Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC_CFI_374/2025
ACT_19943/2025

Order
of the Court of First Instance of the Unified Patent Court
Local Division The Hague
delivered on 29/08/2025
regarding R.211 – provisional measures

CLAIMANTS

1) **Cilag GmbH International**
(Applicant) - Gubelstraße 34
6300 - Zug - CH
Represented by Prof. Dr. Tilman Müller-Stoy

2) **Ethicon LLC**
(Applicant) - 475 Street C, Suite 401 Los Frailes Industrial Park
PR 00969 - Guaynabo – US
Represented by Prof. Dr. Tilman Müller-Stoy

DEFENDANT

1) **RiVOLUTiON GmbH**
(Defendant) - Innaustraße 11
83026 - Rosenheim – DE
Represented by Dr. Peter Koch

PATENT AT ISSUE

Patent no.	*Proprietor/s*
EP3689262	Cilag GmbH International

DECIDING JUDGES

Presiding judge	**Edger Brinkman**
Judge-rapporteur	**Margot Kokke**
Legally qualified judge	**Stefan Johansson**
Technically qualified judge	**Dennis Kretschmann**

LANGUAGE OF PROCEEDINGS: English

Applicants are hereinafter referred to as **Cilag GMBH** and **Ethicon** and collectively as **Cilag.** Defendant is hereinafter referred to as **Rivolution.**

I. BACKGROUND AND SUMMARY OF THE FACTS

1. Cilag are part of the Johnson & Johnson group, which, inter alia, invests in research in medical products. The patent-in-suit EP 3 689 262 (hereinafter "**the patent**" or "**EP 262**") is part of the patent portfolio of the group and was granted on 8 November 2023 for a 'Staple Cartridge'. The unitary effect for the patent was registered on 15 April 2024. The patent is based on a divisional application, published on 5 August 2020, derived from an application filed on 23 September 2011. The parent patent derived from this application, bundle patent EP 2 621 360 B1 ("EP 360"), also for a 'Staple Cartridge', was granted on 23 October 2019. No opposition was filed against the grant of EP 262 or EP 360.

2. The patent pertains to cartridges for medical stapling devices. The only independent claim 1 reads as follows, divided into features:

1.1 A staple cartridge (42), comprising:

1.2 a plurality of staples (83); and

1.3 a cartridge body (85), comprising:

1.3.1 a tissue-contacting deck (90);

1.3.2 a plurality of staple cavities (84), wherein each said staple cavity comprises an opening (110) in said deck, and wherein a said staple is positioned in each said staple cavity; and

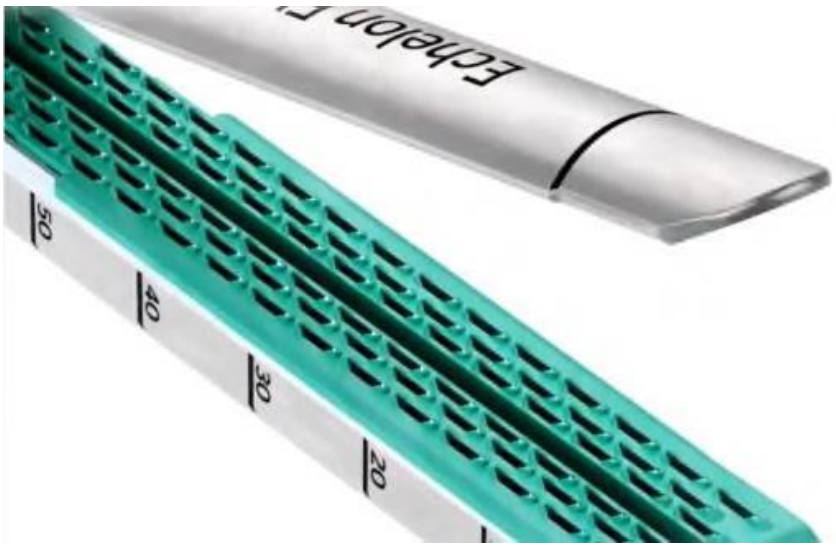
1.3.3 a plurality of ridges (113, 114, 115) extending from said tissue-contacting deck;

characterized in that

1.3.4 some or all of said openings have perimeters being partially surrounded by a said ridge, wherein the said ridge partially defines the perimeter of the said opening.

3. A sister company of Cilag, also a member of the Johnson & Johnson group, sells surgical staplers and corresponding cartridges (which are refill magazines for the stapling devices) as the "ECHELONFLEX GST System", shown below. With these products it has a market share of about

50%. According to a written testimony submitted by Lars Leppin, General Manager Surgery of Johnson & Johnson Medical GmbH (“Leppin”), the ECHELONFLEX GST System has the function of a "door opener", meaning that customers of the competition can be won with this patented and unique product, also with regard to other products. The cartridges are single use products.



