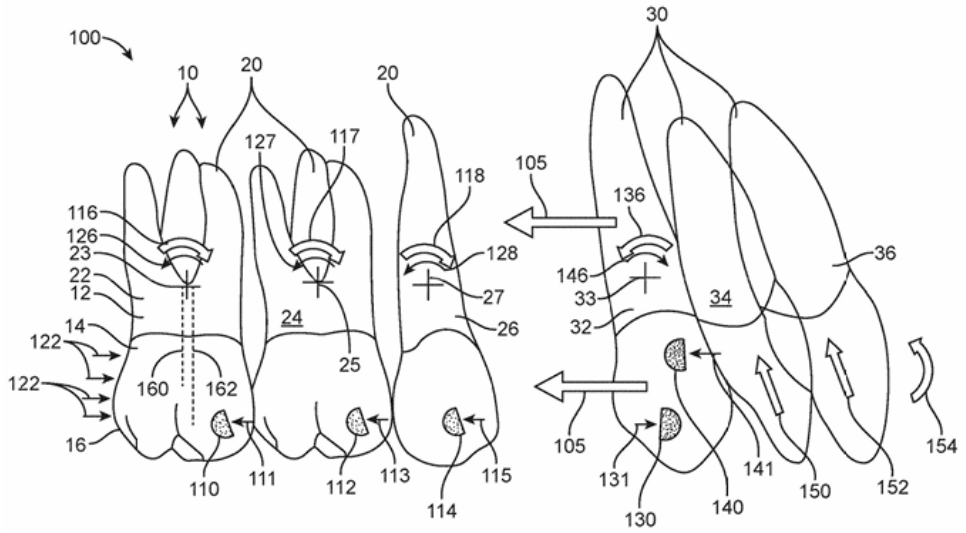


FIG. 2

6. The Applicant, founded in 1997, is a company based in the United States of America active in over 100 countries in the field of clear aligner orthodontic therapy. The Applicant provides aligners and associated interoral scanners, digital imaging systems and digital software tools for treatment planning, known as 'Clincheck.' In 2015, the Applicant implemented 'Invisalign G6', using clear aligners to rearrange teeth and close a gap after the extraction of a tooth.

7. Clear aligner orthodontic therapy is a form of orthodontic treatment in which a patient's teeth are repositioned by a series of transparent plastic shells. Each aligner fits closely over the patient's teeth and the patient wears a sequence of differently shaped aligners to gradually straighten the teeth. Attachments can be formed on the surface of a tooth to provide additional surfaces for the aligner to engage with the tooth.

8. The Defendants are companies in the Angelalign Technology group, founded in 2003 and active in over 50 countries in the same field of clear aligner orthodontic therapy. Defendant 1 is an indirect wholly owned subsidiary of Angelalign Technology Inc. which is incorporated on the Cayman Islands and listed on the Hong Kong stock exchange. Defendant 2 is also an indirect wholly owned subsidiary of Angelalign Technology Inc and is the sole shareholder of Defendants 1, 3 and 4. The sole shareholder of Defendant 2 is Angelalign Technology Pte. LTD which has its principal place of business in Singapore and is a wholly owned subsidiary of Align Technology Inc.

9. Defendants 1, 3 and 4 offer clear aligner orthodontic treatment systems together with a treatment planning system 'iOrtho' in the UPC territory. The aligner systems include three different product systems, named "Select", "Pro" and "KiD". They are offered through the English international website that is also directed at the European market, and through dedicated subpages for inter alia Germany, France, Italy and Portugal. The aligner systems and software are available throughout Europe, including in most Contracting Member States.

10. In 2015, the Angelalign Technology group has launched the "A7 Premolar Extraction Solution" in China. It entered the European market in 2023 and since 2023 or 2024 has offered and supplied treatments incorporating the "A7 Premolar Extraction Solution". On screenshots taken from its international website on 7 November 2025 (exhibit CR-PM-15), the following description of the "A7 Premolar Extraction Solution" is given.

11. The "A7 Premolar Extraction Solution" will hereinafter also be named "the A7 Solution" or the challenged embodiment I. Aligners manufactured accordingly will also be named the challenged embodiment II.

12. Defendant 1 is the Defendants' headquarters in Europe. It is in a business relationship with the other Defendants located in Europe and coordinates the distribution of the challenged embodiments I and II within Europe. Defendant 1 sells and markets the challenged embodiments I and II in France and imports devices, manufactured by Wuxi EA Bio-Tech Co., Ltd., a wholly owned subsidiary of Angelalign Technology Inc., to Europe. Defendant 1 also operates the Angel Aligner web shop with its respective regional subpages for inter alia Germany, France, Italy, and Portugal. Defendant 1 is responsible for the European social media pages, for example the Facebook page. Defendant 2 is the sole shareholder of Defendants 1, 3 and 4. Defendant 3 sells and markets the challenged embodiments I and II in Germany and organises events, training courses and conferences in Germany, Austria and the Netherlands, where it promotes these challenged embodiments. Defendant 4 distributes the challenged embodiments I and II in Italy.

INDICATION OF THE PARTIES REQUESTS:

13. The Applicant requests the following:

    A. The Defendants are ordered, in the territories of Austria, Belgium, Bulgaria, Germany, Denmark, Estonia, Finland, France, Italy, Lithuania, Luxembourg, Latvia, Malta, The Netherlands, Portugal, Romania, Sweden and Slovenia,

    to cease and desist from

    I. offering, placing on the market, using or importing or storing for the aforementioned purposes, orthodontic appliances directly obtained by:

    1. a method of designing an orthodontic appliance for moving one or more teeth of a plurality of teeth, comprising:

    providing, by a processor, a shape profile of an appliance comprising a polymeric shell,

    the appliance being shaped for placement on the plurality of teeth,

    the appliance comprising a plurality of tooth receiving cavities shaped to receive each of the plurality of teeth and provide a differential moment to the plurality of teeth in order to move one or more teeth of the plurality of teeth, the plurality of teeth comprising a first one or more teeth and a second one or more teeth,

wherein the plurality of tooth receiving cavities comprises a first one or more cavities shaped to receive the first one or more teeth and a second one or more cavities shaped to receive the second one or more teeth,

wherein the shape profile of the appliance is configured such that

the first one or more tooth receiving cavities generate a first counter moment to the first one or more teeth received by the first one or more tooth receiving cavities and

the second one or more tooth receiving cavities generate a second counter moment to the second one or more teeth received by the second one or more tooth receiving cavities,

with the first counter moment opposite the second counter moment,

wherein the plurality of tooth receiving cavities comprise one or more engagement structures shaped to receive one or more attachments and urge the first one or more teeth away from the second one or more teeth with a counter force in order to facilitate movement of the first one or more teeth toward the second one or more teeth;

further comprising fabricating the orthodontic appliance;

