



Düsseldorf Local Chamber
UPC_CFI_316/2024
UPC_CFI 547/2024

Decision
of the Court of First Instance of the Unified Patent Court delivered on 10
December 2025
concerning EP 2 061 575 B1

LEADING PRINCIPLES:

1. The ordering of recall, removal from distribution channels and destruction is not normally considered for products that are only challenged on the grounds of indirect patent infringement.
2. Even if Rule 119 of the Rules of Procedure allows for the award of provisional damages on a lump-sum basis, there must be a sufficient factual basis for the award. Against this background, the plaintiff's submission must show that his claim is based on a plausible estimate based on specific facts.
3. If the plaintiff in a nullity action invokes a lack of inventive step as the basis for his nullity action, it is not sufficient to merely name the documents on which he bases his attack. Rather, it is incumbent upon him to explain the disclosure content of the relevant documents and, in addition, to explain in concrete terms why and how a person skilled in the art would combine the individual documents and thus arrive at the claimed solution without engaging in inventive activity.

KEYWORDS:

Indirect patent infringement; provisional damages; inventive step; exhaustion

HEADNOTES:

1. Orders for recall, removal from the channels of commerce and destruction are generally not considered in cases where products are only challenged on the grounds of indirect patent infringement.
2. Although R. 119 RoP permits the interim award of damages at a fixed rate, there must be sufficient facts to justify the award. Against this background, the claimant's submission must demonstrate that its claim is based on a plausible estimate of specific facts.
3. If the claimant in a revocation action bases its claim on a lack of inventive step, it is not sufficient to merely name the documents on which it bases its attack. Instead, the claimant must explain the content of the relevant documents and specifically detail why and how a person skilled in the art would combine the individual documents to arrive at the claimed solution without exercising inventive activity.

KEYWORDS:

indirect infringement; interim award of damages; inventive step; exhaustion

PLAINTIFF:

M-A-S Maschinen- und Anlagenbau Schulz GmbH, represented by its managing director Martin Schnabl, Hobelweg 1, 4055 Pucking, Austria

represented by: Solicitor Dr Dirk Jestaedt, Krieger Mes Partnerschaft mbB, Bennigsen-Platz 1, 40474 Düsseldorf, Germany

Contributor: Patent Attorney Bernhard Ganahl, Patent Attorneys HGF, Neumarkter Straße 18, 81673 Munich, Germany

Electronic delivery address: dirk.jestaedt@krieger-mes.de

THIRD PARTY DEFENDANT:

Katharina Schulz, place of business: M-A-S Maschinen- und Anlagenbau Schulz GmbH, Hobelweg 1, 4055 Pucking, Austria

represented by: Solicitor Dr Dirk Jestaedt, Krieger Mes Partnerschaft mbB, Bennigsen-Platz 1, 40474 Düsseldorf, Germany

Electronic delivery address: dirk.jestaedt@krieger-mes.de

DEFENDANT:

Altech Makina Sanayi ve Ticaret Anonim Sirketi, Akcaburgaz Mh. 3137 Sk. No: 22, 34522 Esenyurt/Istanbul, Turkey

represented by: Lawyer Dr Christian Kau, Lawyer Martin Momtschilow, Preu Bohlig & Partner Rechtsanwälte mbB, Couvenstraße 4, 40211 Düsseldorf, Germany

with the assistance of: Patent Attorney Dr Benedict Kleine Bußmann, Patent Attorney Rolf Sparing, Malkastenstraße 7, 40211 Düsseldorf, Germany

Electronic delivery address: cka@preubohlig.de

PATENT IN DISPUTE:

European Patent No. 2 061 575

DECISION-MAKING BODY/CHAMBER:

Judicial panel of the Düsseldorf Local Chamber

PARTICIPATING JUDGES:

The decision was announced with the participation of Presiding Judge Thomas, legally qualified Judge Dr Schumacher as rapporteur, legally qualified Judge Mlakar and legally qualified Judge Roselinger.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: Action for infringement and counterclaim for annulment

ORAL HEARING: 13 November 2025

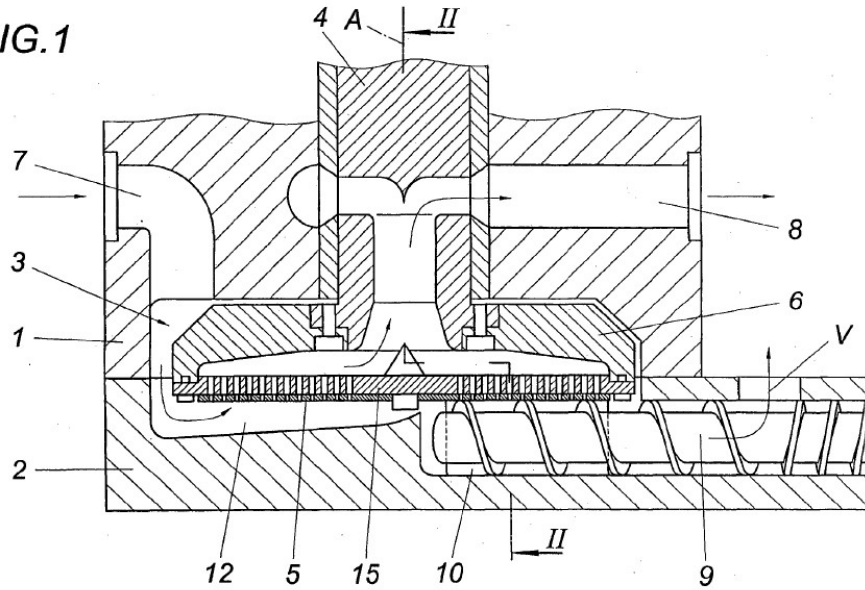
BRIEF DESCRIPTION OF THE FACTS:

1. The plaintiff is suing the defendant for infringement of European patent EP 2 061 575 (hereinafter: the patent in dispute).
2. The patent in dispute was filed on 12 September 2007 in German as the language of the proceedings. It claims priority from AT 15212006 of 13 September 2006. The patent application was published on 27 May 2009. The notice of grant of the contested patent was published on 7 August 2013. The contested patent is currently in force in Germany, Austria, Belgium, Bulgaria, Denmark, France, Italy, the Netherlands, Sweden and Slovenia.
3. An opposition was filed with the European Patent Office (EPO) against the grant of the contested patent. The opposition proceedings were terminated without a decision.
4. The plaintiff initially declared an "opt-out" from the exclusive jurisdiction of the Unified Patent Court with regard to the disputed patent, but withdrew this declaration in a written statement dated 13 June 2024.
5. The owner of the disputed patent is the third-party counterclaimant. The latter acquired the disputed patent by way of universal succession from the original owner, Mr Helmuth Schulz.
6. On 23/29 May 2024, an agreement was concluded between the plaintiff and the third-party counterclaimant concerning, among other things, the rights of use arising from the patent in dispute. For the content of the agreement, reference is made to Annex K 4.
7. The patent in dispute protects a "device for continuously filtering impurities from a plastic melt". Its patent claim 1 is worded as follows:

