



Brussels - Local Division

UPC_CFI_1357/2025

UPC_CFI_629/2025

Procedural Order
In application of R. 9 RoP and R. 36 RoP
of the Court of First Instance of the Unified Patent Court
Issued on 14 August 2026
Concerning EP 3 107 487 B1

HEADNOTES

A request for further pleadings should be explicit in accordance with R. 36 RoP.

KEYWORDS

Request for further written pleadings (R. 36 RoP)

APPLICANTS R.9.2 RoP APPLICATION

RESPONDENTS R. 36 RoP APPLICATION

DEFENDANTS INFRINGEMENT ACTION (UPC CFI 1357/2025)

CLAIMANTS COUNTERCLAIM FOR REVOCATION (UPC CFI 629/2026)

- (1) GC AESTHETICS PARENTCO LIMITED
- (2) NAGOR LIMITED
- (3) GC AESTHETICS MANAGEMENT LIMITED
- (4) GC AESTHETICS (DISTRIBUTION) LIMITED
- (5) GC AESTHETICS (France) SAS
- (6) EUROSILICONE SAS
- (7) GC AESTHETICS ITALY S.R.L.
- (8) GC AESTHETICS GmbH
- (9) GC AESTHETICS SPAIN, S.L.U.
- (10) GLOBAL CONSOLIDATED AESTHETICS (UK) LIMITED
- (11) GC AESTHETICS HOLDINGS LIMITED
- (12) GC AESTHETICS FINANCE LIMITED
- (13) ROMED N.V.

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RESPONDENTS R. 9 RoP APPLICATION

APPLICANTS R. 36 RoP APPLICATION

CLAIMANTS INFRINGEMENT ACTION (UPC CFI 1357/2025)

DEFENDANTS COUNTERCLAIM FOR REVOCATION (UPC_CFI_629/2026)

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PATENT AT ISSUE

Number	Proprietor(s)
EP 3 107 487 B1	ESTABLISHMENT LABS S.A.

LANGUAGE OF THE PROCEEDINGS:

English

SUBJECT MATTER:

Procedural Order R. 9 RoP and R. 36 RoP

PANEL - LOCAL DIVISION

Presiding Judge (Judge-Rapporteur): Samuel Granata
Legally Qualified Judge: Carine Gillet
Legally Qualified Judge: Marije Knijff
Technically Qualified Judge: Paolo Gerli

DECIDING JUDGES:

Order issued by the Judge-Rapporteur

I. PROCEDURAL BACKGROUNDS AND R. 9. ROP REQUESTS

1. On 30 July 2026, LABS filed its Rejoinder to the Reply to Defence to Counterclaim and Reply to Defence to Application to Amend the claims of the Patent (hereafter referred to as "LABS's Rejoinder").
2. On 6 August 2026, the Defendants submitted their "Rule 9 Request objecting to Further Written Pleadings on Infringement" (hereafter referred to as the "Application") and introduced the following requests:
 - a) Rule that the sections of the Claimant's Rejoinder to Reply to Defence to Counterclaim and Reply to Defence to Application to Amend dated 30 July 2026 entitled "Infringement", "Acts of Infringement", "Jurisdiction" and "Relief" (other than paragraphs 611 to 616) are inadmissible and are excluded from the proceedings.
 - b) Order the Claimant to file a revised Rejoinder to Reply to Defence to Counterclaim and Reply to Defence to Application to Amend dated 30 July 2026 without the sections entitled "Infringement", "Acts of Infringement", "Jurisdiction" and "Relief" (other than paragraphs 616 to 616), but permitting no other change.
 - c) Order the Claimant to pay the Defendants' costs of this application.