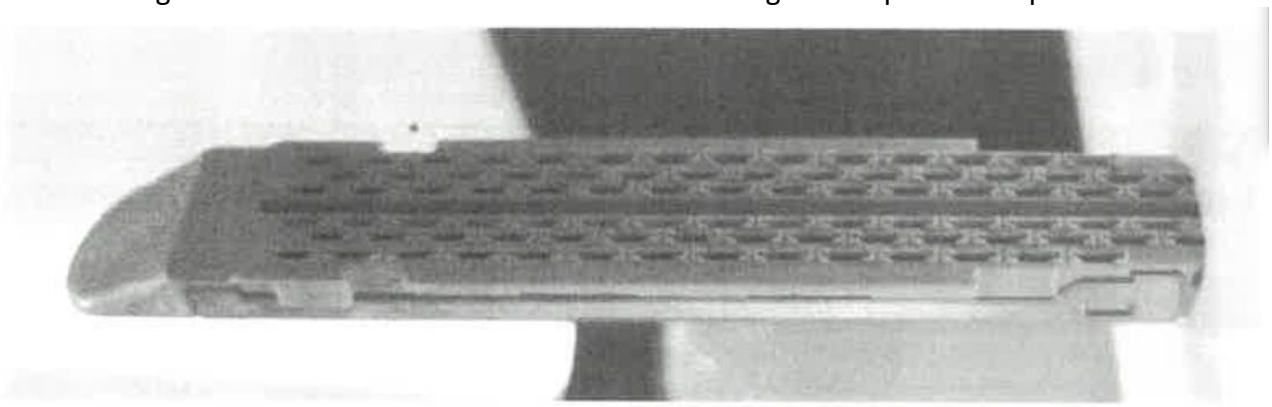
4. In November 2023 and 2024, based on EP 360, Cilag obtained ex parte injunctions from the regional court of Munich against the Chinese manufacturers Bluesail Medical Co., Ltd (“Bluesail”) and Ningbo David Medical Device Co., Ltd. (“David Medical”) prohibiting infringement in Germany with (surgical) staple cartridges manufactured by these companies, also in combination with the corresponding stapler devices. Against Bluesail the injunction was obtained on 14 November 2023 and is directed at its ESI EndoFlex Gen III cartridges. The

injunction against David Medical concerns its EnDrive Beluga cartridges and was given on 12 November 2024. These injunctions are still in place.

5. The David Medical EnDrive Beluga stapler and corresponding cartridge are shown below:

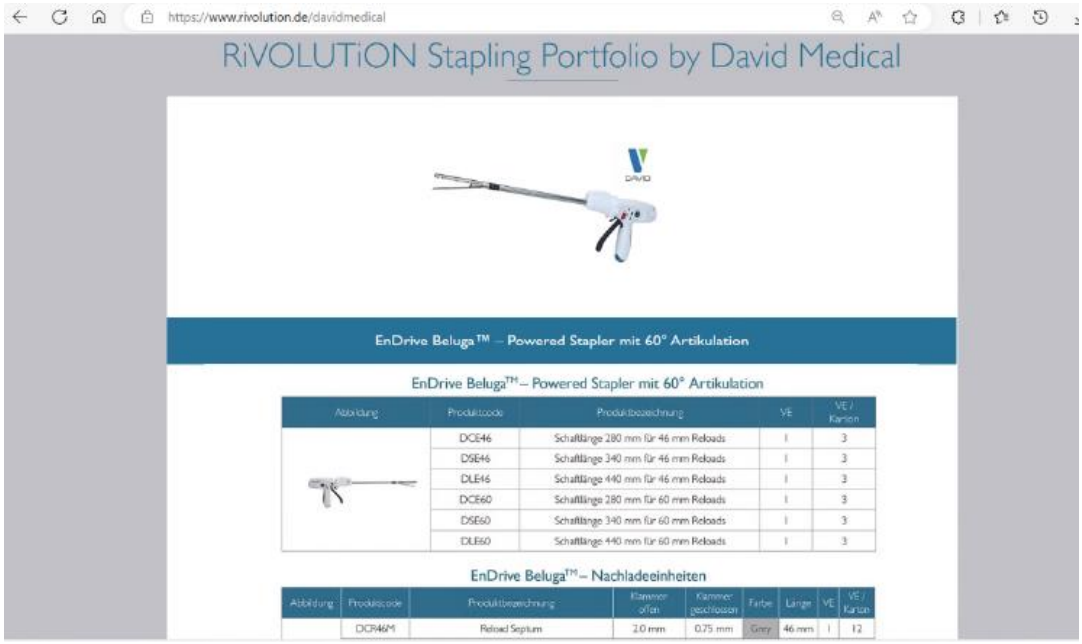
6. 

7. The cartridge for Bluesail's ESI EndoFlex Gen III surgical stapler is depicted below:



8. The said Bluesail and David Medical surgical cartridges are collectively referred to as the infringing products.

9. Rivolution, defendant, is a German distributor of (medical) products by different manufacturers, including the staple cartridges and surgical stapling instruments of David Medical and Bluesail. It offers these products on its website www.rivolution.de, which is available both in German and in English, and has sold the product at least in Germany and Austria. Screenshots of Rivolution's website on which the Bluesail and David Medical products are offered for sale/advertised are reproduced below. Brochures, also specifically for Bluesail and David Medical stapling products, can be downloaded from the website.