Device for continuously filtering impurities from a plastic melt with a filter insert in the form of a hollow rotating body mounted so as to rotate about its axis of rotation relative to a housing and through which the plastic melt flows, which is arranged in a flow channel of the housing between a feed channel for the plastic melt to be filtered and a discharge channel for the filtered plastic melt, and with a discharge device comprising a conveyor screw cooperating with the filter insert for impurities retained by the filter, **characterised in that** the filter insert (3) comprises a disc-shaped filter (5) arranged at the front end of the rotary body and coaxial with the axis of rotation (A), and in that the discharge device comprises, in addition to the at least one conveyor screw (9) arranged with its axis of rotation preferably parallel to the plane of the disc, conveyor screw (9) arranged with its axis of rotation preferably parallel to the disc plane, comprises at least one scraper (10) arranged behind the conveyor screw (9) in the direction of rotation of the filter insert (3) and positioned against the filter."

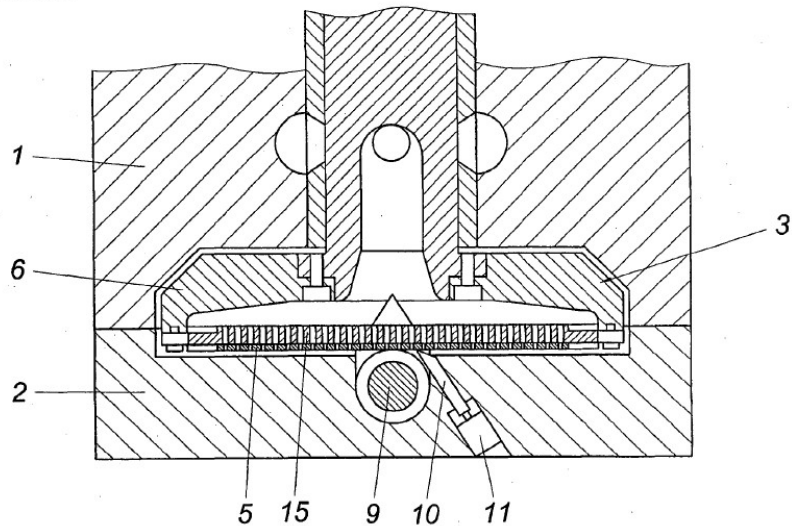
8. Figure 1 below shows a cross-section of a device according to the invention:

FIG.1



9. Figure 2 shows the device from Figure 1 in cross-section along line II-II:

FIG.2



10. With the action, the plaintiff challenges plastic cleaning devices offered and distributed under the name Microfilt/LDF series, in particular under the model names LDF 300 and LDF 500 (hereinafter: contested embodiment), which are manufactured by the defendant. The LDF 300 and LDF 500 models differ only in their dimensions; otherwise, the devices are identical. The LDF 300 model has a filtration area of 1150 cm^2 and a screen diameter of 300 mm. The LDF 500 model has a filtration area of 2450 cm^2 and a screen diameter of 500 mm.
11. Furthermore, the plaintiff challenges the offer and delivery of disc-shaped filters as replacement parts for both the plaintiff's systems and the defendant's systems. The filters for the defendant's systems are designated "Microdisc Filter 300" and "Microdisc Filter 500", respectively, with the designations referring to the relevant sizes in each case.

CLAIMS OF THE PARTIES:

Infringement action

12. Insofar as the plaintiff originally also requested in its claim under I.2. that the use of the product in the Principality of Liechtenstein be prohibited, it stated in its reply that this was an oversight and that it was therefore deleting this passage.
13. Following a notice in the interim proceedings, the plaintiff resubmitted its requests for disclosure, destruction, recall and removal from distribution channels in a written submission dated 10 November 2025. It also submitted a request for the presentation of evidence as request I.5.

14. The plaintiff finally requests:

I. The defendant be ordered

1. to refrain from

devices for continuously filtering impurities from a plastic melt with a filter insert in the form of a hollow rotary body rotatable about its rotational axis relative to a housing and through which the plastic melt flows, which is arranged in a flow channel of the housing between a feed channel for the plastic melt to be filtered and a discharge channel for the filtered plastic melt, and with a discharge device comprising a conveyor screw cooperating with the filter insert for impurities retained by the filter

in the territory of Austria, Belgium, Bulgaria, Germany, Denmark, France, Italy, the Netherlands, Sweden and Slovenia

, to place on the market, to offer, to use and/or to import, to export and/or to possess for the aforementioned purposes,

if the filter insert comprises a disc-shaped filter arranged at the front end of the rotating body and coaxial with the axis of rotation (A), and the discharge device comprises, in addition to at least one screw conveyor arranged with its axis of rotation preferably parallel to the plane of the disc, at least one scraper arranged behind the screw conveyor in the direction of rotation of the filter insert and positioned against the filter;

(direct infringement of claim 1 of EP 2 061 575)

and/or

2. refrain from

disc-shaped filters suitable for a device for continuously filtering impurities from a plastic melt with a filter insert in the form of a hollow rotating body mounted in a housing so as to be rotatable about its axis of rotation relative to the housing

housing and through which the plastic melt flows, which is arranged in a flow channel of the housing between a feed channel for the plastic melt to be filtered and a discharge channel for the filtered plastic melt, and with a discharge device comprising a screw conveyor cooperating with the filter insert-tereinsatz, and a discharge device comprising a screw conveyor cooperating with the filter insert for impurities retained by the filter, wherein the filter insert comprises a disc-shaped filter coaxial with the rotation axis (A) of the screw conveyor and arranged at the front end of the rotary body, and wherein the discharge device comprises, in addition to the at least one screw conveyor arranged with its axis of rotation preferably parallel to the plane of the disc, at least one screw conveyor arranged with its axis of rotation preferably parallel to the plane of the disc on axis (A) and that the discharge device comprises, in addition to the at least one screw conveyor arranged with its axis of rotation preferably parallel to the disc plane, at least one scraper arranged behind the screw conveyor in the direction of rotation of the filter insert and positioned against the filter,

to be used, to offer and/or supply to customers in Austria, Belgium, Bulgaria, Germany, Denmark, France, Italy, the Netherlands, Sweden and Slovenia for use in the above-mentioned devices in the aforementioned areas;

alternatively, to offer and/or supply the above-mentioned disc-shaped filters, which are suitable for use in the above-mentioned device, to customers in the above-mentioned countries for use in the aforementioned territory, unless the defendant indicates with each offer that the filters may not be used for devices according to claim 1 of EP 2 061 575, and

to inform the customers with each delivery that the filters may not be used for devices according to claim 1 of EP 2 061 575 and to require the customers to sign a cease-and-desist declaration, subject to a contractual penalty, stating that the filters will not be used in devices according to claim 1 of EP 2 061 575;