3. The pending actions, broken down by workflow and submission date, can be summarised as follows:

DATE	Infringement Action (Workflow 1)	Counterclaim Revocation (Workflow 2)	for Application to Amend Patent (Workflow 3)
30 October 2025	Statement of Claim (LABS)	N/A	N/A
16 February 2026	Statement of Defence (Defendants)	Counterclaim for Revocation (Defendants)	N/A
24 April 2026	Reply to Infringement Defence (LABS)	Defense to Counterclaim (LABS)	Application to Amend the Patent (LABS)
30 June 2026	Rejoinder to Reply Statement of Defence (Defendants)	Reply to Defence to Counterclaim (Defendants)	Defense to Application to Amend the Patent (Defendants)
30 July 2026		Rejoinder to Reply to Defence to Counterclaim (LABS)	Reply to Defense to Application to Amend the Patent (LABS)
30 August 2026			(To be filed) <i>Rejoinder to Reply to Defense to Application to Amend the Patent</i>

4. LABS was given the opportunity to comment on the Application by 11 August 2026 at the latest. In its comments LABS opposed the R. 9 RoP requests stating that it was procedurally efficient to submit their comments in the LABS' Rejoinder on the new issues and arguments introduced by the Defendants in their previous submissions. This includes the Defendants' request for stays of proceedings.
5. LABS holds that it has a right to be heard on Defendants' alleged new issues, arguments and requests and, therefore, that LABS's Rejoinder touching on these new points should be considered an *implicit* request under R. 36 RoP for a further round of correspondence.

Should the Court not deem such request to be sufficient, LABS *explicitly* introduces a R. 36 RoP application together with its comments on the Application.

6. Further, be it as an implicit or explicit request, LABS holds that the introduction of its responses would not prejudice the Defendants' position, particularly as they are planning to file a Rejoinder to the Reply to the Defence to the Application to Amend by 30 August 2026. Therefore, the Defendants can include any comments in relation to the points on Infringement in these last submissions in Workflow 3.
7. Finally, LABS notes that the Defendants do not object to § 611 to 616 relating to Security being included in the Claimant's Rejoinder.
8. As LABS introduced an explicit R. 36 RoP application as an alternative, the Court invited the Defendants to respond to this application by 13 August 2026 at the latest.

9. The Defendants request in their comments as follows:

49. *In response to the Claimant's Rule 36 Request, the Defendants maintain their original request under Rule 9 RoP that the Court make the following declarations and orders:*

- a) Rule that the sections of the Claimant's Rejoinder to Reply to Defence to Counterclaim and Reply to Defence to Application to Amend dated 30 July 2026 entitled "Infringement", "Acts of Infringement", "Jurisdiction" and "Relief" (other than paragraphs 611 to 616) are inadmissible and are excluded from the proceedings.*
- b) Order the Claimant to file a revised Rejoinder to Reply to Defence to Counterclaim and Reply to Defence to Application to Amend dated 30 July 2026 without the sections entitled "Infringement", "Acts of Infringement", "Jurisdiction" and "Relief" (other than paragraphs 616 to 616), but permitting no other change.*
- c) Order the Claimant to pay the Defendants' costs of the Defendant's Rule 9 request and the Defendants' response to the Claimant's request under Rule 12(5) and Rule 36.*