ESI EndoFlex Gen III – DER ALL IN ONE-STAPLER

Abbildung	Produktcode	Produktbezeichnung	VE	VE/ Karton
	TCNP-S	ESI EndoFlex GEN III Handgriff Short 60 mm	1	3
	TCNP-M	ESI EndoFlex GEN III Handgriff Medium 160 mm	1	3
	TCNP-L	ESI EndoFlex GEN III Handgriff Large 260 mm	1	3

Abbildung	Produktcode	Produktbezeichnung	Klammer offen	Klammer geschlossen	Farbe	Länge	VE	VE/ Karton
	TCZNX-30B	Standard Reload GEN III 30 mm White 2.5 mm	2.5 mm	1.0 mm	White	30 mm	1	6
	TCZNX-45B	Standard Reload GEN III 45 mm White 2.5 mm	2.5 mm	1.0 mm	White	45 mm	1	6
	TCZNX-60B	Standard Reload GEN III 60 mm White 2.5 mm	2.5 mm	1.0 mm	White	60 mm	1	6
	TCZNX-30C	Standard Reload GEN III 30 mm Blue 3.5 mm	3.5 mm	1.6 mm	Blue	30 mm	1	6
	TCZNX-45C	Standard Reload GEN III 45 mm Blue 3.5 mm	3.5 mm	1.6 mm	Blue	45 mm	1	6
	TCZNX-60C	Standard Reload GEN III 60 mm Blue 3.5 mm	3.5 mm	1.6 mm	Blue	60 mm	1	6

10. On 7 and 8 November 2024, at the so-called Frankfurt Meeting 2024 (the "Frankfurt Meeting"), an industry event for scientific exchange in bariatric surgery of which Johnson & Johnson was a major sponsor, Cilag learned that Rivolution was looking for 15-20 participants, i.e. clinics and hospitals, for its study 'BARIATRIC CONCEPT by Rivolution' (the "Bariatric Study"), which (also) involved the same cartridges of David Medical against which Cilag had obtained the ex parte injunctions mentioned above. This study covers 2,000 patients, which corresponds to a market share of 6.67% for approximately 30,000 patients in a comparable period. For 2,000 patients, 2,000 stapling instruments (one per operation) are required, as well as corresponding cartridges, which the study participants are to purchase from Rivolution. The primary end point of the study is quality monitoring and weight loss after 2 to 5 years.

11. On 6 February 2025 Cilag sent a letter to Rivolution, with inter alia the following text (in English translation provided by Cilag), pointing out its rights to EP 360 and the asserted infringement thereon with the infringing products [sic]:

> *"(...) Our client is the registered proprietor of the German part of the European patent EP 2 621 360 B1 (hereinafter: "patent in suit"), (...)*
> *The patent in suit relates to a staple cartridge which can be used in surgery for stapling tissue severed during a medical procedure and for closing corresponding wounds, as briefly described in paragraph [0001] of the patent in suit.*
> *The scope of protection of the patent in suit is determined in particular by its single independent claim 1, which can be subdivided into the following features:*
>
> *1 Clamp magazine, comprehensive:*
> *2 comprising a plurality of clips and a magazine body:*
> *2.1 a fabric contact platform,*
> *2.2 a plurality of staple cavities, wherein each staple cavity comprises an opening in the platform and wherein a staple is positioned in each staple cavity, and*
> *2.3 a plurality of protrusions extending from the tissue contact platform, each opening comprising a proximal end and a distal end, each proximal end and each distal end being surrounded by a respective protrusion.*
>
> *(...)*
> *We draw your attention to the fact that (...) our client (...)has obtained a preliminary injunction ordering these companies* [David Medical and Bluesail, based on EP 360] *to is prohibited from*

offering, placing on the market or using such staple magazines in Germany or importing or possessing them for the aforementioned purposes.
Our client was recently informed that your company advertises and offers various magazines from different providers via the website https://www.rivolution.de, including staple magazines from Ningbo [David Medical] *and Bluesail.*
(...) this directly covers offers on the above-mentioned website:

- *"EnDrive BelugaTM - reloading units" (T-series) in the David Medical staple seam portfolio, available at https://www.rivolution.de/davidmedical, and*
- *"ESI EndoFlex Gen III reloading units" in Bluesail Surgical's staple suture portfolio, available at https://www.rivolution.de/bluesail.*

(…)
[a feature by feature reasoning why these products fall within the scope of protection of claim 1 of EP 360]
(…)
Based on this impression of our client, we therefore ask your company for a statement as to why you consider yourself authorized to use the abovementioned staple magazines without our client's consent.
Our client was recently informed that your company is planning to conduct a study "BARIATRC CONCEPT by RiVOLUTiON" involving the "EnDrive Beluga Stapler" and its refill units. As a purely precautionary measure, we would like to point out that our client's assessment would of course also mean that this study and all other studies carried out by your company would not be compatible with the affected staple magazines.
(...)
For the receipt of your exhaustive statement, we take the liberty of noting a resubmission in two weeks, i.e. by ***February 20, 2025.***
If we have not received a reply from you by then, we must assume that there are no justifications of any kind for the use of the patent by your company."