3. in the event of a violation of the orders pursuant to I.1. and/or 2., to pay the court a penalty of up to EUR 250,000 for each case of violation, whereby a penalty of EUR 50,000 shall be imposed for each device distributed in accordance with
I.1. a penalty payment of EUR 50,000 shall be imposed for each device distributed in accordance with I.2. and a penalty payment of EUR 7,500 shall be imposed for each filter in accordance with I.2.
4. within a period of 30 days after delivery of the notification within the meaning of R. 118.8 S. 1 VerfO and, if applicable, the certified translation thereof, and to provide an account in a list structured by month of the calendar year and by patent-infringing products of the acts of infringement committed since 7 September 2013 in accordance with I.1. and I.2., stating
 - a) the origin and distribution channels of the infringing products;
 - b) the quantities produced, manufactured, delivered, received or ordered and the prices paid for the products referred to in I.1. and I.2. and

- c) the identity of all third parties involved in the distribution of the products referred to in I.1. and I.2.
5. within a period of 30 days after delivery of the notification within the meaning of R. 118.8 S. 1 VerfO and, if applicable, the certified translation of the claimant to verify the information provided in accordance with I.1., plus the information on the profit achieved, the following documents for each month of a calendar year and for each patent-infringing product in electronic form that can be evaluated using a computer:
- a) invoices – or, if these are not available, delivery notes – for the individual deliveries, breaking down the respective deliveries by offer quantities, offer times, prices of the goods offered and type designations, as well as the names and addresses of the commercial recipients of the sales offers for all products sold or otherwise disposed of;
 - b) Evidence of the advertising carried out, including evidence of these advertising activities, broken down by advertising medium, distribution, distribution period and distribution area;
 - c) Evidence of the costs, broken down by individual cost factors and profits achieved;
 - d) Invoices – or, if these are not available, delivery notes – and corresponding statements of all costs incurred, which the defendant refers to in calculating its profits;
- the accuracy of which shall be verified and confirmed by a certified auditor appointed by the claimant at the defendant's expense, whereby the auditor shall be bound to maintain confidentiality towards the claimant with regard to the above-mentioned information;
6. within a period of 30 days after delivery of the notification within the meaning of R. 118.8 sentence 1 VerfO and, if necessary, the certified translation at the defendant's expense
- a) to destroy at its own expense the products referred to in I.1. and I.2. in its direct or indirect possession and/or ownership, or, at its discretion, to hand them over to a bailiff to be appointed by the claimant for the purpose of destruction;
 - b) to recall the products referred to in I.1. and I.2. and placed on the market since 7 September 2013 from commercial customers in writing, referring to the finding of patent infringement by the Unified Patent Court and with a binding undertaking to reimburse any fees and to bear the necessary packaging and transport costs as well as the customs and storage costs associated with the return, and to return the products to

to be provided to the claimant, whereby the claimant shall be given a sample of the recall letters and a list of the addressees with their names and postal addresses or, at the defendant's discretion, a copy of all recall letters;

7. within a period of 30 days after delivery of the notification within the meaning of R. 118.8 S. 1 VerfO and, if necessary, the certified translation, to permanently remove the products referred to in I.1. and I.2. that have been on the market since 7 September 2013 from the distribution channels, whereby the following measures in particular must be taken:
 - a) the defendant must take all possible and reasonable measures to identify the locations and owners of the products referred to in I.1. and I.2.;
 - b) insofar as the defendant itself has legal or actual power of disposal over the products referred to in I.1. and I.2., the legally permissible and reasonable measures must be taken to ensure that these products come into the direct possession of the defendant and remain there;
 - c) insofar as the defendant has neither legal nor actual power of disposal over the products referred to in I.1. and I.2. , it must take all legally permissible and reasonable measures to induce the persons who have claims for surrender or destruction against the holders of power of disposal over the products to assert these claims and/or to support these persons in asserting these claims.
 - II. The defendant is obliged to compensate the plaintiff for all damage incurred and to be incurred as a result of the actions referred to in I.1. and/or I.2. since 7 September 2013.
 - III. The defendant is ordered to pay the plaintiff an amount of EUR 100,000 as provisional damages.
 - IV. The judgments pursuant to I. to III. are effective and enforceable immediately.
 - V. The defendant shall bear the costs of the legal dispute.
15. The defendant requests:
- II.1. It is established that the plaintiff has not proven that the defendant infringes claim 1 of European patent EP 2 061 575 B1;
 - II.2. Consequently, the action of 14 June 2024 is dismissed.
 - II.3. In the alternative to claims II.1. and II.2., the defendant is ordered to pay the claim of 14 June 2024 only subject to the following conditions, which are also interdependent in an alternative relationship:

- a. The injunction pursuant to item I.1. of the claims contains the specific model names (LDF 300, LDF 500) and a specific technical description of the infringing devices.
 - b. The injunction pursuant to Section I.2. of the claims is only granted to the extent of the plaintiff's alternative claim, whereby the obligation to demand a cease-and-desist declaration subject to a contractual penalty is deleted.
 - c. The judgment against the defendant is limited to actions after 19 October 2018 due to the statute of limitations.
 - d. The defendant's conviction is limited to acts in Germany, alternatively in Germany and Austria, and further alternatively within the Member States of the Treaty.
 - e. No lump sums shall be set as penalty payments.
 - f. Reimbursement of the plaintiff's damages and payment of provisional damages shall be reduced to an appropriate amount in accordance with the damages presented and proven by the plaintiff.
- III. The plaintiff is ordered to pay the defendant an amount of EUR 40,000 as provisional reimbursement of costs.

