Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Reference no.:
UPC_CoA_907/2025

# ORDER
## of the Court of Appeal of the Unified Patent Court concerning an application for provisional measures issued on 18 June 2026

KEYWORDS:

Appeal; provisional measures; absence of a party from the oral hearing; claim construction; new facts and evidence on appeal

APPELLANT (APPLICANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

**Occlutech GmbH**, Jena, Germany

(hereinafter "**Occlutech**")

represented by Dr. Peter Koch, attorney-at-law, PENFORCE, and other representatives of that firm

RESPONDENTS (DEFENDANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

1. **Lepu Medical (Europe) Cooperatief U.A.**, Heerenveen, The Netherlands

2. **Lepu Medical Technology (Beijing) Co., Ltd.**, Beijing, China

(hereinafter, respectively, "**Lepu Europe**" and "**Lepu Beijing**" and, jointly, "**Lepu**")

represented by attorney-at-law Dr. Ralph Nack, Noerr Partnerschaftsgesellschaft mbB, and other representatives of that firm

PATENT AT ISSUE

EP 1 998 686

PANEL AND DECIDING JUDGES

Panel 1a:
Klaus Grabinski, presiding judge and President of the Court of Appeal
Peter Blok, legally qualified judge and judge-rapporteur
Emmanuel Gougé, legally qualified judge
Elisabetta Papa, technically qualified judge

Max Tilmann, technically qualified judge

LANGUAGE OF THE PROCEEDINGS

German

DATE OF THE ORAL HEARING

11 May 2026

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- □ Order of the Local Division Düsseldorf, dated 31 October 2025
- □ Reference number: UPC_CFI_630/2025

SUMMARY OF FACTS AND REQUESTS OF THE PARTIES

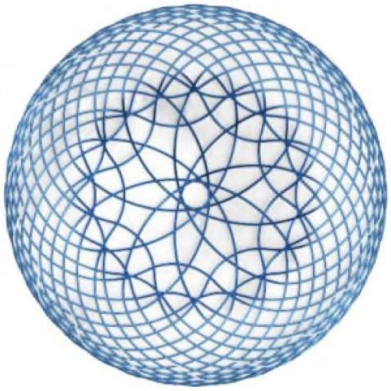
1. The parties are competitors on the market for occlusion devices.

2. Occlutech is the registered proprietor of European patent 1 998 686 (the "Patent") relating to an occlusion instrument and a method for its production. The application was filed on 22 March 2007. Priority is claimed on the basis of patent application DE 102006013770 of 24 March 2006. The date of publication and mention of the grant of the Patent is 9 September 2009.

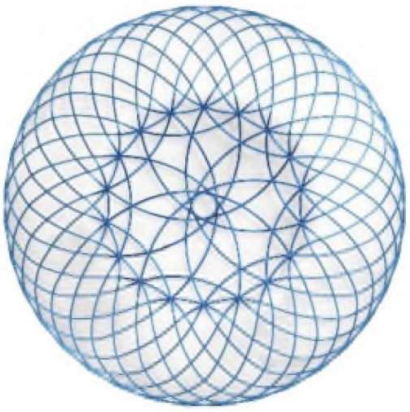
3. Claim 1 of the Patent reads as follows:

> An occlusion device comprising a hub (5) and a braiding (2) of thin wires or threads (4), which is given a suitable form in a molding and heat treatment procedure, having a proximal retention area (6) and a distal retention area (8), wherein the ends of the wires or threads (4) converge into a hub (16) in the distal retention area (8), and a cylindrical crosspiece (10) interposed between said proximal and distal retention areas (6, 8), wherein the two retention areas (6, 8) may be positioned on the two sides of a shunt to be occluded in a septum usually by way of an intravascular surgical procedure while said crosspiece (10) transverses the shunt,
> characterized in that the proximal retention area (6) of the braiding (2) exhibits a completely closed proximal wall (112) having a continuous surface at the proximal end (12) of the occlusion device which forms the proximal end (12) of said occlusion device.

4. Lepu are specialised in developing, manufacturing and marketing high-tech medical devices and equipment, including the occlusion devices named "MemoCarna ASD" and "MemoCarna VSD" (the "Attacked Embodiments"). The proximal end of the Attacked Embodiments is shown in the following drawings:



MemoCarna ASD



MemoCarna VSD

5. Lepu posted announcements of CE-mark approval for the Attacked Embodiments on LinkedIn in the week of 31 March to 4 April 2025 and mid-May 2025. Both posts invite medical professionals to experience this "next generation invention".