(Infringement of claim 1 in combination with claim 10)

2. in particular if the first one or more teeth comprises an anterior group of one or more teeth and the second one or more teeth comprises a posterior group of one or more teeth, and wherein the first counter moment of the anterior group of one or more teeth opposes the second counter moment of the posterior group of one or more teeth;

(Infringement of claim 2 in combination with claim 10)

3. and in particular if the posterior group of one or more teeth comprises a plurality of adjacent posterior teeth, the appliance shaped to generate the second counter moment with the plurality of adjacent posterior teeth;

(Infringement of claim 3 in combination with claim 10)

4. and in particular if the first counter moment is less than the second counter moment in order to move the anterior group of one or more teeth toward the plurality of adjacent posterior teeth;

(Infringement of claim 4 in combination with claim 10)

5. and in particular if the plurality of teeth receiving cavities provide the differential moment to the plurality of teeth in order to increase anchorage of one or more of the plurality of teeth;

(Infringement of claim 9 in combination with claim 10)

specifically, orthodontic appliances of the following systems implementing the ‘A7 Premolar Extraction Solution’:

- Angel Aligner Select
- Angel Aligner Pro
- Angel Aligner KiD;

II. making, offering, placing on the market or using, or importing or storing for these purposes:

an orthodontic appliance for moving one or more teeth of a plurality of teeth, the appliance having a shape profile and comprising a polymeric shell, the appliance being shaped for placement on the plurality of teeth, the appliance comprising a plurality of tooth receiving cavities shaped to receive each of the plurality of teeth and provide a differential moment to the plurality of teeth in order to move one or more teeth of the plurality of teeth, the plurality of teeth comprising a first one or more teeth and a second one or more teeth,

wherein the plurality of tooth receiving cavities comprises a first one or more cavities shaped to receive the first one or more teeth and a second one or more cavities shaped to receive the second one or more teeth, wherein the shape profile of the appliance is configured such that the first one or more tooth receiving cavities generate a first counter moment to the first one or more teeth received by the first one or more tooth receiving cavities and the second one or more tooth receiving cavities generate a second counter moment to the second one or more teeth received by the second one or more tooth receiving cavities, with the first counter moment opposite the second counter moment, wherein the plurality of tooth receiving cavities comprise one or more engagement structures shaped to receive one or more attachments and urge the first one or more teeth away from the second one or more teeth with a counter force in order to facilitate movement of the first one or more teeth toward the second one or more teeth,

(Infringement of claim 14)

specifically, orthodontic appliances of the following systems implementing the ‘A7 Premolar Extraction Solution’:

- Angel Aligner Select
- Angel Aligner Pro
- Angel Align KiD.

B. For each individual infringement of the orders under A., the respective Defendant shall pay to the Court a (possibly repeated) penalty payment of up to EUR 10,000 per infringing product and/or, in the case of continuous infringement such as the offering of the infringing method, of up to EUR 20,000 per day.

C. The Defendants are ordered to provisionally reimburse the Applicant for costs in the amount of EUR 200,000.00.

D. The Defendants have to pay the costs of the proceedings.

E. The above orders are immediately enforceable.

14. The Defendants request that:

I. The Application for provisional measures is rejected.

II. The Applicant shall bear the costs of the proceedings, including reasonable and proportionate legal costs and other expenses incurred by the Defendants.

15. In the event that the Court enters a preliminary injunction as per section A and B of the Applicant's request, the Defendants further request:

III. The order is enforceable for the Applicant only once it has provided security in favour of the Defendants in the form of a deposit or a bank guarantee issued by a bank licensed in the European Union in the amount of EUR 1,600,000.

16. In the Rejoinder, the Defendants further request:

> The Court declares inadmissible and disregards Applicant's Reply dated 20 February 2026 (including Exhibit CR-PM 24) insofar as it refers to steps of the attacked A& Extraction Solution other than the anchorage preparation of posterior teeth 6 and 7 to allegedly show infringement of feature 1.5.2.

POINTS AT ISSUE:

Infringement

17. In the Application, the Applicant has alleged that the Defendants' clear aligners system implementing the A7 Solution realises all features of claims 1, 2, 3, 4, and 9, each in combination with claim 10, and claim 14 of the patent in suit. For this, it refers to the Defendants' website, product brochures and webinars, describing features or "advantages" of the A7 Solution.

18. The Defendants have contested that the various parts of these advantages or steps that the Applicant relies on for infringement, are applied in one single aligner, and argue that the patent is therefore not infringed.

19. In response to this argument, the Applicant has submitted further arguments and evidence on infringement. The Defendants state that these should be disregarded because they amount to an inadmissible amendment of the case and are late-filed.

Sufficiency of disclosure

20. The Defendants submit that claims 1 and 14 lack sufficient disclosure. They argue that each of these claims is too broad with respect to the provided disclosure, in that it allows that generating the counter force for the second counter moment is possible without an engagement structure. With respect to this, the patent merely comprises a general statement in paragraph [0124] and does not provide the skilled person with any information on how the claims can be carried out over the whole scope.

21. The Applicant states that the patent in suit discloses at least one way of performing the claimed invention. With regard to an arrangement with only one engagement structure, the Applicant argues that the Defendants did not prove that such a set-up would not be functional and that the ability to imagine a non-working embodiment does not result in a lack of sufficiency.

Inventive step

22. The Defendants argue that claims 1 and 14 lack inventive step over patent application WO 2008/115654 ("D1"), in combination with:

- Chapter 6, "Biomechanical Basis of Extraction Space Closure", of the textbook "Esthetics and Biomechanics in Orthodontics" ("D2")

- Chapter 9 of the textbook "Biomechanics in Orthodontics - principles and Practice"("D3")

  or

- Chapter 22, "Extraction Treatment with Invisalign" of the textbook "The Invisalign System" ("D4").

23. The Applicant argues that the skilled person, starting from D1, would not turn to D2 or D3, or would not implement their teaching in D1, because these documents relate to wire-and-bracket orthodontic treatment. With regard to D4, the Applicant argues that it does not disclose the missing features and that it evidences that it was not known to use tooth receiving cavities of a polymeric appliance to apply counter moments.

Dependent claims in proceedings on provisional measures

24. The Defendants submit that the Applicant's main request already is a combination of claims 1 and 10 and that further requests are based on combinations of those claims with further dependent claims. They point out the high number of requests and argue that they would amount to amendments to the patent as granted, while provisional measures can only be ordered if the Court is sufficiently satisfied that the patent is valid in its granted form.