Counterclaim

16. The defendant requests

that the contested patent EP 2 061 575 B1 be declared invalid in its entirety in all member states of the agreement.

17. The third counter-defendant requests

that the counterclaim for invalidity be dismissed.

Request for amendment of the patent

18. The third counter-defendant requests

that the counterclaim for revocation be dismissed, alternatively, that the counterclaim for revocation be dismissed to the extent of auxiliary requests 1 to 7,

correspondingly, with regard to the infringement proceedings,

the defendant be ordered to pay damages to the extent requested in the statement of claim, but in each case based on the upheld version of the claim according to the respective auxiliary request.

19. With regard to the wording of the alternative motions, reference is made to the set of documents K 20.

20. The third-party defendant has clarified that the auxiliary requests are to be submitted in the order 1 to 7.
21. The defendant opposed the requests to amend the contested patent, as the proposed amendments were not admissible
or
the patent in dispute cannot be maintained as requested.
22. The defendant also opposed the request for a judgment in accordance with the auxiliary requests. The patent in dispute was not infringed even in the version of the auxiliary requests.

FACTUAL AND LEGAL ISSUES IN DISPUTE:

Legal standing

23. The plaintiff argues that it has standing to sue on the basis of the power of attorney and assignment declaration dated 23/29 May 2024, submitted as Exhibit K 4. On the plaintiff's side, the agreement was signed by its managing director Martin Schnabl, which he also confirmed in his witness statement (Exhibit K 17). The third-party counter-defendant is the sole heir of Mr Helmuth Schulz, named in the patent specification at issue, and thus his universal successor.
24. The defendant, on the other hand, points out that the agreement (Exhibit K 4) is not the licence agreement itself, but only a written confirmation of a licence agreement that had already been concluded previously. The form and content of the original licence agreement are just as unclear as any choice of law. If the licence was granted verbally, it is unclear whether this is sufficient under the national law of the countries asserted in the action and whether the written confirmation remedies any formal defect. Furthermore, it is not explained whether the third-party counter-defendant could also transfer claims prior to 2 July 2018, the date of universal succession, and whether the requirements for the assignment of compensation and damages claims under the respective national law of the states named in the action had been met. The plaintiff had not sufficiently demonstrated its authority.

Scope of protection

25. The plaintiff essentially argues as follows with regard to the scope of protection:
26. Contrary to the defendant's opinion, the rotating body does not have to be "closed". The decisive factor is that it can achieve the desired technical effects with the filter, namely, in particular, rotating and guiding the mass to be filtered through the filter into the interior of the rotating body and from there into the discharge channel. According to the specifications of the claim, the filter is part of the filter insert. Accordingly, parts of the filter could also form the filter insert and thus also influence the shape of the hollow rotating body.
27. If the claim requires that a filter be arranged at the front end of the rotating body, it does not follow that there can only be one filter. Whether additional

The claim does not specify that there are other filters in addition to this filter. This also follows from the fact that, according to the specifications of the claim, the filter insert comprises a filter. This makes it clear that it is not the only element of the filter insert and the rotary body. The accessibility of the rotating body when the housing is opened is already apparent from the fact that the large surface area of the filter is exposed when opened and is therefore easily "accessible" – in contrast to the cylindrical design known in the prior art. Since accessibility is thus ensured by this design, it is also irrelevant how the rest of the rotating body is designed or whether the hollow rotating body has an additional filter in addition to the filter according to the invention. It should also be clarified that the indefinite article "a" does not describe the numeral "1". There are also no technically compelling requirements to understand the indefinite article "a" as a numeral. The accessibility and ease of replacement of the disc-shaped filter arranged at the front of the rotating body is not affected by the fact that a further filter is arranged at the rear of the rotating body. In paragraph [0019], the contested patent itself mentions the possibility of a two-part design of the filter.

28. Contrary to the defendant's opinion, the "interaction" between the screw conveyor and the filter insert does not only occur when the screw conveyor or the filter disc is in constant motion every second. Continuous filtering only stipulates that filtering should not be interrupted by the need to remove contaminants from the filter disc or, in extreme cases, even remove the filter disc when contaminants have occurred. Rather, the cleaning and removal of contaminants should take place at the same time as the flow of the plastic melt, without this necessarily requiring that this further cleaning take place at every moment.
29. The requirement that the scraper be positioned behind the screw conveyor depends solely on the material flow and not on the axis of the screw conveyor. In order for the screw conveyor to be able to pick up the contaminants, the scraper must be positioned at its end, where the screw conveyor is located, behind the screw conveyor in the direction of flow.
30. The defendant essentially argues as follows with regard to the scope of protection:
31. The housing does not necessarily have to correspond to the structure in the example of embodiment, especially since this structure is specifically protected in subclaim 4. Nevertheless, the structure of the housing must comply with the specification in the general description of the invention in paragraph [0007], according to which, due to their design, the filters are always immediately exposed and accessible when the housing is opened, thus allowing for quick and easy filter replacement.
32. The rotating body must be designed as a hollow body through which molten plastic flows. This design means that, after the disc-shaped filter has been inserted, the rotating body forms a cavity into which the molten plastic can penetrate. A mere filter carrier that is open on two sides does not meet the requirements for a hollow body.
33. A device that meets the requirements comprises only one filter. The fact that the specification is a numerical restriction follows from the consideration that the spatial

arrangement of a filter on the front side of the rotating body is only possible on this one side (i.e. the front side and not the rear side). The spatial location on the front side must be taken seriously because the contested patent does not assume that the entire filter insert, consisting of a rotating body and a filter disc, will be dismantled, but only that the filter will be replaced. It follows from paragraph [0011] that removal of the filter insert is to be avoided. The possibility of using several screw conveyors and scrapers does not mean that several filter discs can be used. Rather, it means that contamination can be removed at several points on the level of one filter disc. Insofar as paragraph [0019] mentions alternative designs in which the filter disc is also arranged on the opposite side of the rotating body (ring disc 6) or on both sides, these alternative designs contradict the wording of the patent claim.