50. *In the alternative, the Defendants request the following:*

- a) Rule that the sections of the Claimant's Rejoinder to Reply to Defence to Counterclaim and Reply to Defence to Application to Amend dated 30 July 2026 entitled "Infringement" and "Relief" (other than paragraphs 611 to 616) are inadmissible and are excluded from the proceedings;*
- b) Rule that the sections of the Claimant's Rejoinder to Reply to Defence to Counterclaim and Reply to Defence to Application to Amend dated 30 July 2026 entitled "Acts of Infringement" (other than paragraph 549) and all of the section entitled "Jurisdiction" are inadmissible and are excluded from the proceedings;*
- c) In the alternative to (b) above, rule that the section of the Claimant's Rejoinder to Reply to Defence to Counterclaim and Reply to Defence to Application to Amend dated 30 July 2026 entitled "Acts of Infringement" (other than paragraphs 526 and 549) and "Jurisdiction" (other than paragraphs 563, 568-569 and 580-581) are inadmissible and are excluded from the proceedings;*
- d) In respect of any combination of (a) to (c) above, or any other similar declaration by the Court, Order the Claimant to file a revised Rejoinder to Reply to Defence to Counterclaim and Reply to Defence to Application to Amend dated 30 July 2026 without the sections held to be inadmissible, but permitting no other change.*
- e) Rule that the Defendant be permitted to file a further written pleading in response to any sections of the Claimant's Rejoinder to Reply to Defence to Counterclaim and Reply to Defence to Application to Amend dated 30 July 2026 entitled "Infringement", "Acts of Infringement", "Jurisdiction" and "Relief" (other than paragraphs 611 to 616) that the Claimant is permitted to introduce.*
- f) Order the Claimant to pay the Defendants' costs of the Defendant's Rule 9 request and the Defendants' response to the Claimant's request under Rule 12(5) and Rule 36.*

II. GROUNDS

II.A. Implicit R. 36 RoP Application part of LABS's Rejoinder (dated 30 July 2026)

10. Although the pleadings in above mentioned workflows will often coincide, they should be treated as separately. LABS is permitted in application of R. 12.1 RoP only two rounds of

written proceedings arguing the infringement (a Statement of Claim and a Reply to the Statement of Defence) as the Defendants are regarding arguing the invalidity (Counterclaim for Revocation (R. 25.1. RoP) and Reply to the Defence to the Counterclaim in (R. 29(d) RoP)).

11. The Judge-Rapporteur could allow the exchange of further written pleadings in application of R. 12.5 RoP and Rule 36 RoP.
12. As mentioned in R. 36 RoP, the request for such further pleadings should be formal (explicit). However, LABS did not introduce a formal R. 36 RoP request. Therefore, any reference that LABS makes to an "*implicit*" request for further pleadings is disregarded, as no such system is provided for in the RoP. Any requests based on such an "*implicit*" request are dismissed.

II.B. Explicit R. 36 RoP application part of LABS's comments on the Application (dated 11 August 2026)

II.B.1. Introductory notes

13. Although the Rules of Procedure may seem rigid, the Court should ensure flexibility by applying all procedural rules in a balanced and flexible manner, allowing the judges to organise proceedings efficiently and cost-effectively (Preamble 4 of the RoP).
14. Such flexibility is explicitly provided by the option for the Judge-Rapporteur to permit additional written submissions in accordance with R. 36 RoP. As previously mentioned, the Judge-Rapporteur can only permit additional pleadings upon an explicit request from a party (and subsequently allowing the other party to comment such application). A second option will be discussed later. This allows the Judge-Rapporteur to request additional written pleadings "*where appropriate*" during the interim conference, in accordance with R. 104(e) RoP. This option does not require an explicit request; rather, it is based on efficient case management in preparation for the oral hearing.
15. In their comments to Application (submitted on 11 August 2026), LABS introduced an explicit R. 36 RoP request. This request is limited to the argument already put forward in LABS's Rejoinder and more specifically under the following headings and paragraphs "*Infringement*" (§ 32 to 39), "*Acts of Infringement*" (§ 521 to 549), "*Jurisdiction*" (§ 550 to 587) and "*Relief*" (§ 588 to 616).
16. The Court notes that the Defendants oppose to all of further pleadings with the exception of § 611 to 616 (regarding "*security*") in the section "*Relief*".