6. Lepu attended the Euro PCR 2025 conference, which was held in Paris from 20 to 23 May 2025. The MemoCarna ASD was prominently displayed at this trade fair.

7. Lepu further attended the DCID – Third Dubai Congenital Intervention Course, which was held from 23 to 24 May 2025 in Dubai. During the event, Lepu presented data relating to the MemoCarna series occluders and again announced CE-mark approval for the Attacked Embodiments.

8. Lepu Europe advertised the MemoCarna ASM occluder through its website, providing information about the product and "ordering information".

9. Lepu sponsored the CSI Frankfurt, which was held from 18 to 21 June 2025. They took part in a focus workshop, which included a "device parade".

10. On 4 July 2025, Occlutech lodged an application for provisional measures against Lepu with the Düsseldorf Local Division, requesting *inter alia* that the Düsseldorf Local Division order Lepu to cease and desist from – in summary – infringing claim 1 of the Patent.

11. By order of 31 October 2025, the Düsseldorf Local Division rejected the requested provisional measures (the "Impugned Order"). In its opinion, claim 1 requires a braiding of *multiple* wires or threads. It could not be established with a sufficient degree of certainty that the Attacked Embodiments comprise a braiding of more than one wire. The Düsseldorf Local Division held that the Attacked Embodiments in all other respects are within the scope of protection of the Patent, that the offer of these products by Lepu constitutes an imminent infringement of the Patent, that the validity of the Patent was sufficiently certain, and that the balance of interests was in favour of Occlutech.

12. Occlutech lodged an appeal against the Impugned Order, requesting that the Court of Appeal set aside the Impugned Order, grant – in summary – the requested provisional measures, and order that Lepu bear the costs of the proceedings in first and second instance.

13. Lepu responded to the appeal, requesting that the Court of Appeal reject the appeal.

GROUNDS FOR THE ORDER

**Procedural issues**

*Absence from the oral hearing*

14. The request for a decision by default, which Occlutech filed following Lepu's announcement that they would not attend the oral hearing, was withdrawn at the oral hearing. It therefore does not need to be decided upon.

15. Lepu were not represented at the oral hearing. Pursuant to R. 116.2, 116.3 and 240 RoP, the Court of Appeal, as requested by Occlutech in the oral hearing, will treat Lepu as relying only on their written case and will issue the present order on that basis.

*Competence*

16. The Düsseldorf Local Division held that it is competent to hear the case on the basis of Art. 33(1)(a) UPCA, as Germany is the Contracting Member State where the alleged actual or threatened infringement has occurred or may occur.

17. In the Statement of response, Lepu refer to the arguments on lack of competence of the Düsseldorf Local Division that they submitted in the first-instance proceedings but failed to provide any reasons why the findings of the Düsseldorf Local Division are incorrect. The Court of Appeal concurs with the findings of the Düsseldorf Local Division and therefore rejects Lepu's arguments for the same reasons.

*Admissibility new prior art*

18. In its Statement of response, Lepu argue that the patent is not novel over a master's thesis by Mr Wang, and in this context submit several new documents (Exhibit BB1 to BB6a). The Court of Appeal will disregard these new facts and the new evidence pursuant to Art. 73(4) UPCA and R. 222.2 RoP.

19. Under Art. 73(4) UPCA, new facts and new evidence may only be introduced in the appeal proceedings where the submission thereof by the party concerned could not reasonably have been expected during proceedings before the Court of First Instance. Similarly, R. 222.2 RoP provides that requests, facts and evidence which have not been submitted by a party during proceedings before the Court of First Instance may be disregarded by the Court of Appeal. When exercising discretion, the Court of Appeal shall in particular take into account:
    (a) whether a party seeking to lodge new submissions is able to justify that the new submissions could not reasonably have been made during proceedings before the Court of First Instance;
    (b) the relevance of the new submissions for the decision on the appeal;
    (c) the position of the other party regarding the lodging of the new submissions.