12. Rivolution replied to this letter on 20 February 2025, expressing doubts about the legal validity of EP 360 after the Chinese Patent Office ("CPO") declared the Chinese equivalent of EP 360, with an identical claim 1, invalid.

13. On 26 March 2025 Cilag responded that the decision of the CPO is bound to be revoked on appeal. In addition to EP 360, in this letter it also asserted infringement of six other patents from its patent portfolio, including EP 262.

14. In the beginning of April 2025, Cilag learned that the Bariatric Study would be more extensive than initially announced, with 27 participants registered already, including several of Johnson & Johnson's customers, all committing to purchasing staplers and cartridges of David Medical from Rivolution.

15. On 29 April 2025 Cilag filed applications for provisional measures against Rivolution regarding the infringing products, based on EP 262 (at the LD The Hague) and on an unrelated patent directed at the stapler devices at the LD Munich (in German).

16. Both Cilag and Rivolution participate(d) in several tenders for medical products, including one in June 2024 for clinics in the city of Cologne (the "Cologne tender") and the Sana tender.

17. Cilag allege to have learned on 20 May 2025 that Sana (PHG & GPO), the third largest private hospital group in Germany, has officially accepted Rivolution as an approved supplier and is actively promoting their products to the hospitals in their network to save costs. Rivolution's products are advertised as a direct alternative to the products of the Johnson & Johnson Group,

in particular the staplers and magazines from the manufacturer David Medical. As a result, the Johnson & Johnson Group is threatened with a direct loss of sales totalling several million euros, again according to Leppin. For example, Klinikum Duisburg Niederrhein (Sana EKG) has announced that it will purchase its entire corresponding product portfolio from Rivolution with immediate effect. This decision was taken even though a supplier contract with a term of three years with the Johnson & Johnson Group (not yet cancelled) is in place. The expected turnover from this contract alone is EUR 800,000.00 per year for the three-year period.

18. On 28 May 2025, the preliminary decision was announced to award the contract regarding the Cologne tender to Rivolution, including for the staplers and magazines of the manufacturer DavidMedical, because of more favourable pricing. The Johnson & Johnson group officially (and successfully, as the Court learned during the oral hearing) objected to this because of the obtained German national injunctions against these products and the pending proceedings against Rivolution.

II. ORDER SOUGHT BY CILAG, SUBMISSIONS OF THE PARTIES AND PROCEDURE

19. On 29 April 2024, Cilag filed an application for provisional measures ("the Application") requesting that the Court (directly enforceable) order Rivolution – in summary - to cease and desist direct infringement of claim 1 of EP 262 in all UPCA Contracting Member States, order payment of penalties of EUR 250,000 per day in case of non-compliance and order Rivolution to pay the costs of the proceedings.

20. Cilag assert that Rivolution infringes the patent with the infringing products. They also assert urgency and necessity for the measures in view of the perceived recent increased activity of Rivolution with the infringing products, resulting in market loss and price erosion.

21. On 12 May 2025 the JR issued a procedural order including the following schedule of submissions:

> " I. Parties can exchange the following briefs:
> a. An Objection to the Application (of up to 40 pages) can be filed by the Defendant on or before 10 June 2025 (…);
> b. Claimant can reply to the Objection on or before 24 June 2025 (maximum 15 pages);
> c. Defendant can file a rejoinder' on or before 8 July 2025 (maximum 15 pages).

22. Rivolution requests that the Court reject the application for interim measures as inadmissible and/or in any case unfounded. Alternatively, it requests to be allowed to continue the alleged infringement against the provision of a security deposit of up to EUR 250,000. In the further alternative, it requests the Court to make the measures dependant on the provision of security of not less than EUR 20,000,000 and to order Cilag to pay the costs of the proceedings.

23. It argues that:
    i. The LD The Hague is not competent to hear the case.
    ii. Applicants have no standing to sue.
    iii. The application lacks urgency and necessity.
    iv. The attacked embodiments do not infringe the patent because in any case they do not have a perimeter according to feature 1.3.4, they have two ridges where the claim requires one ridge for each perimeter.
    v. The validity of the patent is questionable because:

- claim 1 contains added matter,
- the patent is not novel over prior art US 5,484,451 ("Akopov")
- lacks novelty in view of prior art US 5,452,837 ("Williamson") or inventive step in combination with Akopov and
- lacks novelty in view of prior art EP 1 090 592 A1 ("Ethicon") or inventive step in view of Ethicon and Akopov.

24. The oral hearing took place on 14 July 2025.

25. After the closure of the oral hearing, both Rivolution and Cilag filed a R.9 application requesting to be permitted to submit further evidence, Rivolution as App_34759/2025 and Cilag as App_34891/2025.