II.B.2. Sections "*Infringement*" (§ 32 to 39) and "*Relief*" (§ 588 to 616)

17. The Court dismisses LABS's R. 36 RoP request on the sections "*Infringement*" (§ 32 to 39) and "*Relief*" (§ 588 to 616) based the following grounds:

- The reasons mentioned by LABS to allow further written pleadings are limited to the sections “*Acts of Infringement*” (§ 521 to 549) and “*Jurisdiction*” (§ 550 to 587).
 - The Court sees no reason to allow new arguments and material in the section on “*Infringement*” which indeed seem to relate to technical infringement arguments.
 - The same applies for the section on “*Relief*” (with the exception of § 611 to 616 to which the Defendants do not oppose).
18. As such the additional written pleadings under the sections “*Infringement*” and “*Relief*” (with the exception of § 611 to 616) in LABS’s Rejoinder should be disregarded by the Court.

II.B.3. Sections “*Acts of Infringement*” (§ 521 to 549) and “*Jurisdiction*” (§ 550 to 587)

19. Although the Defendants should indeed be allowed to expand on the position taken in earlier submissions (i.e. Statement of Defence (Defendants)(Workflow 1) and Counterclaim for Revocation (Workflow 2), as a defence against LABS’s submissions (i.e. Reply to Infringement Defence (Workflow 1), Defence to Counterclaim (Workflow 2) and Application to Amend the Patent (Workflow 3), Defendants should take care and act diligently by not introducing new issues, arguments and requests which were not made earlier.
20. The above duty of care and diligence becomes fragile if issues, arguments and requests are introduced primarily based on evolving UPC and/or EUCJ case law. In such circumstances, flexibility and, more importantly, procedural efficiency are key. This means that judges should organise proceedings in the most efficient and cost-effective manner possible (Preamble 4 of the Rules of Procedure), while ensuring that such organisation does not limit the right of defence of any party or create procedural inequality.
21. When examining the Defendants’ Rejoinder to the Reply to the Statement of Defence (Workflow 1), Reply to Defence to Counterclaim (Workflow 2) and Defence to Application to Amend the Patent (Workflow 3), the Court notes that new issues, arguments and requests were raised which the Defendants did not raise in their Defence to the Statement of Claim (Workflow 1) and Counterclaim for Revocation (Workflow 2). As such LABS had no possibility to reply in writing on the hereunder listed new issues, arguments and requests:

New issues/requests	Defendants’ Rejoinder to the Reply to the Statement of Defence, Reply to Defence to Counterclaim and Defense to Application to Amend the Patent	Answered by LABS’s Rejoinder
Preliminary ruling under Article 267 TFEU and stay of proceedings	§ 1666	§ 569 with reference also made to § 556 to 568
Stay of proceedings in view of <i>Dyson v Dreame</i>	§1643 and § 1682	§541 to 549, § 581 in combination with preceding paragraphs 578 to 580
Reference and implication of <i>Fujifilm v Kodak</i> (June 2026 decision):	§1625, 1656, 1657, 1673, 1681 and 1691	§526, 562 to 567 and 580