20. Lepu failed to justify that the new submission could not reasonably have been made during the proceedings before the Court of First Instance. The fact that Mr Wang's thesis concerns a device that, according to Lepu, is a precursor to the Attacked Embodiments and has been developed by a company that Lepu acquired in 2008, underscores that Lepu could and should have submitted the facts and evidence in the first-instance proceedings, and also within the – relatively short – time periods for preparing a defence in provisional measures proceedings.

21. In addition, the new submissions raise questions concerning, *inter alia*, the accuracy of the translation, the disclosure of a number of the patent claim features and the enablement of the teaching disclosed by Wang. The late submission therefore prejudices Occlutech in its defence against the new argument. Although Lepu shared exhibit BB1 with Occlutech two weeks before they filed the Statement of response, the fact remains that Occlutech has not had the opportunity to examine and discuss the document in the first-instance proceedings.

22. Furthermore, the late submission, combined with Lepu's absence from the oral hearing, complicates the Court's assessment of the argument and evidence, as Lepu did not respond to the questions raised by the new submissions.

**The Patent**

*The problem underlying the invention*

23. The Patent concerns an occlusion instrument and method for its production. In particular, the Patent relates to occlusion devices (para. [0001] of the patent).

24. In medical technology, efforts are being made to close septal defects, such as defects in the atrial septum, non-surgically, i.e. without surgery in the strict sense, by means of a transvenous, interventional approach using catheter intervention. Various occlusion systems with different advantages and disadvantages have been proposed, without any particular occlusion system having become established. The patent refers to the various systems as "occluders" or "occlusion devices" (para. [0002]).

25. In all interventional occlusion systems, a self-expanding umbrella system is inserted transvenously through a defect in a septum that is to be closed. Such a system could, for example, consist of two small umbrellas, each positioned on the distal (i.e. the side further from the centre of the body or the heart) and the proximal (i.e. the side closer to the centre of the body) sides of the septum (para. [0003]), with the small umbrellas subsequently being screwed together. When assembled, this results in a double-umbrella system fixed by a short connecting peg (see para. [0003]). However, according to the patent, such occlusion devices known from the prior art have the disadvantage that the implantation procedure is relatively complicated, difficult and time-consuming, and there is a risk of material fatigue leading to fragment fracture. Furthermore, thromboembolic complications are frequently to be expected (para. [0004]).

26. Another type of occlusion device, the so-called Lock-Clamshell umbrella system, consists of two steel umbrellas covered with Dacron, each stabilised by four arms. This type of occluder is implanted via a venous access point in the patient. However, a problem with the Lock-Clamshell occluder is that the delivery system required for implantation must be relatively large. A further disadvantage is that many different occluder

sizes are required to match the specific proportions of the septal defect to be closed. It has thus been found that the umbrellas do not flatten completely when deployed if the length or diameter of the crosspiece inserted into the defect is not optimally suited. This leads to incomplete endothelialisation. Furthermore, it has been shown that many of the systems implanted in the patient's body exhibit material fatigue and fractures in the metallic structures over a longer period due to considerable mechanical stress. This is particularly the case when there is permanent tension between the implant and the septum (para. [0005]).

27. To overcome these drawbacks, self-centring occlusion devices have been developed which are inserted into the patient's body using minimally invasive techniques – for example, via a catheter and guide wires – and positioned within the septal defect to be closed. The design is based on the principle that the occlusion device can be tapered to match the size of the introducer set or catheter used for the intravascular surgical procedure. Such a tapered occlusion device is then inserted via the catheter into the septal defect to be closed or into the shunt of the septal defect to be closed. The occluder then emerges from the catheter, whereupon the self-expanding umbrellas or retention discs unfold and lie against both sides of the septum. The umbrellas, in turn, contain, for example, fabric inserts made of Dacron or are spanned by such inserts, thereby closing the defect or shunt. The implants remaining in the body are more or less completely enclosed by the body's own tissue after a few weeks to months (para. [0006]).

28. According to the description of the patent, WO 2005/020822 A1 also discloses an occlusion device consisting essentially of a braiding of thin wires or threads made of a shape-memory material. In the expanded state, the known occlusion instrument has a proximal and a distal retention region, as well as a cylindrical crosspiece arranged between them. Because, in this prior art document, the proximal retention region of the braiding has a shape open towards the proximal end, it is possible to ensure that, when the occlusion device is in use, the edge of the proximal retention region generally lies flat against the septal wall and the retention region does not protrude beyond the septal wall. By applying a specific braiding technique, it is possible to produce a braiding in which the proximal retention area has a shape that is open towards the proximal end (paras. [0011]–[0014]).