25. The Applicant, at the request of the Court, identified the combination of claims 1 + 9 + 10 as the one it wishes to fall back on, if necessary, should the Court consider claim 1 to be more likely than not invalid. It further submits that this does not amount to an amendment of the patent as granted.

Liability of Defendant 2

26. The Defendants contest that Defendant 2 is liable since it is not involved in any of the allegedly infringing activities.

27. The Applicant argues that, as the sole shareholder and financial holding company of Defendants 1, 3 and 4, Defendant 2 directly controls and (financially) supports these companies in their offering and distribution of the infringing products, so that their infringing actions can be attributed to it. The Applicant submits that because Defendant 2 has a commercial relationship with the other Defendants, it is both aware of and has knowledge of the other Defendants' infringing activities.

Urgency and necessity of provisional measures

28. The Applicant states that it made the application without undue delay after the grant of the patent in suit. It further submits that provisional measures are necessary to prevent the Applicant from suffering a significant and increasing loss of market share that could neither be regained nor be remedied by later compensation.

29. The Defendants argue that provisional measures are not necessary, since the Application is not intended to seek protection from imminent and irreparable harm and the Applicant attempts to lastingly change an existing market order that was formed before the patent was even granted.

Security for enforcement

30. The Defendants argue that since the Applicant is located in the United States of America, and thus outside the Contracting Member States and the European Union, proceedings for the recognition and enforcement of a foreign damages award would incur considerable legal costs which, even if successful, could be non-reimbursable by the Applicant.

31. The Applicant contests that there are any grounds for security for enforcement, submitting that the Defendants have not shown that the financial position of the Applicant gives rise to a legitimate and real concern that a possible order for costs may not be recoverable and that they have not provided any evidence regarding the applicable foreign law which would establish difficulty in enforcing an order against the Applicant.

GROUNDS FOR THE ORDER

32. The Applicant`s request for the grant of an interim injunction is admissible, however, it is not well-founded.

I. International jurisdiction and competence

33. International jurisdiction and competence have not been challenged by the Defendants. The Court has international jurisdiction on the basis of Art. 31 and 32(1) (c) UPCA and Art. 4(1), 7(2) and 8(2) in conjunction with Art. 71b(1) of the Brussels I recast Regulation. The Düsseldorf Local Division is furthermore competent according to Art. 33(1)(b) UPCA. Defendant 3 has its principal place of business in Germany, the Defendants have a commercial relationship and the action relates to the same alleged infringement.

II. Preliminary injunctions

a) General principles

34. Pursuant to Art. 62 UPCA and R. 211 RoP the Court may, in taking a decision regarding pre-

liminary injunctions against a defendant, require the applicant to provide reasonable evidence to satisfy the Court with a sufficient degree of certainty that the applicant is entitled to commence proceedings, that the patent in question is valid and that his right is being infringed, or that such infringement is imminent.

35. Such a sufficient degree of certainty requires that the Court considers it on the balance of probabilities at least more likely than not that the applicant is entitled to initiate proceedings and that the patent is infringed. A sufficient degree of certainty is lacking if the Court considers it on the balance of probabilities to be more likely than not that the patent is not valid. The burden of presentation and proof for facts allegedly establishing the entitlement to initiate proceedings and the infringement or imminent infringement of the patent, as well as for all other circumstances allegedly supporting the applicant's request, lies with the applicant, whereas, the burden of presentation and proof for facts concerning the lack of validity of the patent and other circumstances allegedly supporting the defendant's position lies with the defendant (UPC_CoA_335/2023, Order of 26 February 2024 – NanoString v. 10x Genomics, see p. 26-27; UPC_CoA_182/2024, Order of 25 September 2024 – Mammut Sports v. Ortovox; UPC_CFI_213/2025 (LD Düsseldorf), Order of 10 July 2025, mn. 91 – Aesculap v. Shanghai International Holding; UPC_CFI_712/2025 (LD Düsseldorf), Order of 5 December 2025, mn. 195 – Roche v. Menarini).

b) Case at hand

36. The above-mentioned general principles will be applied as stated out below.

III. Teaching of the Patent in suit and claim construction

1. The patent in suit

a) Scope of the patent

37. The patent in suit relates to the field of methods and apparatuses for aligning teeth. It describes in the background section that, while braces can be used to move teeth into alignment, they can be cumbersome to wear and require expertise to place on the subject. Also, complex movements can be difficult to achieve and orthodontic placement may less than ideally address the complex movements of several teeth [para. 0001].

38. In paragraph [0002] of the patent in suit, it is described that transparent shell appliances have been used to successfully move teeth and that, for example, a user can be provided with a series of transparent shell appliances in which each shell of the series of shells may correspond to a stage of the treatment.

39. The embodiment shown in Fig. 1A of the patent in suit shows a jaw, a plurality of teeth (10) comprising an attachment (102) and a polymeric shell appliance (11) comprising a plurality of tooth receiving cavities (101) to receive each of the plurality of teeth. Also shown is an attachment (102) on a tooth and an engagement structure (104) of the polymeric shell appliance to engage the attachment. Fig. 1B shows a cross-sectional diagram of an exemplary appliance (11) engaging a tooth crown and a positioned attachment (102) on the tooth. Also shown is a center of resistance (103) on the tooth root:

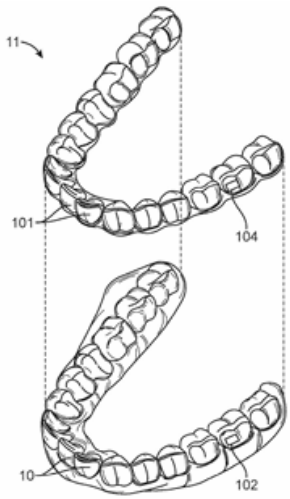


FIG. 1A

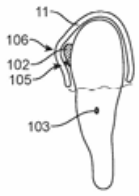


FIG. 1B

40. In paragraph [0002] of the patent in suit, it is explained that although transparent shell appliances can be used to successfully reposition teeth, the transparent shell appliances can provide less than ideal results in at least some instances. For example, complex movements of teeth, such as to fill an extraction, can be difficult to treat with transparent shell appliances. Also, in some instances, a wearer of a transparent shell appliance may not complete treatment.

41. According to paragraph [0003], prior methods and apparatuses of aligning teeth with transparent shell appliances can rely on providing shells with cavities shaped to the tooth profile at a final intended position and orientation at a stage of the treatment. As a drawback of these methods and apparatuses, it is described that cavities shaped to position a tooth at a final intended position and orientation at a stage of the treatment can provide less than ideal movement. Although attachments can be placed on teeth to facilitate movement of the teeth with polymeric shell appliances, the resulting movements can be less than ideal in at least some instances. For example, the force applied to the tooth can decrease as the tooth moves toward the target position. Also, the movement of a tooth may not be uniform, and the tooth may move more easily along some dimensions than others. Further the movement of teeth can be coupled, such that movement of a first tooth can affect movement of adjacent teeth.