Adobe v Keeex	§1667 to 1673 and 1685	§563 and 570
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22. These issues, arguments and requests are based on evolving case law (specifically three UPC Court of Appeal decisions from 2026 relating to the long-arm jurisdiction of the UPC). The Court acknowledges that not all of the referenced decisions were issued after LABS's submissions on 24 April 2026. Technically, this would mean that LABS should have invoked them earlier in the proceedings. However, these decisions became particularly important when the Defendants relied on them in their submissions dated 30 July 2026.
23. It would be possible for LABS to articulate the counterarguments related to the above new issues, arguments and requests at the oral hearing.
24. However, it seems procedurally more efficient for the Court to take into consideration the written pleadings on these issues from both parties, rather than relying solely on their own notes and/or the audio recordings of the oral hearing. As mentioned, this approach is based on procedural efficiency, specifically as a means for judges to organise proceedings in the most efficient and cost-effective way (Preamble 4 of the Rules of Procedure (RoP)).
25. While the Defendants provide a detailed analysis of the aforementioned paragraphs, indicating that some refer to existing case law, the Court considers the section on "*Jurisdiction*" as a whole. While it is possible that earlier case law is cited (which LABS could have brought to the Court's attention earlier), it is also possible that such reference is based on more recent case law. Therefore, the Court allows the section on "*Jurisdiction*" (paragraphs 550 to 586) as a whole. A specific assessment of §587 and the paragraphs related to the alleged liability of Defendant 3 is provided in § 27 - 32 of this order.
26. LABS convincingly argues that "*Acts of Infringement*" and "*Jurisdiction*" are interlinked, as evidenced by the relevance of the cited decisions, *Dyson v Dreame* and *Fujifilm v Kodak*, to both topics. This could be particularly true (to be assessed later by the Court) given the alleged concerted action of multiple companies within the GCA Group across multiple territories. Therefore, the Court holds that it would be artificial to separate them.
27. Regarding the alleged liability of Defendant 3, the Court should distinguish between the argument that Defendant 3 would be liable as an accessory infringer and the reference to national law referred to under §587 in LABS's rejoinder.
28. Regarding the first issue, the Defendants argue that the accessory liability of Defendant 3 was not set out in earlier pleadings. More generally, the basis on which LABS grounds its requests against Defendant 3 is unclear to the Defendants (with reference to the Statement of Claim, where no indication can be found relating to Art. 25 UPCA ("*direct infringement*") and the only reference to liability is under §14 of the Statement of Claim, which refers to Defendant 3 as the authorised representative within the EU for the distribution of the Perle implant, without indicating how Defendant 3 would infringe the Patent).

29. On the other hand, LABS holds that it has argued "*from the outset*" that the coordinated behaviour of the different Defendants within the GCA group constitutes direct or indirect liability on the part of Defendant 3. In this regard, the following statement is held relevant by LABS: "*All of the defendants have related commercial activities aimed at the same purpose, i.e. the manufacture, distribution and sale of GC Aesthetics Group's products. They are all involved in the same infringement, i.e. the manufacture, offering, placing on the market, use, import or storage of the Perle implant in the jurisdictions listed in Section II.*" Furthermore, LABS argues that its statement regarding Defendants 1 and 3 was indeed that "*at least Defendant 1 is liable as an instigator, accomplice or accessory, if not a direct infringer, and Defendant 3 is liable as an intermediary (as well as an instigator, accomplice or accessory)*". While the Court agrees with the Defendants that such an argument in the form of a "*catch-all*" argument is procedurally difficult to defend against as no clear position is taken, it *could* indeed be understood (at this stage of the proceedings and not as final assessment by the Court) as holding the Defendant 3 accountable for direct or indirect infringement. Indeed, whether the arguments put forward by LABS are sufficient to convince the Court of any liability will be assessed by the Court alongside all the other arguments in its final decision.
30. The second issue pertains to the reference to national law (Ireland, Norway, Spain and Switzerland) under §587 of LABS's Rejoinder in arguing the accessory liability of Defendant 3. In their submissions dated 16 February 2026, the Defendants objected to LABS requesting the UPC to rule on infringement of the Patent in non-UPC countries without specifying the applicable national law. In response to this objection, LABS indeed introduced the relevant national law equivalents to Art. 25 UPCA. If LABS's argument that they had argued "*from the outset*" "*the coordinated behaviour of the different Defendants within the GCA Group*", implying possible accessory liability for Defendant 3, is to be followed, LABS should have introduced the applicable national law in their Reply regarding "*accessory liability*". Nothing in the Defendants' submission actually urges LABS to introduce these references in LABS' Rejoinder. The argument that §587 was introduced "*in direct response to the statement by the Defendants that such sources had not yet been provided*" does not entitle LABS to request further pleadings. A lack of providing such information could indeed be considered as failing to meet the burden of proof as it relates to possible applicable national law which is considered a factual element (as the judges of the UPC are not considered to know and ex officio apply such national law).
31. However, the Court, and specifically the Judge-Rapporteur, finds itself in a difficult position. On the one hand, §587 of LABS's Rejoinder should be dismissed on procedural grounds, but on the other hand, the Court may require information on the referred-to national law in order to reach a final decision. In this regard, the Court should also consider the possibility of the Judge-Rapporteur requesting further pleadings from the parties during the interim conference, in accordance with R. 104(e) RoP. Procedural efficiency would favour allowing §587 of LABS's Rejoinder in the proceedings, with the possibility and right for the Defendants to respond in writing (see §34 – 36)).