29. With regard to these occlusion instruments, known from WO 2005/020822 A1, the patent considers it a disadvantage that the braiding has an opening at the proximal end which must be covered, for example, with a Dacron insert or a cloth, so that the finished occlusion instrument is no longer open at the proximal end. This is said to be laborious and therefore costly. Furthermore, it is said to be a disadvantage that different materials, namely the materials of the braiding and the materials of the Dacron insert or the cloth, must be joined together by a force-fit connection, which leads to weak points and material fatigue. Furthermore, thromboembolic complications are to be expected. The proximal end of the known occlusion device has a proximal wall in which a manufacturing-related opening is provided axially to the crosspiece. Even if this opening, as described above, is closed by means of, for example, the Dacron insert, it cannot be prevented in the known system that, in the finished occlusion device, at the proximal retention region of the occlude — namely where the opening closed by the Dacron insert is located — at least a trough-shaped recess remains or, under certain circumstances, components may also protrude, which can lead to embolism-related problems, in particular consecutive embolisation (paras. [0016]–[0018]).

30. The invention is therefore based on the task of further developing such an occlusion device, known from medical technology and described in WO 2005/020822 A1, such that the aforementioned disadvantages

can be overcome. In particular, an occlusion instrument is to be provided which ensures the closure of a septal defect, whilst avoiding the aforementioned complications.

31. To solve this problem, the Patent protects an occlusion instrument having the following features:

    1. An occlusion device

    1.1 The occlusion device consists of a hub (5) and a braiding (2) of thin wires or threads (4).

    1.1.1 The braiding (2) of thin wires or threads (4) is given a suitable form in a molding and heat treatment procedure.

    1.2 The occlusion device has a proximal retention area (6) and a distal retention area (8).

    1.2.1 The ends of the wires or threads (4) converge into a hub (16) in the distal retention area (8).

    1.3 A cylindrical crosspiece (10) is interposed between said proximal and distal retention areas (6, 8).

    1.4 The two retention areas (6, 8) may be positioned on the two sides of a shunt to be occluded in a septum usually by way of an intravascular surgical procedure,

    1.4.1 while said crosspiece (10) transverses the shunt.

    1.5 The proximal retention area (6) of the braiding (2) at the proximal end (12) of the occlusion device exhibits a completely closed proximal wall (112).

    1.5.1 The completely closed proximal wall (112) is a continuous surface at the proximal end (12) of the occlusion device.

    1.5.2 The completely closed proximal wall (112) forms the proximal end (12) of said occlusion device.

**The person skilled in the art**

32. The Düsseldorf Local Division defined the person skilled in the art as an engineer in the field of biomedical engineering, in particular of catheter-based implantable devices and methods, possibly working in a team with a cardiologist or interventional radiologist. None of the parties challenged this definition. The Court of Appeal will adopt it as well.

**Claim construction**

*Principles*

33. The principles applicable to claim construction have been set out by this Court in its final order in the case of NanoString v 10x Genomics (UPC_CoA_335/2023, Order of 26 February 2024, as rectified on 11 March 2024). 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. These principles for the interpretation of a patent claim apply equally to the assessment of the infringement and the validity of a European patent.

*Claim element 1.1 ("braiding of thin wires or threads")*

34. The Court of Appeal concurs with the Düsseldorf Local Division's finding that claim 1 requires the braiding to consist of multiple wires or threads, i.e. more than one wire or thread. This interpretation follows from
i) the wording of the claim, which uses the plural ("*wires or threads*") in claim elements 1.1 and 1.2.1,
ii) the description, which consistently teaches the use of wires or threads, and
iii) the fact that a braiding consisting of a single wire or thread has a number of disadvantages, which both parties accepted as common general knowledge of the person skilled in the art. The parties agree that the person skilled in the art would have known that a braiding consisting of a single wire or thread is more complicated and more expensive to produce and entails more risks of material fatigue than a braiding consisting of multiple wires or threads.