34. The "interaction" between the screw conveyor and the filter insert required by the claim is to be understood as meaning that continuous cleaning of the filter disc takes place. This is because the contested patent criticises the lack of continuous cleaning of the filter (specifically: filter inserts) in the prior art in paragraph [0003] and sets itself the task of achieving a high degree of cleaning of the plastic melt in paragraph [0005]. According to the teaching of the contested patent, this high degree of cleaning is achieved by continuously cleaning the filter disc so that full filter performance is always available. This is made clear in several places in the description and in the presentation of the embodiment (see paragraphs [0007], [0008], [0009], [0017], [0019]). The patent description states throughout that the filter element rotates during the filtration process (i.e. when the molten plastic passes through the filter) and is continuously cleaned by the discharge device (scraper and screw conveyor). According to the teaching of the contested patent, only partial or intermittent cleaning of the screw conveyor is not provided for, since continuous cleaning and thus the full filter surface area are necessary in order to achieve the high degree of cleaning of the plastic melt required for the task.
35. The spatial requirement that the scraper be arranged behind the screw conveyor is to be understood to mean that the part of the scraper that touches the filter disc (i.e. the scraper tip or scraper edge) is arranged behind the centre of the screw conveyor's axis. This is the only sensible technical option. This is because the embodiment described in the patent allows the scraper to protrude into the area of the screw conveyor and still be positioned "behind" the screw conveyor. Against this background, an interpretation according to which the spatial arrangement behind the screw conveyor is to be understood as beyond the outer circumference of the screw conveyor is ruled out. Insofar as the plaintiff argues that it is the opposite end of the scraper that is relevant and that this must be located completely behind the screw conveyor, this view is not supported by the patent specification. The scraper is not divided into sections in the patent specification, and there is no mention of the "end of the scraper" or "end point of the scraper" at any point. Paragraph [0017] rather proves that the patent in dispute only refers to the scraper where it touches the filter. For this reason, the claim also contains the requirement that the scraper be positioned against the filter. The tip of the scraper is therefore relevant. From the point of view of a person skilled in the art, this is also understandable because this is where the filter disc is cleaned.

Infringement

36. In the plaintiff's opinion, the contested embodiment literally fulfils all the features of patent claim 1. It essentially argues as follows:
37. If the concept of a hollow rotary body is correctly understood, such a body can also and precisely be recognised in the sectional drawings submitted by the defendant. Figure 12 below shows that this filter insert is designed in such a way that the molten plastic penetrates through the filter elements into the interior of the filter insert in the form of the rotational body and is then directed into the discharge channel:

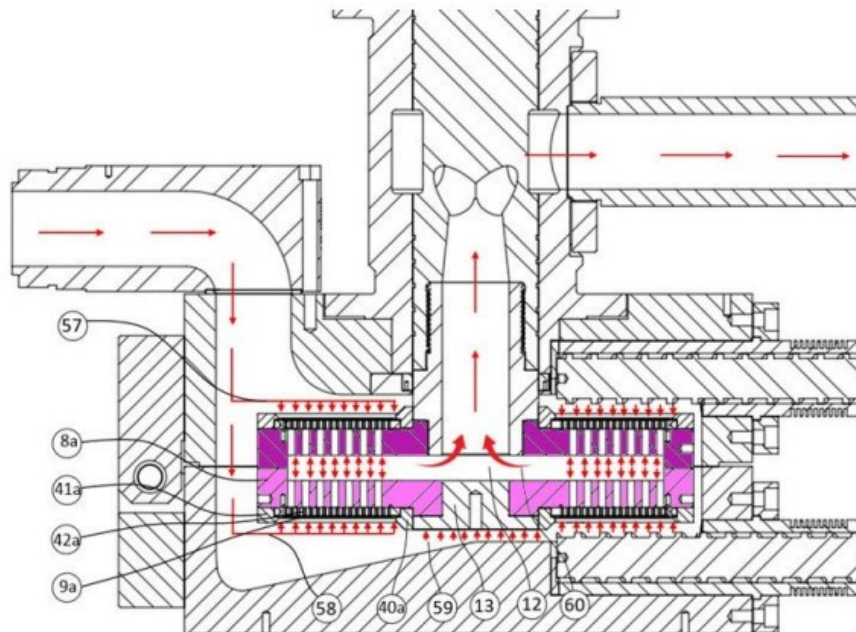


Abbildung 12 – Schnittzeichnung durch die angegriffenen Ausführungsformen

38. Figure 12 also shows that simply by screwing together the two open frames 8a and 8b, a (laterally closed) filter insert is created, to which the filters 9a and 9b are then attached.
39. The contested embodiment has a disc-shaped filter at the front of the rotary body, as specified in the claim. Whether or not there is also a filter on the opposite side of the filter insert is not specified in the claim. The fact that the entire unit must always be removed when changing the filter also does not constitute an infringement. The contested patent also considers this to be advantageous in paragraph [0011].
40. In the contested embodiment, the scraper is also located behind the screw conveyor, if understood correctly. This is evidenced by the following illustration of the design of the contested embodiment shown by the defendant:

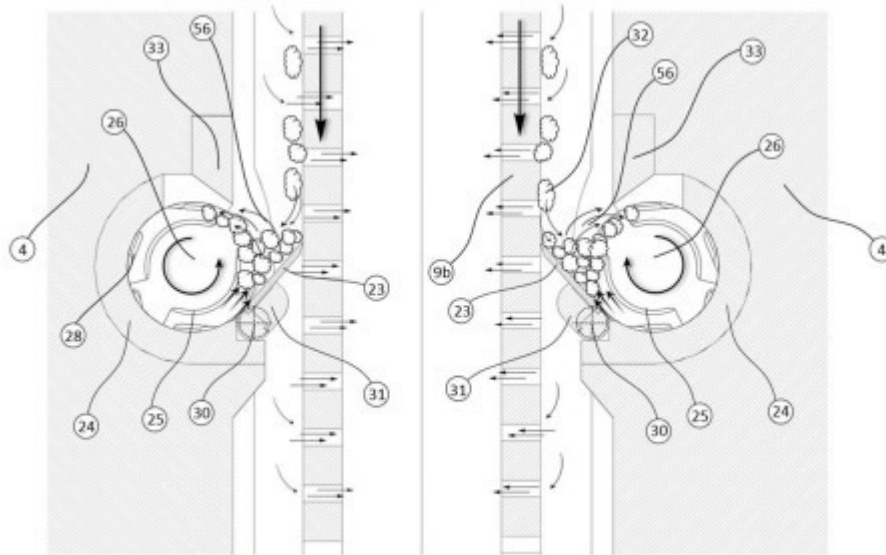


Abbildung 18 – Schnitzzeichnung durch die angegriffenen Ausführungsformen

41. This illustration shows that the design and arrangement of the scraper ensures that all contaminants are fed to the screw. It is technically irrelevant whether the area of the scraper that rests against the disc is slightly further forward or not.
42. The defendant, on the other hand, argues that the contested embodiment does not make use of claim 1 of the contested patent. It essentially argues as follows:
43. The contested embodiment does not provide for a hollow rotating body which forms a cavity after the disc-shaped filter has been inserted. Instead, the filter discs are attached to two filter carriers, which are then joined together. There is no hollow body into which the molten plastic (through the filter disc) penetrates and then remains in the cavity to be pressed into the discharge channel.
44. The contested embodiment has an additional filter on the rear side of the rotary body, which is no longer located on the "front side". There are always two filter discs, which are mounted on the front and rear filter carriers. Due to this double-sided design, only the front filter disc is accessible when the housing is opened and is located on the "front side" of the carrier structure, while the rear disc on the rear side of the carrier structure is not accessible. In order to replace the two filter discs, it is necessary to remove the entire support structure, which weighs almost 100 kg, which cannot be done without special tools and the use of a crane. Replacing the filter discs and getting the system back up and running takes a total of about four to six hours.
45. In the contested embodiment, the screw conveyor does not interact with the filter insert in the manner specified in the patent, as there is no continuous cleaning of the respective filter disc, which is necessary according to the correct understanding. Instead, the rotational speeds of both the filter screws and the conveyor screws varied until the filter discs and/or conveyor screws came to a standstill.

46. In the contested embodiment, the scrapers are not located behind the conveyor screw, or more precisely, behind the centre of the conveyor screw, but in front of it. This can also be clearly seen in the figure shown below, in which the sectional drawing has been rotated by the contested embodiment to produce the same view as in Fig. 2 of the contested patent:

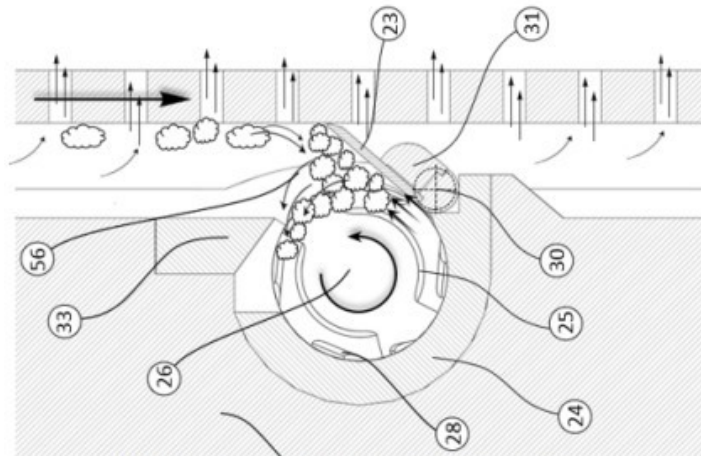


Abbildung 14 – Angegriffene Ausführungsformen

47. This arrangement in front of the centre of the screw conveyor has the technical reason that the scraper should form a collection chamber for contaminants. Contaminants that are scraped off by the scraper initially collect in the space between the scraper and the screw conveyor. This prevents the collected contaminants from coming into contact with the surface of the filter disc. The scraper extends like a roof over the collection chamber and protects the filter disc from contamination. Such a design deviates from the teaching of the patent (see paragraph [0013]), according to which the dead space between the scraper and the screw should be kept as small as possible.
48. Even if one were to take as a basis the plaintiff's incorrect interpretation, according to which the scraper – i.e. the end area of the scraper – must be arranged behind the conveyor screw, the requirement would not be met. This is because, when looking at Figures 13, 14 and 15 submitted by the plaintiff, it can be seen that the end area of the scraper is located above the conveyor screw and not behind it. This can also be seen from the CAD drawing shown below, which shows a cross-section of the contested embodiment:

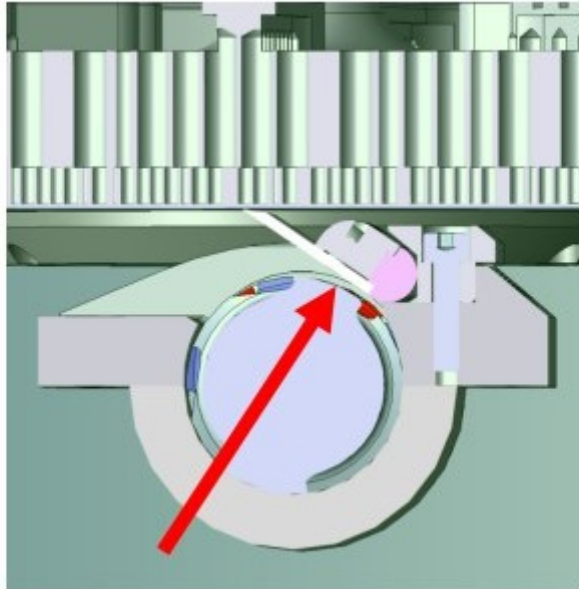


Abbildung 17 – CAD-Schnittzeichnung durch die angegriffenen Ausführungsformen

49. The contested embodiment is based on the prior art, which the defendant has further developed. In particular, it has taken up the system known from EP 0 655 268 A2 (Annex B 9), but also other prior art. However, it has further developed the working principle of the filter device compared to the prior art. Specifically, it had developed a system that was controlled by delta P (pressure difference) and avoided continuous rotation of the filter discs and screw conveyors, activating them only when necessary. It had applied for a patent for its further development with PCT application WO 2022/060318 A1 (Exhibit B 10).

Acts of use

50. The plaintiff argues that the defendant offers and distributes its products, both the systems and the disc-shaped filters, throughout the European Union. This is evident from the design of the website submitted as Exhibit K 8, which is available not only in German but also in other languages, in particular English, and is therefore aimed at all European countries. The other documents also clearly confirm this. Finally, the defendant also exhibits at Europe-wide trade fairs, such as the "PRS Europe" trade fair on 19/20 June 2024 in Amsterdam.
51. Contrary to the defendant's opinion, it is not necessary to present all possible courses of action. Because the defendant is a manufacturing company, there is also a risk of infringement for manufacturing within the EPG countries.
52. The filter discs were offered at the "Fakuma" trade fair in Friedrichshafen from 17 to 21 October 2023, for example. The filter discs offered by the defendant are always designed in such a way that they can be used for a specific system, namely either for a system of the plaintiff or for a system of the defendant.