42. In paragraph [0004] of the patent in suit it is further described that prior user interface software can provide the user with teeth shown at target positions for each stage of treatment. The polymeric shell appliance can be manufactured in accordance with target positions of the teeth. As a further drawback it is mentioned that, although manufacturing appliances in accordance with target positions of the teeth at the end of each stage of treatment can be effective, the amount of force applied to each tooth can differ from that which would be ideal and the corresponding movement of the tooth can be less than ideal.

43. In the light of the above, the patent in suit states that it would be desirable to provide improved methods and apparatus for moving teeth to target positions with polymeric shell appliances. Ideally such methods and apparatus would more accurately move teeth to target positions with decreased forces (para. [0005]).

44. Regarding prior art, the patent in suit states in paragraph [0006] that EP2129320 discloses an active dental attachment device for interacting with a polymeric shell dental appliance, wherein the attachment device includes an anchoring attachment body, a bonding surface coupled to the anchoring attachment body, wherein the bonding surface is configured for anchoring the anchoring attachment body to a dental feature of a patient's dentition. This prior art document relates to D1 in this case.

45. Under the "Summary" of the patent in suit it is inter alia stated that in embodiments, polymeric shell appliances are provided in which the appliances are configured to provide one or more activation forces to facilitate tooth movement and that the activation forces provided by each appliance are arranged to provide force in a direction opposite to an intended direction of tooth movement. The activation forces may comprise a force to urge a tooth in target direction of tooth movement, or a counter force opposite the force (para. [0008]).

46. It is explained that in embodiments, a tooth moves about a center of resistance, and the tooth is urged with the force in the targeted direction of tooth movement so as to generate a moment about the center of resistance. The counter force can generate a counter moment about the center of resistance, such that the tooth can be moved with a differential moment comprising a differential of the moment and the counter moment. The differential moment can be related to tipping of the tooth along the targeted direction of movement, and this tipping can be controlled in order to facilitate movement and may decrease an amount of force to move the tooth along the targeted direction for each of the plurality of teeth (para. [0008]).

47. It is further explained that in embodiments, each polymeric shell appliance comprises engagement structures shaped to engage attachments to generate counter forces and counter moments for a stage of treatment. The polymeric shell appliance may comprise tooth receiving cavities with an inner surface profile shaped so as to correspond to a surface profile of a received tooth, in which each of the tooth receiving cavities is positioned and/or oriented away from a corresponding target position and orientation of the received tooth for the corresponding stage of treatment (para. [0009]).

48. In paragraph [0010], it is explained that in embodiments a processor comprises a user input and display for a user to position and orient teeth at target positions and orientations for each stage of a treatment. The processor may comprise instructions to position teeth receiving cavities of the appliance at positions away from the target positions and orientations for each stage of the treatment in order to provide activation energy to the appliance.

b) Claim features

49. With regard to the needs and improvements stated above, the patent in suit provides in claim 1 and 10 a method of designing (and fabricating) an orthodontic appliance for moving one or more teeth of a plurality of teeth comprising the following features:

Claim 1:

1.1 A method of designing an orthodontic appliance for moving one or more teeth (10) of a plurality of teeth, comprising:

1.2 providing, by a processor, a shape profile (50, 55, 60) of an appliance comprising a polymeric shell (1),

1.3 the appliance being shaped for placement on the plurality of teeth, the appliance comprising a plurality of tooth receiving cavities (101) shaped to receive each of the plurality of teeth and provide a differential moment to the plurality of teeth in order to move one or more teeth (10) of the plurality of teeth, the plurality of teeth comprising a first one or more teeth and a second one or more teeth,

1.4 wherein the plurality of tooth receiving cavities (101) comprises a first one or more cavities shaped to receive the first one or more teeth and a second one or more cavities shaped to receive the second one or more teeth,

1.5 wherein the shape profile of the appliance is configured such that

1.5.1 the first one or more tooth receiving cavities generate a first counter moment to the first one or more teeth received by the first one or more tooth receiving cavities and

1.5.2 the second one or more tooth receiving cavities generate a second counter moment to the second one or more teeth received by the second one or more tooth receiving cavities,

1.5.3 with the first counter moment opposite the second counter moment,

1.6 wherein the plurality of tooth receiving cavities comprise one or more engagement structures shaped to receive one or more attachments and urge the first one or more teeth away from the second one or more teeth with a counter force in order to facilitate movement of the first one or more teeth toward the second one or more teeth.

Claim 10:

10.1 The method of any preceding claim,

10.2 further comprising fabricating the orthodontic appliance.

50. Claim 14 provides an orthodontic appliance for moving one or more teeth of a plurality of teeth comprising the following features:

14.1 An orthodontic appliance for moving one or more teeth of a plurality of teeth (10),

14.2 the appliance having a shape profile (50, 55, 60) and comprising a polymeric shell (1)

14.3 the appliance being shaped for placement on the plurality of teeth, the appliance comprising a plurality of tooth receiving cavities (101) shaped to receive each of the plurality of teeth (10) and provide a differential moment to the plurality of teeth (10) in order to move one or more teeth of the plurality of teeth, the plurality of teeth comprising a first one or more teeth and a second one or more teeth,

14.4 wherein the plurality of tooth receiving cavities (101) comprises a first one or more cavities shaped to receive the first one or more teeth and a second one or more cavities shaped to receive the second one or more teeth,

14.5. wherein the shape profile of the appliance is configured such that

14.5.1 the first one or more tooth receiving cavities generate a first counter moment to the first one or more teeth received by the first one or more tooth receiving cavities and

14.5.2 the second one or more tooth receiving cavities generate a second counter moment to the second one or more teeth received by the second one or more tooth receiving cavities,

14.5.3 with the first counter moment opposite the second counter moment,

14.6 wherein the plurality of tooth receiving cavities comprise one or more engagement structures shaped to receive one or more attachments and urge the first one or more teeth away from the second one or more teeth with a counter force in order to facilitate movement of the first one or more teeth toward the second one or more teeth.