35. This interpretation is not called into question by the fact that, according to paragraph [0073] of the patent, reference numeral 4 indicates a wire or thread ("*wire, thread*"). The reference numeral is used in several figures to indicate that a specific line of the drawing is a wire or thread, but that does not teach the person skilled in the art that only a single wire or thread could or should be used, in particular since the figures show a number of similar lines.

36. The Court of Appeal further agrees with Occlutech that claim 1 is not limited to devices with a braiding made by a specific manufacturing method. The claim therefore also covers a device comprising a braiding that is made from a single wire or thread as starting material if that wire or thread is cut in multiple wires or threads during the manufacturing process. Once finished, such a product also comprises a braiding consisting of multiple wires or threads, as claimed in element 1.1.

37. Lepu's observation that some of the disadvantages of a braiding consisting of a single wire or thread relate to the manufacturing process does not lead to a different understanding. The fact remains that the claimed device can be produced without those disadvantages, for instance by using multiple wires or threads as starting material or by cutting a single wire or thread during the manufacturing process. In addition, even if not all advantages were fully realised in some embodiments, that does not mean that those embodiments are outside the scope of protection of claim 1, provided that the structural element of multiple wires or threads is realised in the finished product.

*Claim element 1.2.1 ("the ends of the wires or threads converge into a hub")*

38. The Court of Appeal further concurs with the Düsseldorf Local Division's finding that the person skilled in the art would understand that claim element 1.2.1 (*"the ends of the wires or threads converge into a hub"*) refers to the ends of the wires or threads *of the braid*. This interpretation follows from the wording of claim elements 1.1 ("*a braiding of thin wires or threads*") and 1.2.1 (*"the ends of the wires or threads converge into a hub"*), which indicates that the wires or threads of claim element 1.2.1 refer back to the wires or threads of which the braiding consists according to claim element 1.1. It is supported by the description, which teaches in paragraph [0054] that "das Geflecht 2 in einer Fassung 5 zusammengefasst [ist]" ("*the braiding 2 is held together in the hub 5*") and in paragraph [0027] that "am proximalen Retentionsbereich auf eine Fassung zum Zusammenbündeln bzw. Zusammenfassen des Geflechtes verzichtet werden kann ("*at the proximal retention area, a hub for bundling or gathering the braiding may be dispensed with*").

39. It follows that the claim does not rule out that the occlusion device comprises wires or threads that do not converge into the hub if those wires or threads do not form part of the braiding. Admittedly, the ends of those other wires or threads might cause the same problems that the Patent aims to avoid by having the wires or threads of the braiding converged in the hub. The claim, however, does not require or presuppose the presence of such other wires or threads and therefore does not deal with any problems caused by them.

*Claim element 1.5 ("a completely closed proximal wall")*

40. Claim element 1.5 requires that the braiding at the proximal end exhibits a completely closed proximal wall. The person skilled in the art will understand that the feature of a "*completely closed proximal wall*" refers to the shape of the braiding at the proximal end, not the density of the weavings of the braiding at that end. The wall will therefore be considered to be completely closed within the meaning of the patent where the braiding covers the entire surface of the proximal wall, irrespective of the density of the braiding.

41. This interpretation follows from the wording of the claim element, which indicates that it is the braiding that exhibits a completely closed proximal wall, not a completely closed braiding that exhibits a proximal wall.

42. The interpretation is confirmed by the description and the drawings of the Patent. In the description, the claimed invention is distinguished from prior art occlusion devices having a braiding that exhibit an "*open shape*" (paras. [0012] to [0018], see also above paras. 28 and 29 of the present order) at the proximal end. The description refers, for instance, to devices disclosed in WO 2005/020822 A1 which have the shape of a tulip or bell, as shown in the following Figure 16a of the Patent:

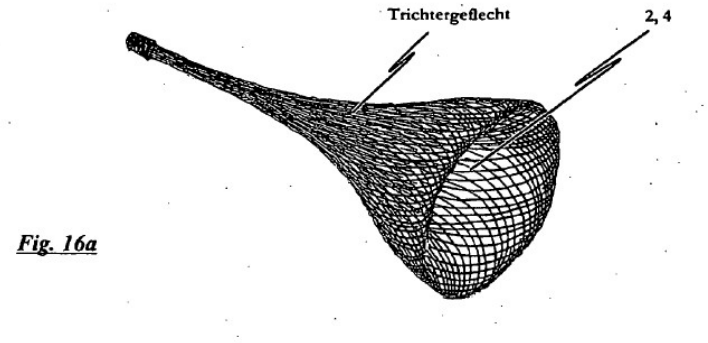


Fig. 16a

The patent teaches not to use such open shapes but the shape of a completely closed proximal wall.