32. For the record, the Court notes that the arguments on which the Defendants rely regarding §587 under §§37 and 38 of their comments, submitted on 13 August 2026, rather seem to relate to whether the arguments and referred to national law are sufficient to prove LABS's case regarding "accessory" liability. These arguments are to be assessed when deciding on the actions as a whole by the Court.

II.C. Filing of a Revision of LABS's Rejoinder

33. The Court orders LABS to submit a revised Rejoinder to Reply to Defence to Counterclaim and Reply to Defence to Application to Amend, dated 30 July 2026, (excluding the sections held to be inadmissible and must not include any other changes) within 16 days of the issuance of this order, unless at least one of the parties requests a panel review of this procedural order. In this case, the panel judges would need to read all the sections that the Judge-Rapporteur ruled inadmissible. Therefore, the reason for submitting a revised submission ("*to avoid the risk that the judges, when preparing for the oral hearing and written judgement, will read the sections that have been ruled inadmissible*") would become redundant.

II.D. Further written pleadings.

34. In the case at hand the Court has set a date for the Interim Conference (21 September 2026) as well as for the Oral Hearing (2 December 2026). The written phase has almost come to an end. The last submission to be submitted will be the Defendants' *Rejoinder to Reply to Defence to Application to Amend the Patent* (to be expected on 30 August 2026 – and as this is a Sunday actually on 31 August 2026).
35. The Defendants request to be permitted further written pleadings on the sections and paragraphs which the Court admitted into the proceedings is granted for procedural equality of arms.
36. For procedural efficiency Defendants' further pleadings should be included in the Defendants to be filed *Rejoinder to Reply to Defence to Application to Amend the Patent*. For reasons of proportionality and equity, the Court grants the Defendants 5 working days extra to file these submissions. As such the *Rejoinder to Reply to Defence to Application to Amend the Patent* should be submitted the latest by 7 September 2026.

II.E. Costs

37. The costs for this procedure (including attribution to a party) will be assessed together with the costs to be determined following a decision on the merits in both actions.

III. ORDER

The Court:

- Orders/Rules that the sections of LABS's Rejoinder to Reply to Defence to Counterclaim and Reply to Defence to Application to Amend dated 30 July 2026 entitled "*Infringement*" and "*Relief*" (other than paragraphs 611 to 616) are inadmissible and are excluded from the proceedings in application of R. 36 RoP.
- Allows the sections of LABS's Rejoinder to Reply to Defence to Counterclaim and Reply to Defence to Application to Amend dated 30 July 2026 entitled "*Acts of Infringement*" and "*Jurisdiction*" into the proceedings in application of R. 36 RoP.
- Order LABS to file a revised Rejoinder to Reply to Defence to Counterclaim and Reply to Defence to Application to Amend dated 30 July 2026 (without the sections held to be inadmissible, but permitting no other change) within 16 days of this Order except if at least one of the parties would request a review of this order (R. 333 RoP).
- Allows the Defendants to submit further written pleadings on sections that the Court did not deem inadmissible. These further written pleadings should be part of Defendants' Rejoinder to the Reply to the Defence of the Application to Amend the Patent. The deadline for submitting these submissions is extended to 7 September 2026 (6PM CEST).

Order issued on 14 August 2026 by the Judge-Rapporteur:

Samuel GRANATA Judge-Rapporteur Presiding Judge LD Brussels Legally Qualified Judge	
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