2. Claim construction

a) General principles

51. The patent claim is not only the starting point but the decisive basis for determining the protective scope of a European patent under Art. 69 EPC in conjunction with the Protocol on the Interpretation of Art. 69 EPC. The interpretation of a patent claim does not depend solely on the strict, literal meaning of the wording used. Rather the description and the drawings must always be used as explanatory aids for the interpretation of the patent claim and not only to resolve any ambiguities in the patent claim. However, this does not mean that the patent claim merely serves as a guideline and that its subject matter extends to what, after examination of the description and drawings appears to be the subject-matter for which the patent proprietor seeks protection. The patent claim is to be interpreted from the point of view of a person skilled in the art. In applying these principles, the aim is to combine adequate protection for the patent proprietor with sufficient legal certainty for third parties. These principles for the interpretation of a patent claim apply equally to the assessment of the infringement and the validity of a European patent (UPC_CoA_335/2023, Order of 26 February 2024, mn. 73 et seq. – 10x Genomics v. Nanostring; UPC_CoA_1/2024, Order of 13 May 2024, mn. 26 – VusionGroup v. Hanshow; UPC_CoA_182/2024, Order of 25 September 2024, mn. 82 – Mammut v. Ortovox).

52. The division into claim features is for reference only. Claim features must always be interpreted in the light of the claim as a whole (UPC_CoA_528/2024, Decision of 25 November 2025, mn. 40 – Amgen v. Sanofi).

b) Case at hand

(1) The skilled person

53. The Applicant describes the skilled person relevant to the patent in suit as a person with expertise in treating dental malocclusion with clear aligner systems.

54. The Defendants submit that the Applicants' proposed definition of the skilled person is unjustly limited to expertise only in clear aligner systems. They argue that the patent in suit is broader and encompasses generally orthodontic systems, as is described in e.g. paragraph [0106]. They submit that the skilled person should be defined as a person with a background in orthodontics and experience in the field of orthodontic treatment planning, including treating dental malocclusion with clear aligner systems.

55. Although the claims are aimed at clear aligner orthodontic treatment, it can be assumed that the skilled person in that field would also have general knowledge of orthodontics and of other systems for treating dental malocclusion, as has been acknowledged by the Applicant. The Court will therefore define the skilled person - in accordance with the definition submitted by the Defendants - as a person with a background in orthodontics and experience in the field of orthodontic treatment planning, including treating dental malocclusion with clear aligner systems.

(2) Claim features of claim 1

56. Some claim features require further explanation.

a) Feature 1.1 – a method of designing an orthodontic appliance for moving one or more teeth of a plurality of teeth

57. As becomes clear from the description of the patent in suit (e.g. para. [0002]), the orthodontic appliance referred to in claim 1 can be part of a series of appliances corresponding to a stage of the treatment. However, as follows from the wording of feature 1.1., in conjunction with features 1.2 and 1.3, the method according to claim 1 refers to the design of a single appliance. The skilled person would furthermore understand that this literal meaning of the claim wording is also in accordance with the overall disclosure of the patent in suit. This follows from inter alia paragraph [0008] ("the activation forces provided by each appliance"), paragraph [0010], paragraph [0031] ("an/the appliance"), Figs. 1A. 1B and 2 as depicted above and the corresponding paragraphs of the description (e.g. para. [0121], [0125]), wherein one single appliance ("polymeric shell appliance 11") generates the (counter) forces and (counter) moments described. All features of claim 1 must therefore be realised in one single appliance.

b) Feature 1.2 – providing, by a processor, a shape profile of an appliance comprising a polymeric shell, the appliance being shaped for placement on the plurality of teeth

58. According to feature 1.2, the design of the shape of the appliance is being performed by a processor. The skilled person would understand from this that the design is computer-generated (see e.g. paras. [0010], [0075], [0086], [0103].

59. Although it is described in paragraph [0106] of the patent in suit that the disclosed embodiments are also suited for use with many other appliances fabricated with various materials, the skilled person reads in feature 1.2 that the appliance protected by claim 1 comprises a

polymeric shell.

c) Feature 1.3 – the appliance comprising a plurality of tooth receiving cavities shaped to receive each of the plurality of teeth and provide a differential moment to the plurality of teeth in order to move one or more teeth of the plurality of teeth, the plurality of teeth comprising a first one or more teeth and a second one or more teeth

60. According to feature 1.3 of the patent in suit, against the background of the description (e.g. para. [0009], Figs. 1A and 1B and para. [0108]), the appliance comprises a plurality of cavities, each shaped to receive a respective tooth and comprising an inner surface profile shaped to correspond to a surface profile of the received tooth. These tooth receiving cavities are also part of features 1.4, 1.5.1, 1.5.2 and 1.6.

61. According to feature 1.3, the plurality of tooth receiving cavities provide a differential moment to the plurality of teeth in order to move one or more teeth. A “moment” - synonymous to “torque” according to paragraph [0013] - is defined in paragraph [0016] of the patent:

> [0016] As used herein a "moment" encompasses a force acting on an object such as a tooth at a distance from a center of resistance. (…)

62. The center of resistance of a tooth or teeth can be located on the root of a tooth or teeth (paras. [0026] - [0027]). If a force is applied to the tooth at a distance from this center of resistance, for example when a force is applied to the tooth crown, the tooth rotates around the center of resistance. This is described as ‘tipping’ of a tooth and can be undesirable, e.g. when movement of the tooth root concurrently with the tooth crown is necessary. This is explained in the patent in suit in inter alia paragraphs [0008], [0118] to [0122] and [0141].

63. A differential moment is defined in paragraph [0017] of the patent (underlining added):

> [0017] As used herein a "differential moment" encompasses two or more moments coupled to each other to provide opposing moments to one or more teeth. The differential moment may comprise a first moment and a second opposing moment applied to a tooth. Alternatively or in combination, the differential moment may comprise a first moment of a first one or more teeth of the arch coupled to a second, opposing moment of a second one or more teeth of the arch. (…)

64. Differential moments between groups of teeth are further described in paragraph [0134] of the patent (underlining added):

> [0134] In many embodiments, differential moments are provided between groups of teeth as described herein in order to provide tooth movement with improved control. In many embodiments, a first group of teeth comprises a first moment and a second group of teeth comprises a second moment, and a differential moment between a first moment of the first group of teeth and a second moment of the second group of teeth allows selective movement of the teeth, e.g., anterior and/or posterior teeth. (…)

65. A differential moment in feature 1.3 will therefore be understood by the skilled person as two or more opposing moments, resulting from a force acting at a distance from a center of resistance, that are applied to one or more teeth.

66. The skilled person would understand from the description of the patent in suit that the providing of the differential moment (feature 1.3) - and the generation of the first (feature 1.5.1) and second (feature 1.5.2) counter moment - by the tooth receiving cavities can take

place directly, by the interior of the tooth receiving cavity, or indirectly with an attachment on the tooth that is received by an engagement structure of the tooth receiving cavity (see e.g. paras. [0018], [0045], [0121], [0125]).