43. In contrast, the Patent does not teach that the braiding that exhibits the proximal wall must be completely closed. On the contrary, paragraph [0064] of the Patent describes that the braiding that is used as the basis for the claimed occlusion device may leave "Zwischenräume" ("*gaps*") and that, consequently, under circumstances, "das […] Geflecht 2 als solches einen Defekt nicht vollstäandig verschließen kann" ("*the braiding as such cannot completely close a defect*"). The embodiments shown in the figures, such as the following Figure 2, similarly disclose clear gaps between the wires or threads of the braiding.

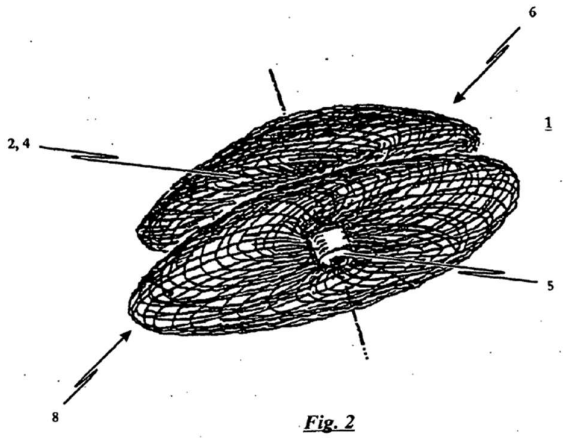


*Fig. 2*

44. This interpretation is further confirmed by the function that the feature is supposed to fulfill in the context of the claimed invention. The Patent describes that the open form of the prior art devices may cause embolism-related problems, even if the opening is closed by an insert (para. 0017]). It points out that such inserts cannot prevent that at the proximal end a recess remains which may cause consecutive embolisation (para. [0018]). The object of the invention is to reduce the risk of such complications by an occlusion device that lies flat against the septum at the proximal end. This is realised by, inter alia, a proximal wall without recesses or other "Unstetigkeiten" ("*discontinuities*"), such as sharp edges and kinks (see paras. [0019], [0024] and [0027]).

45. This interpretation is not called into question by the fact that the Patent describes that the completely closed proximal wall has the additional effect of a substantially quicker encapsulation of the occlusion device by endogenous tissue than prior art devices (paras. [0025] and [0050]). Contrary to the opinion of Lepu, this does not mean that there is no completely closed proximal wall where the openings between the wires or threads of the braiding are so large that they prevent complete endothelialisation without the use of inserts. The Patent merely teaches that the claimed shape has a positive effect on endothelialisation, not that the shape as such will ensure complete endothelialisation. Therefore, depending on the density of weavings of the braiding of which the wall is made, inserts may be necessary to achieve complete endothelialisation. Accordingly, the Patent indicates that "selbstverständlich" ("*self-evidently*") the claimed occlusion device may have inlays (para. [0052], see also para. [0064]). By mentioning that the completely closed proximal wall has the additional effect of a substantially quicker encapsulation of the occlusion device, the description only relates to the fact that endothelialisation is accelerated when discontinuities of the shape of the braiding at the proximal end such as recesses or protrusions like sharp edges or kinks are not allowed.

*Claim element 1.5.1 and 1.5.2 ("continuous surface" and "proximal end")*

46. Claim elements 1.5.1 and 1.5.2 specify that the completely closed proximal wall is a "*continuous surface*" and "*forms the proximal end*" of the occlusion device. These claim elements must be interpreted in the light of the functions of the proximal wall in the context of the claimed invention. As described above in paragraphs 44 and 45, these functions are: those of supporting endothelialisation and of reducing the risk of embolisation. This means that the person skilled in the art will understand that, for the question of whether claim elements 1.5.1 and 1.5.2. are realised, not any recess or protrusion at the proximal end of

the device is relevant, but only a recess or protrusion that has a substantial impact on endothelialisation or embolisation.