III. GROUNDS FOR THE ORDER

III.A – SUMMARY AND JURISDICTION

26. The panel finds that it has jurisdiction and is competent to hear the case and that Cilag GmbH has standing to sue. The application on behalf of Ethicon is dismissed. Cilag GmbH's application is dismissed because the panel finds there is no urgency, for the reasons set out below.

27. After addressing jurisdiction/competence in this chapter, procedural issues (including admissibility and urgency) are addressed in III.B below. In a concluding chapter III.C costs and some outstanding applications will be discussed.

28. Rivolution, a company residing in Germany, contests the jurisdiction and competence of the LD The Hague, arguing that it has no commercial activities in or directed to the Netherlands. Cilag primarily argue that the LD The Hague has jurisdiction and competence to hear the application because the patent at issue is a unitary patent, and infringement in Germany qualifies as infringement in UPC territory, which creates jurisdiction and competence for all divisions of the Court. Cilag also argue that there is an imminent threat of infringement in the Netherlands.

29. For international jurisdiction based on Art. 7(2) Brussels Regulation ("BR), infringement of a Unitary Patent within the territory of the addressed court, here the UPC, indeed suffices. However, with Rivolution, the panel doubts whether the UPCA should be interpreted such that, in case of a unitary patent, all divisions of the court are then also competent to hear the case, irrespective of the internal distribution of competences of the court provided by Art. 33.1 UPCA. This would make Art. 33.1 UPCA effectively meaningless for cases relating to unitary patents.

30. In any case, the Court finds that Cilag substantiated in a sufficiently plausible way that the asserted imminent/threatened infringement is also directed to customers in the Netherlands. This follows from the fact that Rivolution's website is also available in the English language, in contradiction with the fact that Rivolution states it only operates in Germany and Austria, and does not feature a disclaimer that offers/sales are limited to certain countries, nor a restriction for the infringing products which were injuncted in Germany. In addition, it is apparent from Rivolutions's website at the tab 'news/events/workshops' (submitted by Cilag as exhibit BP 19), that Rivolution is also active by providing workshops in European countries within UPC

territory other than Germany and Austria, notably also in Portugal, Belgium and the Netherlands. The LD The Hague therefore is competent to hear the application pursuant to Art. 7(2) BR and Art. 33.1(a) UPCA.

31. The LD The Hague thus assumes jurisdiction and competence to hear the application.

III.B – PRELIMINARY AND PROCEDURAL ISSUES

No standing to sue?

32. Rivolution argues that it is not clear which entity is entitled to start proceedings based on EP 262, and consequently that Art. 47 UPCA is not met.

33. The relevant test in proceedings concerning provisional measures is whether the Court is convinced with a sufficient degree of certainty (R. 211.2 RoP) that the applicant is entitled to commence proceedings pursuant to Art. 47, that the patent in question is valid and that the patent right is being infringed, or that such infringement is imminent. According to the Court of Appeal of the UPC ("CoA") a sufficient degree of certainty pursuant to R. 211.2 RoP, in conjunction with Art. 62(4) UPCA (see also Art. 9(3) Directive 2004/48/EC) 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 and valid. 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.[1]

34. For a sufficient degree of certainty in relation to Art. 47 UPCA, the following is relevant in this case. EP 262 was originally granted to Ethicon. Ethicon assigned all rights, title and interest in and to the patent to Cilag GmbH with effective date 5 April 2021 by a Patent Assignment Agreement that was submitted in the proceedings (as exhibit BP12). The change in ownership of the patent was registered with the EPO on 18 April 2025, which registration was published on 21 May 2025. The confirmation thereof was submitted as exhibit BP10. Pursuant to R. 8.4 RoP, the person shown in the Register for unitary patent protection as the proprietor of the patent, Cilag GmbH, shall be treated as such. Contrary to what is explicitly mentioned for bundle patents (in R. 8.5 (c) RoP), this is not said to be a rebuttable presumption. In any case, Rivolution has not provided any proof to rebut that Cilag GmbH is the proprietor, only refuting the ownership because of lack of knowledge.

35. The Court is thus convinced, with a certainty that well exceeds the minimum requirement set out above ('more likely than not'), that Cilag GmbH has a right to sue as proprietor of the patent pursuant to Art. 47 UPCA. Ethicon does no longer have such standing. The application insofar as it is filed on behalf of Ethicon shall therefore be dismissed.

Inadmissible due to unreasonable delay/no necessity?

36. According to R. 211.4 RoP, the Court shall have regard to any unreasonable delay in seeking provisional measures. This delay shall be calculated from the day on which the applicant became aware, or should have become aware, of the infringement in a way that would enable it, in accordance with R. 206.2 RoP, to file an Application for provisional measures with a reasonable prospect of success. Thus, the decisive point in time is when the applicant has, or should have had, after exercising due diligence, the reasonably necessary facts and evidence within the meaning of R. 206.2(d) RoP (CoA, 25 September 2024,

[1] CoA order of 26 February 2024, UPC_CoA_335/2025 (Nanostring/10x Genomics)

UPC_CoA_182/2024, Mammut vs Ortovox confirmed in CoA 13 August 2025, UPC_COA_446 and _520/2025, Boehringer Ingelheim vs Zentiva).