67. According to feature 1.3, the differential moment is provided to the plurality of teeth in order to move one or more teeth of the plurality of teeth. It is not required that the force(s) or (differential) moments determine(s) a movement (displacement) of all the teeth to which they are applied. This follows from the wording of feature 1.3 and inter alia from paragraphs [0019] and [0132] to [0135], where it is explained that a differential moment can be applied to move a first group of one or more teeth while maintaining a second group of one or more teeth ("anchoring teeth") to move the first group of one or more teeth.

68. Feature 1.3 defines the plurality of teeth as comprising a first one or more teeth and a second one or more teeth. As follows from the claim wording, this sub-feature is not associated with the application of the differential moment. This sub-feature covers any (arbitrary) subdivision of the teeth in a first and second subgroup. The same applies to the corresponding sub-features in features 1.4, 1.5.1, 1.5.2 and 1.6.

d) Feature 1.5 – wherein the shape profile of the appliance is configured such that
Feature 1.5.1 – the first one or more tooth receiving cavities generate a first counter moment to the first one or more teeth
Feature 1.5.2 - the second one or more tooth receiving cavities generate a second counter moment to the first one or more teeth and
Feature 1.5.3 - with the first counter moment opposite the second counter moment

69. A counter moment according to the patent in suit is generated by a counter force that is opposite another force, the latter creating a moment. A moment and counter moment can be applied to a single tooth. The patent in suit describes this inter alia in paragraphs [0008] and [0125] (underlining added):

> [0008] (…) The activation forces may comprise one or more of a force to urge a tooth in target direction of tooth movement, or a counter force opposite the force. In many embodiments, a tooth moves about a center of resistance, and the tooth is urged with the force in the targeted direction of tooth movement so as to generate a moment about the center of resistance. The counter force can generate a counter moment about the center of resistance, such that the tooth can be moved with a differential moment comprising a differential of the moment and the counter moment. (…)
>
> [0125] Referring again to the exemplary embodiment of FIG.2, a counter moment 136 can be provided with an attachment 130 or directed engagement of the tooth with the polymeric shell appliance 11 or combinations thereof, which generates a force vector as shown with arrow 131, opposite the force vector of attachment 140 shown with arrow 141. In many embodiments, the attachment 140 that urges the tooth 32 in target direction 105 is located closer to the center of resistance 33 and gingiva than the counter attachment 130, such that counter moment 136 can approximate moment 146 in order to control rotation of tooth 32 as the tooth moves along target direction 105. For example, counter moment 136 can be less than moment 146 to allow the tooth to tip with rotation in the target direction 105, greater than moment 146 in order to rotate the crown away from target direction105, or similar to moment 146 in order to maintain an orientation of tooth 32 when the tooth moves along target direction 105. (…)

70. The moment and counter moment can also be applied to different (groups of) teeth, see inter alia paragraph [0139] (underlining added):

> [0139] Referring again to the embodiment of FIG. 2, in many embodiments, moment 136 opposes moment 116, moment 117 and moment 118, for example. Moments 116, 117 and 118 are similarly oriented as shown. (…) The sum of moment 116, moment 117, and moment 118 can be considered as a counter moment on the posterior teeth 20 that opposes the moment 136 on the one or more anterior teeth 20. In many embodiments, the counter moment on the posterior teeth 20 increases anchorage of the posterior teeth 20 while the moment 136 on the anterior teeth 20 induces movement of the anterior teeth.

71. Features 1.5.1 and 1.5.2 recite a first counter moment to the first one or more teeth and a second counter moment to the second one or more teeth. The skilled person would understand from this wording, against the background of the patent description, that this first counter moment opposes a (first) moment and the second counter moment opposes another (second) moment. If this would be otherwise, describing a moment (to the first one or more teeth - feature 1.5.1) and a counter moment (to the second one or more teeth - feature 1.5.2) would have been sufficient. Furthermore, feature 1.5.3 additionally requires that the first counter moment and the second counter moment are opposite. The patent in suit describes embodiments in which a first counter moment opposes a (first) moment and a second counter moment opposes another (second) moment and in which the first and second counter moment also oppose each other (see e.g. para. [0024], Fig. 2 and the corresponding description in paras. [0124] to [0141], in particular para. [0137]).

72. As is explained in mn. 67 above with regard to the differential moment in feature 1.3, features 1.5.1, 1.5.2 and 1.5.3 do not require that the (counter) moments incur movement of (all of the) the tooth or teeth to which they are applied.

73. As discussed above under feature 1.1, it follows from the claim wording, against the background of the description, that the moments, counter moments and opposing counter moments have to be applied by (the tooth receiving cavities of) one single appliance.

e) Feature 1.6. – wherein the plurality of tooth receiving cavities comprise one or more engagement structures shaped to receive one or more attachments and urge the first one or more teeth away from the second one or more teeth with a counter force in order to facilitate movement of the first one or more teeth toward the second one or more teeth.

74. As described above under mn. 66, a tooth receiving cavity can comprise one or more engagement structures shaped to receive one or more attachments that are applied to a tooth. According to feature 1.6, the tooth receiving cavities comprise one or more engagement structures to receive an attachment and urge the first one or more teeth away from the second one or more teeth, i.e. away from the target direction of these teeth, with a counter force. As the thus created (moment and) counter moment can control the movement of the tooth/teeth and for example control tipping of the tooth/teeth, the movement in the target direction (toward the second one or more teeth) is facilitated (see e.g. paras. [0008], [0034], [0062], Fig. 2 and para. [0125] - [0130]).

75. Neither feature 1.6 nor any other feature of claim 1, specifies how the counter force to the second one or more teeth (that generates the second counter moment of feature 1.5.2) is generated. This is therefore left open.

(3) Claim features of claim 14

76. The interpretation of the features of claim 1 applies equally to the corresponding features of claim 14.

IV. Infringement

77. The Applicant has failed to demonstrate, with the necessary degree of certainty, that the attacked embodiments infringe the patent in suit.

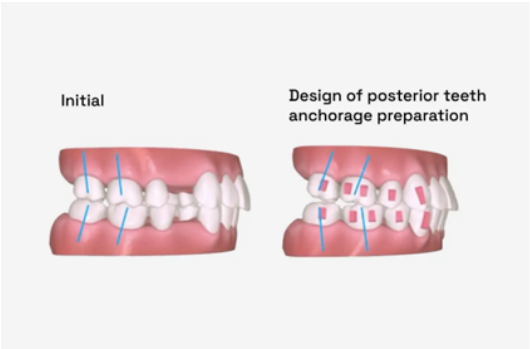
78. As has been mentioned above, the burden of presentation and proof for facts allegedly establishing the infringement of the patent lies with the Applicant. This also means that, other than the Applicant seems to put forward, it is not in the first place up to the Defendants to present or proof facts establishing why the patent is not infringed. The Defendants solely have to respond to the infringement argumentation brought forward by the Applicant in the Application, which they did in the Objection.