47. This interpretation is confirmed by the type of protrusions in prior art devices which the patent description presents as problematic. The description refers to hubs which enclose the end of the wire of the braiding at the proximal end (para. [0010]) and [0027]), such as the hub (5) in the following figure 15b of the patent:

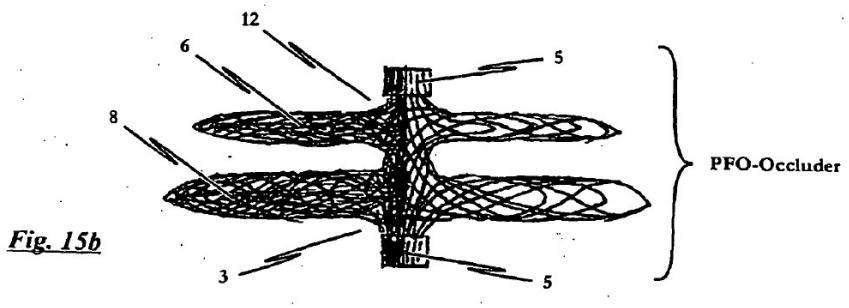


*Fig. 15b*

**Validity**

*Novelty*

48. The Düsseldorf Local Division did not err in finding that the device claimed in claim 1 of the Patent is novel over the Chinese patent applications CN 2705130 Y and CN 2705130 Y. It correctly held that these documents do not directly and unambiguously disclose a braiding of thin wires or threads (claim element 1.1). The documents expressly describe that the braiding is made of a single wire and do not, and certainly not directly and unambiguously, disclose that the wire is cut during the manufacturing process and that the end product consequently is made of multiple wires.

49. Lepu failed to provide any reasons why the findings of the Düsseldorf Local Division are incorrect. It merely submitted that the production of an occlusion device without cutting the wire is complicated. That is not sufficient to conclude that the documents directly and unambiguously disclose a braiding of multiple wires or threads.

**Infringement**

*Claim element 1.1 ("braiding of thin wires or threads")*

50. In the Statement of response, Lepu conceded that their assertion in the first instance proceedings that, in the Attacked Embodiments, the wire of which the braiding is made is laid in loops in the hub is incorrect. They acknowledged that the wire from which the braiding of the Attacked Embodiments is made is shortened to achieve the required length. In view thereof, the Court of Appeal understands that it is no longer in dispute that the wire is cut into pieces during the manufacturing process of the device, as Occlutech submits. It follows that the Attacked Embodiments comply with claim element 1.1 ("*braiding of thin wires or threads*").

51. Lepu's view that the attacked embodiments do not exhibit claim element 1.1 is based on the assumption that a braiding that is made of a single wire or thread that is cut in the manufacturing process is not a

braiding of wires or threads within the meaning of the patent claim. That assumption is incorrect for the reasons given above in paragraphs 34 et seq.

*Claim element 1.2.1 ("the ends of the wires or threads converge into a hub")*

52. Claim element 1.2.1 is realised in the Attacked Embodiments, since the ends of the wires that constitute the braiding converge into a hub in the distal retention area of the devices.

53. This finding is not called into question by the fact that, in the Attacked Embodiments, the ends of some black threads do not converge into the hub. These threads are used to attach the insert to the braiding. The person skilled in the art will therefore not consider them to be part of the braiding. For that reason, they cannot preclude the realisation of claim element 1.2.1 (see above paras. 38 and 39).

*Claim element 1.5 ("a completely closed proximal wall")*

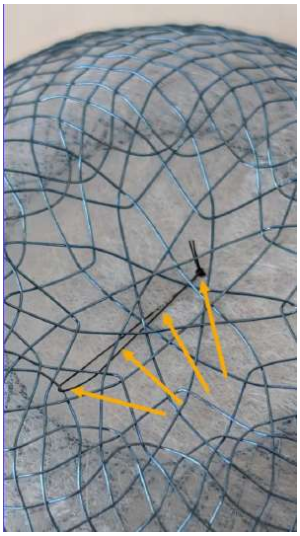
54. In the Attacked Embodiments, the braiding exhibits a "*completely closed proximal wall*" within the meaning of claim element 1.5, since, at the proximal end of the devices, the braiding has the shape of a wall and covers the entire surface of that wall. The fact that the braiding is coarse-meshed and therefore has some openings between the wires, does not preclude the realisation of claim element 1.5 for the reasons given above in paragraphs 40 et seq.