37. It follows from the above that an applicant does not need to apply to the Court until it has – or should have had – reliable knowledge of all the facts which make an action for interim measures likely to succeed including evidence to credibly substantiate those facts. The applicant may prepare for any possible procedural situation that may arise in the circumstances in such a way as to be able to submit the requested information and documents to the court upon an appropriate order and to successfully respond to the opposing party's submissions. On the other hand, the applicant must not delay unnecessarily. As soon as it becomes aware of the alleged infringement, it must investigate it, take the necessary steps to clarify the matter and obtain the necessary documents to support its submission. In doing so, the applicant must pursue the necessary steps with determination and bring them to a conclusion. Once the applicant is in possession of all the knowledge and documents that are reasonably likely to lead to a successful prosecution of the case, it must normally file an application for provisional measures without delay (LD Munich 21 May 2024, UPC_CFI_443/2023 and 27 August 2024, UPC_CFI_201/2024).

38. R. 211.4 RoP thus ensures that an applicant whose conduct already indicates that it is not in a hurry, cannot expect assistance in the form of an order for provisional measures. In other words, given that the main proceedings at the UPC are (to be) concluded within a (little over a) year, a patent holder who acts with unreasonable delay, shall not be allowed to jump the queue.

39. However, the reverse conclusion that provisional measures must be ordered because the applicant has acted quickly does not apply. Rather, the order for provisional measures must also be objectively urgent/necessary. This follows both from R.206.2(c) and (d), where necessity for the measures is mentioned as a requirement, and from R.211.3.

40. For the assessment of objective urgency/necessity the interests of the parties must be weighed against each other to determine whether the issuance of provisional measures is necessary and appropriate in view of a later decision in the main proceedings, i.e., whether it is unreasonable for the applicant to wait until the conclusion of the main proceedings to enforce its claims, given the risk of an erroneous order for provisional measures and the associated consequences for the respondent on the one hand, and the disadvantages associated with the continuation of the patent infringement until a decision on the main proceedings is made for the applicant on the other hand.

41. In this case, the Court finds that Cilag acted with unreasonable delay in requesting provisional measures. Whilst at the time of the submission of the tenders (both the Cologne and the Sana one), the Court accepts that Cilag, although they were or must have been aware that Rivolution was one of the participants and that Rivolution is a distributor for both David Medical and Bluesail in Germany, did not have sufficient reason to suspect that Rivolution was offering the infringing products as part of such tenders. The tenders concerned a range of products.

42. However, this situation changed early November 2024. On 7 November 2024 at the Frankfurt Meeting, Cilag, according to their own admission, learned that Rivolution was looking for participants (clinics and hospitals) for its Bariatric Study. This study concerns several products of which it was clear that the infringing products produced by David Medical were part. From the flyer available at the Frankfurt Meeting, it was clear, as also submitted by Cilag, that

Rivolution's Bariatric Study is to cover 2,000 patients, which corresponds to a market share of 6.67% for approximately 30,000 patients in a comparable period. For 2,000 patients, 2,000 stapling instruments (one per operation) are required as well as 14,000 corresponding cartridges, which participants are to acquire from the defendants.

43. A few days later, during the Medica trade fair in Düsseldorf, Cilag were able to see David Medical's products, including the infringing cartridges for the EnDrive Beluga stapler. This prompted Cilag (or another group member) to obtain an ex parte injunction order against David Medical based on EP 360, prohibiting it from infringing with the EnDrive Beluga cartridges. The order was enforced at the trade fair the next day, on 12 November 2024.

44. Cilag subsequently waited almost three months, until 6 February 2025, before sending a letter to Rivolution to bring, inter alia, to its attention that the En Drive Beluga cartridges were considered to infringe EP 360 and injuncted, and that the same holds for the Bluesail cartridges also offered for sale on Rivolution's website, for which an injunction order based on EP 360 was obtained already in November 2023.

45. When Rivolution replied timely on 20 February 2025 that it did not believe the injunction would hold, because EP 360 is likely to be invalidated as the Chinese equivalent was invalidated by the CPO, Cilag also did not take action immediately. Cilag claim that they needed time to study their patent portfolio and do a formal infringement analysis, before they asserted infringement of six further patents, including EP 262, in a letter to Rivolution of 26 March 2026 (in reply to Rivolution's response of 20 February 2025). It then took until the end of April, 29 April 2025, to file this application for provisional measures based on EP 262, a divisional of EP 360.