53. The defendant emphasises that the contested embodiment is manufactured exclusively in Turkey. The plaintiff has not demonstrated any relevant infringement in the countries in which the disputed patent is valid. None of the contracting member states referred to in the action are supplied by the defendant with the contested embodiment. The contested embodiment is distributed via separate export companies, including Altek Endüstri Makine San. ve Diş Tic. Ltd. Şti. (hereinafter: Altek Endüstri). Contrary to the plaintiff's representation, this is not merely the defendant's distribution arm, but a legally separate company.
54. The documents submitted by the plaintiff as evidence of an infringement by the defendant (Annexes K 8 to K 11) are insufficient to prove an infringement. For example, the defendant's German-language website (Exhibit K 8) does not contain any details about the contested embodiment. Contrary to the plaintiff's representation, its structure is also not undisputed. For example, the positioning of the scraper as shown in Exhibit K 11 is incorrect. The English-language flyer on the contested embodiment (Exhibit K 9) also only shows the LDF models in general terms and without technical details. The offer for an LDF 500 microfiltration system to a recipient in Belgium, submitted as Exhibit K 10, dates from before the start of the EPG and must therefore be assessed under Belgian law. Furthermore, Exhibit K 10 is not an offer made by the defendant, but by Altek Endüstri. The question of attribution must be assessed under Belgian law, on which the plaintiff has not made any submissions. Finally, the technical presentation in Exhibit K 11 does not accurately reflect the actual structure of the contested embodiment and is, moreover, only an internal document.
55. The plaintiff's assertion that the manufacture, supply and distribution of filter discs by the defendant for the plaintiff's systems is undisputed is incorrect. This is disputed by the defendant. The plaintiff's filter discs have larger holes or indentations on their outer edge, as they are screwed onto the rotating body. The defendant's filter discs, on the other hand, do not have such connection holes, as they are clamped in two retaining rings. However, by adding holes at a later date (by the plant operator), third-party filter discs could also be used in the plaintiff's systems. Therefore, an outright ban would be disproportionate, as this could also affect the filter discs for the defendant's systems.

Indirect patent infringement

56. The plaintiff argues that offering and distributing filter discs, which are also offered as spare parts, constitutes an indirect patent infringement.
57. No exhaustion has occurred, even if the filters are distributed for the plaintiff's systems.
58. The decisive factor in distinguishing between repair and new manufacture is whether the technical effects of the invention are also apparent in the replaced wear part, either because this part is responsible for the advantages of the patent or because the invention influences its mode of operation or service life, so that the advantages of the invention are specifically reflected in the replaced part. In the case in dispute, the advantages of the invention are linked to the spare part relevant here, i.e. the disc-shaped filter. With the disc-shaped design of the

filter, the invention according to the contested patent combines a simple design with easy, quick and problem-free filter replacement.

59. The delivery of spare parts in the knowledge that they would be used for the patented systems also constitutes an act of aiding and abetting the direct patent infringement and therefore also justifies the claims asserted.
60. The defendant, on the other hand, is of the opinion that there is no indirect patent infringement through the offering of filter discs. The plaintiff itself refers to literature sources according to which the delivery of replacement or spare parts to an "authorised person" within the meaning of the principle of exhaustion under Article 29 EPCU takes place if the replacement process on the product is part of the normal use of the product, which must be expected during distribution. This is the case here. The filter discs are a component that costs only a fraction of the filter system and whose replacement is a regular matter that is necessary at relatively short intervals. Nor is the value of the invention realised in the filter disc. Filter devices with disc-shaped filters are known in various ways from the prior art.

Legal issues

61. The defendant argues that it is unclear whether the EPG has jurisdiction over infringements of European patents committed before 1 June 2023. If the EPG is to consider itself competent, the relevant national law must be applied.
62. The respective national law must also be applied to the limitation period with regard to any infringements prior to 1 June 2023.
63. If, on the other hand, the EPO also applies the substantive law of the EPC to acts committed before 1 June 2023, claims are time-barred under Article 72 EPCU if the plaintiff had knowledge of the acts before 19 October 2018, which is undisputed in this case. Article 72 EPCU is to be understood as a time limit for financial claims relating to the past.
64. It is also necessary to specifically name the infringing embodiment in the operative part of the decision and to describe its technical features in detail. A mere reproduction of the patent claims is not sufficient.
65. The plaintiff, on the other hand, is of the opinion that the EPG is also responsible for claims arising before 1 June 2023.
66. The limitation period has not expired. According to Article 72 EPCU, the five-year limitation period begins on the date of knowledge, i.e. 19 October 2023.

Legal consequences

67. The defendant is of the opinion that an application for an injunction does not meet the requirements of proportionality and fairness if it lists all the contracting member states in which the disputed patent is apparently validated without proving that

infringements have actually taken place or are imminent in all these contracting member states. The statement of claim does not contain any information on infringements outside Germany.

68. In any case, manufacturing or exporting should not be included in the operative part of the judgment because it does not constitute an act of infringement within the meaning of Article 25(a) EPC.
69. Furthermore, the plaintiff has neither proven nor presented evidence that the defendant uses the contested embodiment in the contracting member states or imports and/or possesses it for use. Even if proof of an act of infringement were considered sufficient, this would not apply to manufacturing as opposed to the other types of acts.
70. The absolute prohibition demanded is not provided for in Article 26 of the EPCU and is also disproportionate, as the disc filters for plastic recycling plants are all constructed in the same way and have similar dimensions. Due to the tolerances provided for, filter discs from other manufacturers could also be used. For example, it is possible to take a disc from the defendant and drill holes in it at the appropriate places for screwing it into another plant. Filter discs for the defendant's plants could thus be modified by the defendant's customers in such a way that they could be screwed into the plaintiff's plants. Therefore, an absolute prohibition would effectively lead to a sales ban on filter discs, even for the defendant's own plants.
71. The demand for a cease-and-desist declaration with a contractual penalty from the defendant's customers is also disproportionate. It is already unclear whether the plaintiff or the defendant should be the recipient of the contractual penalty promise. Such a contractual penalty clause is also not necessary for purely commercial customers, as it can generally be assumed that they would refrain from using the product in accordance with the patent as a result of a mere warning notice.
72. It is also disproportionate and violates Article 82(4) EPCU that the applicant itself determines the amount of the penalty payment in its application and does not leave this to the discretion of the court.
73. Insofar as the request for information covers actions relating to areas outside the contracting member states, it is disproportionate. In this respect, the applicant has no legally justified interest in obtaining the information.
74. The asserted right of recall is already disproportionate insofar as it concerns the filters, since these could also be used elsewhere.
75. In the absence of special circumstances, there is no room for removal from the distribution channels in addition to the recall request. The contested embodiment is neither harmful to health nor comparable in terms of risk, nor are the products attributable to the plaintiff.
76. According to the powers of the EPG, the claim for destruction could only concern products within the contracting member states, not those outside them. Furthermore, this claim was also disproportionate. The destruction of the contested embodiment would have devastating negative effects on the environment. The court should therefore in any case

take into account the environmental consequences of such destruction, and allow the sale of the remaining copies of the contested design, subject to the payment of a fixed licence fee per design sold.