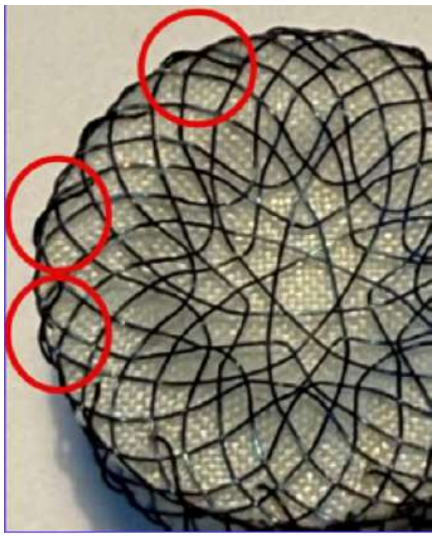
55. Lepu's view that the attacked embodiments do not realise claim element 1.5 is based on the assumption that the braiding must enable complete endothelialisation without an insert. That assumption is incorrection for the reasons given above in paragraph 45.

*Claim elements 1.5.1 and 1.5.2 ("continuous surface" and "proximal end")*

56. Claim elements 1.5.1 ("*continuous surface*") and 1.5.2 ("*proximal end*") are also realised in the Attacked Embodiments, since the proximal wall is a continuous surface and forms the proximal end of the device.

57. The presence of the black threads that attach the insert to the breading does not alter this assessment. Occlutech demonstrated that these black threads do not protrude from the proximal wall. The following images of the attacked embodiments (with markings added by Lepu) do not show any protrusion due to the black threads:





The absence of protrusions is confirmed by the promotional materials of Lepu, which emphasises that the proximal end of the attacked embodiments is a "*flat surface*" that can "*reduce thrombosis and facilitate endothelialisation*".

58. In addition, even if the black threads were to protrude slightly from the proximal wall, this would have such a limited impact on endothelialisation or embolisation that it is not likely to have a substantial effect. As set out above in paragraph 46, such minimal protrusions do not prevent the realisation of claim elements 1.5.1 and 1.5.2 and their technical effect.

*Further defences*

59. In the Statement of response, Lepu refers to the arguments on the alleged lack of infringing acts, the balance of interests and urgency which they submitted in the first instance proceedings. However, Lepu failed to provide any reasons why the findings of the Düsseldorf Local Division relating to these issues are incorrect. The Court of Appeal concurs with the findings of the Düsseldorf Local Division and therefore rejects Lepu's arguments for the same reasons. Lepu's only new argument concerns the effect of their novelty challenge on the basis of the master thesis by Mr Wang on the balance of interest. That novelty challenge is, however, not admissible for the reasons given above in paragraphs 18 to 22.

*Security*

60. Lepu's auxiliary request for a security for enforcement must be rejected. Lepu has not stated, let alone demonstrated, that serious difficulties would be expected in connection with the recovery of any possible damages from Occlutech, which is established in Germany and – undisputedly – has sufficient financial means.

*Conclusion*

61. For the reasons given above, the appeal is well-founded. The Impugned Order must be aside. The Court of Appeal will grant the provisional measures as requested by Occlutech. As the unsuccessful party, Lepu must bear the costs of the proceedings in both instances.

ORDER

The Court of Appeal

I. sets aside the Impugned Order;

II. orders Lepu to refrain from offering, placing on the market, using or importing for the aforementioned purposes or possessing occlusion instruments according to claim 1 of the Patent in
- Germany
- France
- Italy
- the Netherlands;

III. orders Lepu to pay the Court a (where applicable, repeated) penalty of up to € 250,000 per day for each individual breach of the order set out under II;

IV. orders that Lepu shall bear the reasonable and proportionate legal costs and other expenses incurred by Occlutech in the proceedings at first instance and on appeal;

V. specifies the date as referred to in R. 213 RoP at 31 calendar days after service of this order;

VI. declares the order to be immediately enforceable;

VII. rejects any further requests made by Occlutech or Lepu.

This order was issued on 18 June 2026.

Klaus Grabinski, president of the Court of Appeal

Peter Blok, legally qualified judge and judge-rapporteur

Emmanuel Gougé, legally qualified judge

Elisabetta Papa, technically qualified judge

Max Tilmann, technically qualified judge

For the Registrar