



Reference no:

UPC-COA-63/2026

UPC-COA-64/2026

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 22 July 2026

APPELLANT

Advanced Brain Monitoring, Inc., 2237 Faraday Ave, CA 92008, Carlsbad, USA

represented by Wim Maas, Diptanil Debbarma and Fazel Abdul, Winston Taylor N.V.

RESPONDENTS

1) Koninklijke Philips N.V., High Tech Campus 34, 5656 AE Eindhoven, The Netherlands

2) Philips RS North America LLC, 1001 Murry Ridge Lane, Murrysville, PA 15668 USA

3) Respireonics Deutschland GmbH & Co. KG, Gewerbstraße 17, 82211 Herrsching am Ammersee, Germany

represented by Hendrik Albert Pastink, Michael Adrianus Josephus Ras, Arie Jan Willem Tol, and Ceren Okat, Philips International B.V., and Roeland Grijpink, Hoyng Rokh Monegier B.V.

PATENT AT ISSUE

EP 2 437 696 B2

PANEL

Panel 1c

Klaus Grabinski, presiding judge and president of the Court of Appeal

Paolo Catallozzi, legally qualified judge and judge-rapporteur

Peter Blok, legally qualified judge

Christoph Schober, technically qualified judge

Giorgio Checcacci, technically qualified judge

DECIDING JUDGE

This order has been issued by the judge-rapporteur

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Decision of the Court of First Instance of the Unified Patent Court, The Hague Local Division, dated 3 March 2026

Numbers attributed by the Court of First Instance: UPC_CFI_43/2025 and UPC_CFI_103/2025

SUMMARY OF FACTS AND PARTIES' REQUESTS

1. By Statement of claim filed on 21 January 2025, the appellant commenced infringement proceedings before the Local Division The Hague against the respondents, alleging infringement of the patent at issue, which relates to a wearable position therapy device for influencing the sleeping position of a user, by the respondents' NightBalance device.
2. The respondents contested infringement and filed a counterclaim for revocation of the patent, challenging the validity of the patent on several grounds, including lack of novelty and lack of inventive step.
3. In the course of the written procedure, the respondents introduced, inter alia, an inventive-step attack starting from Japanese patent application publication JP H03-49748 (JP '748). In response to that attack, the appellant filed an application to amend the patent and submitted Auxiliary Request 1, which limited claim 1 by specifying that the position detector comprises an accelerometer.
4. By the impugned decision of 3 March 2026, the Local Division dismissed the infringement action and revoked the patent in its entirety. The Local Division held that claim 1 of the patent as maintained lacked novelty over JP '748. It further held that Auxiliary Request 1 lacked inventive step in view of JP '748 in combination with common general knowledge.
5. The impugned decision disposed of both the infringement action and the counterclaim for revocation. The appellant subsequently lodged separate appeals against that decision on 4 May 2026 and, on 3 July 2026, filed Statements of grounds of appeal in the corresponding appeal proceedings. In those proceedings, the appellant challenges both the finding that the patent as maintained lacks novelty and the finding that Auxiliary Request 1 lacks inventive step.
6. Together with the Statements of grounds of appeal, the appellant filed Applications to amend the patent containing eleven additional auxiliary requests. The appellant submits that those additional auxiliary requests constitute a legitimate response to the reasoning adopted by the Local Division and requests that they be admitted pursuant to Article 73(4) UPCA and Rule 222.2 RoP.
7. By objections dated 17 July 2026, the respondents requested the Court to determine that the additional auxiliary requests have not been validly introduced into the appeal proceedings. In

the alternative, they request that, should any of those auxiliary requests be admitted, the deadline for filing their Statement of response and any Statement of cross-appeal be fixed at three months from the date of the Court's decision on admissibility.

8. The present order concerns those requests.

GROUND FOR THE ORDER

9. The respondents seek a preliminary determination that the additional auxiliary requests filed together with the Statement of grounds of appeal have not been validly introduced into the appeal proceedings. In the alternative, they request that, should any of those requests ultimately be admitted, the deadline for filing their Statement of response and any Statement of cross-appeal be set at three months from the date of the Court's decision on admissibility.
10. The Court is not persuaded that it is appropriate at this stage of the proceedings to determine whether the additional auxiliary requests satisfy the requirements of Art. 73(4) UPCA and R. 222.2 RoP.
11. The assessment of the admissibility of those requests is closely connected with the circumstances of the appeal and, in particular, with the reasons relied upon by the appellant for introducing them for the first time on appeal and with the question whether they could reasonably have been filed during the proceedings before the Court of First Instance. Determination of those issues requires consideration of the procedural history of the case, the content of the impugned decision and the parties' submissions concerning the procedural and substantive context in which the requests were filed.
12. In the circumstances of the present case, it is not necessary to address those issues at the present stage of the proceedings. They can more appropriately be assessed at a later stage of the appeal proceedings.
13. The judge-rapporteur notes that, in appeal proceedings, issues concerning the admissibility of new facts, evidence, prior-art documents or procedural requests will ordinarily be dealt with in the context of the appeal as a whole and are not normally determined separately in advance unless particular circumstances make such a course necessary.
14. No such circumstances have been shown in the present case. In particular, no exceptional circumstances have been identified which would make it necessary, before the filing of the Statement of response, to determine whether the additional auxiliary requests are admissible.
15. It is therefore appropriate to reserve determination of the respondents' objections to the admissibility of the additional auxiliary requests for a later stage of the appeal proceedings.
16. As regards the respondents' request for an extension of time, the Court notes that the additional auxiliary requests were filed together with the Statements of grounds of appeal and that their content is fully known to the respondents. The respondents are therefore in a position to address, in their Statement of response, both their objections concerning the admissibility of those requests and, in the alternative, their submissions on their substantive merits.

17. Reserving the issue of admissibility for determination at a later stage of the proceedings does not deprive the respondents of a fair opportunity to present their case. Nor have the respondents demonstrated that the circumstances of the present case justify the introduction of a separate procedural phase devoted exclusively to the admissibility of the additional auxiliary requests.
18. The judge-rapporteur further considers that a separate determination of admissibility at this stage would not contribute to the efficient conduct of the appeal proceedings and is not required for the respondents to prepare their Statements of response.
19. The respondents' request that the deadline for filing their Statement of response and any Statement of cross-appeal be fixed at three months from the date of a future decision on the admissibility of those requests must therefore be rejected.

ORDER

The Court hereby orders:

- i) the respondents' objections to the admissibility of the additional auxiliary requests are reserved for determination at a later stage of the appeal proceedings;
- ii) the respondents' request that the deadline for filing their Statement of response and any Statement of cross-appeal be fixed at three months from the date of a future decision on the respondents' objections to the admissibility of the additional auxiliary requests is rejected.

Issued on 22 July 2026.

Paolo Catallozzi, legally qualified judge and judge-rapporteur