79. There might be good arguments to conclude that the line of argumentation for infringement brought forward by the Applicant in the Reply is late-filed. This is however not decisive. Even if one were to consider all of the Applicants' arguments in its favour, regardless of issues of timeliness, these arguments are insufficient to establish that it is more likely than not that claim 1 of the patent in suit is infringed.

80. The Applicant did not conclusively demonstrate that the Defendants offer, place on the market or use a method of designing an orthodontic appliance (or an orthodontic appliance manufactured accordingly) in which the shape profile of one single appliance is configured such that a first and second counter moment as required by features 1.5.1 and 1.5.2 are generated by the tooth receiving cavities of that single appliance.

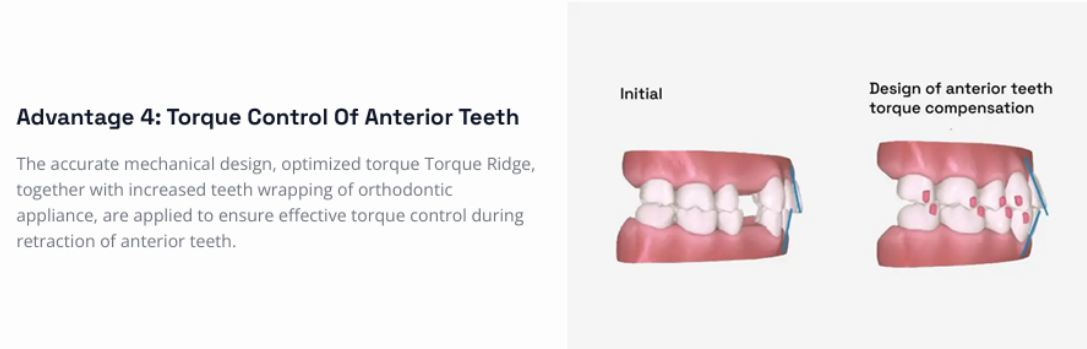
81. In the Application, the Applicant for infringement of the patent in suit refers to the description of the A7 Solution on the website of the Defendants, in product brochures of 2022 and 2023, a webinar made available on 27 June 2022 and a webinar on 25 March 2025. Based on this promotional material, the Applicant alleges that the Defendants' clear aligner system implementing the A7 Solution realises all features of claim 1 (and claims 2, 3, 4, 9, 10 and 14) of the patent in suit.

82. The Applicant refers to features or "advantages" of the A7 Solution that are described in this promotional material. Screenshots from the website relating to advantages 1, 3 and 4 that the Applicant relies on are depicted below.



Advantage 1: Anchorage Preparation Of Posterior Teeth

Clear aligner treatment is integrated with classical orthodontic theory. The anchorage preparation of posterior teeth is processed at the beginning of orthodontic treatment, and the anterior teeth are retracted subsequently to ensure a stable anchorage or bodily mesialization of posterior teeth.



83. For feature 1.5.1, requiring a first counter moment to the first one or more teeth, the Applicant refers to the description in the promotional material of advantages 3 (“bodily canine distalization”) and 4 (“torque control of anterior teeth”) of the A7 Solution as depicted above. It argues that the anterior teeth (including the canines) are tilted away from the extraction gap by 10-15 degrees, which tilting is also shown by the change in angle of the axis of the tooth (blue lines in the images). From this, the Applicant concludes that the anterior teeth have been subject to a counter moment away from the extraction gap.

84. Regarding feature 1.5.2, requiring a second counter moment to the second one or more teeth, the Applicant in the first place refers to the description in the promotional material of advantage 1 (“anchorage preparation of posterior teeth”) as depicted above. It argues that the posterior teeth are tilted away from the extraction gap, as can be appreciated by the change in angle in the tooth axis (blue arrows in the images). According to the Applicant, the posterior teeth thus have been subject to a counter moment away from the extraction gap.

85. However, as follows from the claim construction formulated above, all features of claim 1, including features 1.5.1 and 1.5.2, have to be realised in one single appliance. By merely asserting that on the one hand the posterior teeth “have been subject to” a counter moment and that on the other hand the anterior teeth “have been subject to” a counter moment, the Applicant has not sufficiently established that these counter moments are applied by the tooth receiving cavities of one single appliance. On the contrary, as the Defendants correctly pointed out, it follows from the description of advantage 1 in the promotional material that the anchorage preparation of the posterior teeth takes place at the beginning of the treatment and that the retraction of the anterior teeth takes place subsequently and can therefore not be performed by the same aligner. This can be seen in the screenshot regarding “advantage 1”:

> Clear aligner treatment is integrated with classical orthodontic theory. The anchorage preparation of posterior teeth is processed at the beginning of orthodontic treatment, and the anterior teeth are retracted subsequently to ensure a stable anchorage or bodily mesialization of posterior teeth.

86. Moreover, the Defendants, referring to a witness statement by Mr [redacted] have submitted that in the phase of the treatment in which anchorage preparation takes place, no design inputs are made to the anterior teeth and that tilting of the anterior teeth may happen after the anchorage preparation of the posterior teeth, with different, subsequent aligners. The Applicant has not contested this.

87. The Applicant has further argued that counter moments in accordance with features 1.5.1 and 1.5.2 are also applied in other, later steps of the treatment. For this, the Applicant relies on the text in the screenshot regarding anchorage preparation of the posterior teeth depicted above under mn. 85, wherein also retraction of the anterior teeth and "stable anchorage" or "bodily mesialization" of posterior teeth is mentioned. The Applicant has in this context also referred to its infringement argumentation regarding feature 1.6, for which it has submitted that the anterior teeth are moved rearward into the gap and so move toward the posterior teeth, that the posterior teeth are either stationary or are simultaneously moved forward into the gap and that thus the movement of the anterior teeth toward the posterior teeth is facilitated.

88. The Applicant submits that in order for the posterior teeth to function as stable anchorage or to permit bodily mesialization during anterior retraction, a moment must necessarily continue to be applied to the posterior teeth, directed away from the extraction gap and opposite to the first counter moment applied to the anterior teeth. Such a moment, applied to the posterior teeth in a direction away from the extraction gap, provides the 'second counter moment' as defined in feature 1.5.2. Only by maintaining this second counter moment can the posterior teeth preserve the position achieved during 'anchorage preparation' or move bodily in the direction of the extraction gap. Without the second counter moment the posterior teeth would tilt back toward the extraction gap. This would not only be undesirable but would also undermine the purpose of the 'anchorage preparation'. For this, the Applicant refers to a written witness statement of Mr [redacted] Paragraph 14 of this statement reads:

> In order for the posterior teeth to function as stable anchorage, or to permit bodily mesialization of the posterior teeth during anterior retraction, a second moment must necessarily continue to be applied to the posterior teeth during steps 3 and 4. This moment is directed away from the extraction gap and opposite to the first moment applied to the anterior teeth. Otherwise, the posterior teeth crowns will mesially tip towards the extraction gap, which would not only be undesirable but would also undermine the purpose of the "anchorage preparation" step. Only by maintaining this second moment can the posterior teeth preserve the position achieved during the "anchorage preparation" step (and thereby provide stable anchorage) or move bodily in the direction of the extraction gap (i.e. move in the direction of the gap without the crowns tipping mesially).