46. In view of the above, the Court establishes the day on which the applicant became aware, or should have become aware, of (imminent) infringement by Rivolution in a way that would enable it, in accordance with R. 206.2 RoP, to file an Application for provisional measures against Rivolution, relevant for establishing undue delay, in this case on 11 November 2024 at the latest. On that day, apparently enough information had been gathered to file an ex parte application in the German national court based on EP 360 for a product identical to one of the infringing products (the David Medical cartridge). For the cartridges of BlueSail, such assessment had been done in November 2023 already. It is not clear why Cilag did not immediately confront Rivolution with the order of the Munich national court of 12 November 2024 in which the David Medical cartridges that it had just learned to be part of the Bariatric Study, were considered to infringe EP 360.

47. Cilag assert that infringement of the patent was only established at the beginning of March after a formal infringement analysis of the products and the patent portfolio. Prior to this, the focus was on the infringement of another patent, EP 360, and it was only after the respondent apparently 'stonewalled' this patent with reference to assumed invalidity of the Chinese parallel patent, that there was reason to investigate the infringement of further intellectual property rights.

48. This argument is not convincing. Unlike in the parallel application for provisional measures in Munich (concerning medical staplers), the infringing products (cartridges) at issue in these proceedings were already known to and had been analysed in detail by Cilag in the course of the requested (and obtained) measures against the manufacturers of the cartridges. Also unlike in the parallel Munich proceedings, it is unlikely that much time was needed to assess that the cartridges infringe the patent asserted here, which is a divisional of EP 360. Claim 1

of the patent is very similar to that of its parent EP 360, with only feature 1.3.4[2] differing (see 2 above). It is not plausible that much time (more than a month) was needed to establish infringement of EP 262 with the infringing products.

49. Cilag do not explain why they waited three months to write a first letter to Rivolution based on EP 360 (apart from the holiday season, which is not accepted as sufficient). Cilag, presumably realising this, assert that urgency revived because they became aware only in April 2025 that the extent of the infringement by Rivolution was much larger than previously known, which prompted the start of the action. They argue that in November 2024 they did not and could not know about the current significantly intensified acts of infringement. To illustrate this, they name the following facts:
    - Stock piling: Cilag claim to have only learned in April 2025 that Rivolution offers a supply guarantee for the infringing products and supplies large quantities of the infringing products as packages for testing;
    - Expansion of Bariatric Study to 27 recruited participants, including clients of Johnson & Johnson, and extension of the period to possibly seven years;
    - Imminent announcement of the (potential) winner of the Cologne tender in May 2025, for which Rivolution are expected to have offered significantly cheaper prices than the Johnson & Johnson group

50. In view of the debate between the parties, in particular also the fact the above allegedly intensifying activities are disputed by Rivolution and only substantiated with party declarations of Johnson & Johnson, the Court is not convinced with a sufficient degree that these asserted facts are true and in any case that they can revive the urgency requirement. The stock piling has not been proven; the only incident in support of this mentioned by Cilag concerns a batch for testing, the remainder of which were later returned, and is insufficient substantiation. Rivolution pointed out that it offers supply guarantees to customers as this is completely standard practice in the industry and not new. It also asserts that it delivers exclusively just in time, and does not engage in the asserted so-called stock piling.

51. Also, the asserted recent awareness of the expansion of the scope of the Bariatric Study, cannot cause a revival of urgency. Even if it is assumed that Cilag only became aware that the scope of the study was extended to 27 (from 20) participants and to maximum 7 (instead of 5) years, these increases are not so substantial to justify a revival of urgency. Already in November 2024, Cilag became aware that the Bariatric Study could amount to a market share of 6.7 %.

52. The imminent announcement of the winner of the Cologne tender in May 2025, was already known in (probably already July) 2024. From the start, Cilag could have expected that Rivolution would offer its products at considerably lower prices. After learning in November 2024 that Rivolution was offering the infringing cartridges, it should have realised that this could lead to price erosion. It has not been convincingly substantiated why this expectation only materialised in April 2025.

53. Pending the proceedings, Cilag supplied further evidence of allegedly intensified infringement, mentioned in par. 15 and 16 above. The confirmation that a substantial lower price was a reason for the Cologne tender to be granted (provisionally) to Rivolution, only confirms what

[2] The text of feature 1.3.4 of EP 360 reads: "*wherein each said opening (110, 310, 510) comprises a proximal end (111, 311, 511) and a distal end (112, 312, 512), and wherein each said proximal end and each said distal end is surrounded by a respective said ridge*."

was already (to be) expected and does not revive urgency. Cilag could and should have realised in November 2024 the risk of price erosion. Testament to this is also that this fact materialised after launch of the application in this case, so cannot have constituted a 'trigger point'.

54. Cilag's assertion that they just found out that Sana group accepted Rivolution as an official supplier (see par. 15 above), does not affect urgency. Rivolution pointed out that it has been listed as a supplier to Sana since 1 January 2023 and that it participated in a tender for staplers (including cartridges, as at the oral hearing it became clear that the cartridges are not interchangeable between different type of staplers) for Sana together with Ethicon in 2023. Competitors in such a tender receive information on who participated. Rivolution submitted the request to participate for this tender (for which the deadline to submit was 31 January 2023), evidencing that both Rivolution and Johnson & Johnson were listed in the call for this tender. Also here, finding out in November 2024 that the infringing cartridges were part of Rivolution's portfolio, Cilag should have realised the possible impact thereof for the Sana group. This is not a new fact that came up in April 2025 that can revive urgency.