89. These arguments by the Applicant are not conclusive. They are solely based on promotional material of the Defendants, not the result of any assessment by the Applicant itself of the method comprising the A7 Solution or any aligner designed in accordance with it and hinge upon mere assumptions and speculations by the same Applicant. The statement that a second counter moment *must necessarily continue* to be applied to the posterior teeth during

retraction of the anterior teeth is of a too general character and lacks any specific substantiation or evidence. The witness statement that the Applicant has submitted contains nothing more than this same statement and furthermore (other than the arguments by the Applicant almost literally based on it) refers to "moments" instead of "counter moments". As has been addressed above with regard to claim features 1.5.1 - 1.5.3, according to claim 1 and the description of the patent, "moments" and "counter moments" shall be distinguished from each other.

90. The reasoning by the Applicant furthermore seems to be predicated on the assumption that after anchorage preparation in the A7 Solution, without a continuous counter moment within the meaning of features 1.5.1 - 1.5.3 of the patent in suit applied to the posterior teeth, these teeth would (instantly and in any case) tilt toward or into the extraction gap in an undesired way. This is however not supported by any further substantiation or evidence relating to the A7 Solution and is not in apparent accordance with the incremental character of the clear aligner therapy, involving many (small) stages and corresponding (individual) tooth movements performed by many differently shaped aligners.

91. Furthermore, the "advantages" or "steps" in the A7 Solution that the Applicant (and its witness) refers to do not correspond to a single appliance. As said, the clear aligner orthodontic treatment consists of many stages of tooth movement, each performed by one of many appliances (that are worn during a short period of time such as one or two weeks), that incrementally lead to the repositioning of the complete dentition into a final configuration. This equally applies to phases of the treatment that the Applicant describes as "the retraction of the anterior teeth". Such a phase is also performed in stages and by a plurality of aligners, each having tooth receiving cavities of a different shape. Against this background, by merely referring to a phase in the treatment and not to the shape profile of the tooth receiving cavities of an individual aligner, the Applicant has not sufficiently substantiated the realisation of features 1.5.1 and 1.5.2 in one single aligner.

92. In addition, the Defendants have put forward that in the scenario where the posterior teeth function as stable anchorage, the A7 Solution does not aim to preserve the position of the posterior teeth achieved during anchorage preparation and that the A7 Solution does allow the posterior teeth to slightly tip mesially towards the extraction gap after anchorage preparation. The tooth crowns are tilted so far away from the extraction gap that in the further course of the treatment they can slightly tip back mesially towards the extraction gap and ultimately return to a nearly upright position at the end of the treatment, according to the Defendants. With regard to the scenario in which bodily mesialization of the posterior teeth is realised, the Defendants submit that in the A7 Solution, during points in time that correspond to "design of canine axis compensation" (advantage 3) and "design of anterior teeth torque compensation" (advantage 4), the aligners are not designed to move the posterior teeth mesially at all. The Defendants for this refer to a (second) written witness statement of Mr. Zhao Bailiang.

93. The Applicant has not sufficiently refuted this argumentation by the Defendants. It has merely stated that it only involves a minimal tipping back, that there will be a counter moment applied to the posterior teeth and that there are many appliances in the A7 Solution that each implement all of the moments and counter moments required by claim 1. As has been explained above, these arguments are of a too general character. Notably, the submission by the Defendants emphasises that the infringement argumentation by the Applicant is solely based on assumptions on the functioning of the A7 Solution and without further substantiation cannot form the basis for preliminary measures.

94. It follows from the foregoing that the Applicant, who bears the burden of presentation and proof for facts establishing the infringement of the patent, has not sufficiently established that it is more likely than not that at least features 1.5.1 and 1.5.2 are realised in one single aligner of the challenged embodiments and thus that claim 1, and claim 14 comprising corresponding features, are infringed. This also applies to the dependent claims (including claims 9 and 10).

V. Legal consequences

1. (No) preliminary injunctions

95. Since it is not considered to be more likely that not that the patent in suit is infringed, the other requirements for the ordering of preliminary injunctions do not have to be examined and the requests of the Applicant will be dismissed.

2. Costs

96. The decision on costs follows the standards set by the Court of Appeal, according to which a decision on costs shall be made in inter partes proceedings for provisional measures, since it concludes the action (UPC_CoA_523/2024, Order of 3 March 2025, mn. 117 – Sumi Agro v. Syngenta).

97. It will be ordered that, as the unsuccessful party, the Applicant has to bear the costs of the proceedings.

3. Value of the case

98. In the Application, the Applicant did not provide an indication of the value in dispute. It did request an interim award for costs in the amount of EUR 200.000. In the Objection, the Defendants stated that this amount was based on a value in dispute of EUR 1,600,000. In the Reply, the Applicant agreed to this and calculated its request for an interim award of costs accordingly. The Panel will therefore set the value of the case on EUR 1,600,000.

ORDER

1. The application for provisional measures is dismissed.

2. The Applicant shall bear the costs of the proceedings.

3. The value of the case is set on EUR 1,600,000,-.

Düsseldorf on 12 May 2026
NAMES AND SIGNATURES

Presiding Judge Thomas	Ronny Thomas Digital unterschrieben von Ronny Thomas Datum: 2026.05.07 19:05:08 +02'00'
Legally qualified Judge Dr Rinken	Ingo Rinken Digital unterschrieben von Ingo Rinken Datum: 2026.05.07 19:24:03 +02'00'
Legally qualified Judge Visser	Marjolein Jeanette Johanna Visser Signature numérique de Marjolein Jeanette Johanna Visser Date : 2026.05.08 12:03:21 +02'00'
Technically qualified Judge Dr Papa	Elisabetta Papa Firmato digitalmente da Elisabetta Papa Data: 2026.05.07 22:28:49 +02'00'
For the sub-registrar	LAURA CHANTAL DANIEL Digital unterschrieben von LAURA CHANTAL DANIEL Datum: 2026.05.08 13:51:04 +02'00'

INFORMATION ON APPEAL:

An appeal by a party adversely affected may be brought against the present order within 15 days of service of this order (Art. 73(2)(a), 62 UPCA, R. 220.1(c), 224.2(b) RoP).