55. This also means that Cilag's so called David versus Goliath argument cannot create urgency in this case. The Court accepts that Cilag initially did not perceive the information it obtained regarding the Bariatric Study as a relevant infringement, asserting that they initially had no expectation of loss in market share/price erosion and that this changed when taking into account the upcoming decision on the grant of the Cologne tender and Rivolution's position on the market, for instance with Sana. The Court also appreciates that these can be relevant and legitimate considerations. However, as set out above, in the factual circumstances at hand, Cilag could and should have realised the true extent of the potential infringement, and the related possible market share loss and price erosion at a much earlier stage. The facts were there already; that Cilag apparently only studied these facts properly in April 2025 and subsequently realised this, cannot create urgency. Lastly, the Court takes into account that Rivolution pointed out that the assumption of Leppin that a sales volume of EUR 800,000 could potentially be lost due to the infringement, is not correct as this amount concerns the entire product range involved and not just the cartridges. This was not disputed.

56. As temporal urgency has not been established, it is not necessary to address objective urgency/necessity or other defences by Rivolution. The application of Cilag GmbH is dismissed for lack of urgency.

III.C – Outcome, costs and other applications

Conclusion and costs

57. The application for provisional measures is dismissed. The consequence of this for the costs is that Cilag shall be ordered to pay the legal costs of the proceedings incurred by Rivolution. R.211.1 (d) RoP provides the opportunity to give an interim award of costs in these proceedings. In this case, parties have agreed on the amount of costs to be awarded to the winning party. The amount agreed is EUR 80,000. Cilag will be ordered to pay this amount as 'interim' award, with the clarification that the amount is not in dispute and that the connotation 'interim' in this case only reflects that the party ordered to pay this amount may be reversed on appeal. The interim cost award is immediately enforceable and is to be paid within three weeks from the date of this order.

Late filed applications to submit further evidence and other open application

58. The applications filed by both parties to submit further evidence into the proceedings after the oral hearing (see par. 24), are dismissed. The proceedings are closed after the oral hearing and further evidence is not admitted.

59. Cilag filed two applications pursuant to R.262A RoP as App_30154 and App_31412/2025. The second application is understood to replace the first application and was provisionally granted as requested by order of 1 July 2025. In the parallel proceedings at the LD Munich identical applications were filed concerning the exact same information. There the agreement of the parties on confidentiality and a confidentiality club was confirmed in a final order. As this order applies to the same confidential information and parties agreed on the same terms and conditions for this information in both proceedings, it is not apparent that this order is needed, but both parties request the Court to do so.

60. Thus, with this order the Court confirms its preliminary confidentiality order in App_31412/2025 and the confidentiality club as agreed on by the parties in this case, including the latest expansion thereof during the oral hearing at the LD Munich on 6 August 2025.

IV. ORDER

I. The application for provisional measures is dismissed;
II. Cilag is ordered to pay EUR 80,000.- to Rivolution as interim award of costs within three weeks from the date of this order;
III. Applications App_34759/2025 and App_34891/2025 are dismissed;
IV. The preliminary order regarding R.262A application App_31412/2025 is herewith confirmed, with the confidentiality club as agreed by the parties;
V. The order on costs is immediately enforceable.

INFORMATION ABOUT APPEAL

An appeal to this order may be brought in accordance with Art. 73 (2) (a) UPCA and R. 220.1 (c) and 224.1(b) RoP within 15 calendar days of the notification of the order to the applicant.

INFORMATION ON ENFORCEMENT (ART. 82 UPCA, ART. 37(2) STATUTE, R. 118.8, 158.2, 354, 355.4 ROP)

An authentic copy of the enforceable order will be issued by the Deputy Registrar upon request of the enforcing party (R. 69 Rules governing the Registry of the Unified Patent Court).

Brinkman	Edger Frank BRINKMAN Digitally signed by Edger Frank BRINKMAN Date: 2025.08.29 15:28:30 +02'00'
Johansson	Stefan Erik Johansson Digitally signed by Stefan Erik Johansson Date: 2025.08.29 15:15:42 +02'00'
Kretschmann	Dennis Kretschmann Digital unterschrieben von Dennis Kretschmann Datum: 2025.08.29 15:01:24 +02'00'
Kokke	Margot Elsa KOKKE Digitally signed by Margot Elsa KOKKE Date: 2025.08.29 15:40:59 +02'00'
On behalf to the registry	Noua Mohammed Digitally signed by Noua Mohammed Date: 2025.08.29 15:36:23 +02'00'

ORDER DETAILS

Order no. ORD_32992/2025 in ACTION NUMBER: ACT_19943/2025
UPC number: UPC_CFI_374/2025
Action type: application for provisional measures (RoP206)