77. In its rejoinder, the defendant also argues that destruction would be disproportionate under Article 64(4) of the EPC if the contested devices could instead be modified to a non-infringing state. Should the EPC require further submissions on this point, the defendant requests that it be notified accordingly.
78. With regard to the claim for damages, it is unclear whether this is a claim for payment that has not yet been quantified or a general claim for a declaratory judgment. Furthermore, the plaintiff has neither argued nor proven that it manufactures and distributes its own devices in accordance with the patent in dispute in the contracting member states. As long as it does not submit this, its damages can only consist of lost licence fees, not its own loss of profits or the infringer's profits. This should be clarified accordingly. In addition, the statute of limitations must be observed.
79. The plaintiff's claim for provisional damages is based on the infringing acts themselves, which is insufficient. Rather, the plaintiff must demonstrate the defendant's lost profits or turnover figures. An amount exceeding the anticipated legal costs of the prevailing party for the proceedings is not reasonable without specific justification. Furthermore, the defendant does not sell or deliver its systems to the member states of the agreement. Insofar as the plaintiff states, with regard to the delivery of replacement filter discs, that it has sold approximately 50 systems based on the invention in Europe, this is disputed on the grounds of lack of knowledge. In addition, there are various other companies that offer filter discs for the plaintiff's systems.
80. An amount of EUR 40,000 is to be ordered in favour of the defendant as provisional reimbursement of costs.
81. The plaintiff also considers an unrestricted conviction of the defendant to be necessary with regard to the indirect patent infringement. The disc-shaped filters cannot be installed in a system that does not infringe the patent. Specifically, the respective discs are always designed, suitable and intended for a specific system. Insofar as the defendant argues that it is possible to use the filters for another system by providing additional drill holes, this is disputed on the grounds of lack of knowledge. It is also legally irrelevant because the defendant's systems also infringe the patent. In addition, systems from the Ettliger company are in use in the competitive environment, but these use cylindrical filters.
82. The specified penalty payment is a suggestion on their part; it is, of course, up to the court to determine the amount. However, based on the costs for a complete system or for the individual filters, the information appears to be reasonable.
83. The request for information was related to the injunction and therefore only information for the scope of the EPGÜ was requested.
84. The negative effects on the environment of destroying the patent-infringing plant, as claimed by the defendant, were not substantiated in detail. The defendant clearly

defendant was of the opinion that destruction could lead to CO₂ emissions to a certain extent. This was not sufficient to justify disproportionateness.

85. The asserted provisional claim for damages in the amount of EUR 100,000 is justified because, according to Exhibit K 10, the defendant's equipment is offered for a price of EUR 135,000 and the price for a filter is significantly above EUR 1,000.
86. The claim for reimbursement of costs asserted by the defendant as a counterclaim has nothing to do with the provisional claim for damages. There is no basis for this, especially since filing a lawsuit does not constitute an unlawful act.

COUNTERCLAIM FOR ANNULMENT

87. In its third-party counterclaim, the defendant asserts that the patent in dispute is not based on an inventive step, Art. 56 EPC.
88. The publication WO 715 (NK 1) cited in the contested patent represents the closest prior art, as it relates to the same technical field and also displays most of the features of claim 1. NK 1 merely does not show the sub-feature according to which the filter is disc-shaped. Accordingly, the optionally formulated sub-feature according to which the screw conveyor is preferably arranged with its axis of rotation parallel to the disc plane is also not shown. However, the skilled person would refer to NK 2 in this regard.
89. Reference is also made to AT 399844B (NK3) and AT 404562B (NK 4).
90. The other documents NK 5 to NK 13 are also relevant for assessing patentability, as they all relate to devices that are at least suitable for the continuous filtering of plastic melts.
91. The third counter-defendant is of the opinion that the defendant is right to assume NK 1 as the closest prior art. However, based on NK 1, a person skilled in the art would not use NK 2 for further development and, in any case, no subject matter according to claim 1 of the contested patent would result.
92. Insofar as the defendant presents further embodiments from the prior art, there is a lack of relevant factual submissions for assessing the inventive step.

LEGAL ASSESSMENT:

A. Admissibility of the infringement action and the counterclaim for revocation

I. Action

93. The infringement action is admissible.
94. The jurisdiction of the EPG and the Local Chamber in Düsseldorf is deemed to have been accepted, as the defendant did not file a provisional opposition within the time limit specified in Rule 19(1) of the Rules of Procedure, Rule 19(7) of the Rules of Procedure.

II. Counterclaim

95. There are no concerns regarding the admissibility of the counterclaim.
96. In particular, the EPO also has international jurisdiction. Pursuant to Art. 32(1)(e) EPC, the EPO has exclusive jurisdiction over counterclaims for the revocation of (European) patents. Since there is currently no opt-out (Article 83(3) EPCU) from the exclusive jurisdiction of the court with regard to the contested patent, the EPC – as the common court of the member states of the EPCU – has international jurisdiction for the present counterclaim pursuant to Article 24(4), 71a(2)(a), 71b(1) of Regulation (EU) No 1215/2012.
97. The counterclaim is admissibly directed against the third-party defendant as the proprietor of the contested patent, R. 25(1), R. 42 of the Rules of Procedure.
98. The counterclaim also cites a ground for invalidity within the meaning of R. 25.1 (b) VerfO, namely the combination of NK 1 with NK 2.

III. New application by the plaintiff in the written statement of 10 November 2025

99. Insofar as the plaintiff introduced a new motion (motion under I.5.) into the proceedings in its written submission of 10 November 2025, in which it also requested for the first time that evidence be submitted for the information to be provided, this constitutes an extension of the action within the meaning of R. 263.1 VerfO. However, the conditions for the admission of the extension of the action are not met.
100. The plaintiff did not submit a motion for the admission of the extension of the action in its written statement of 10 November 2025. However, even if the wording of the new application is interpreted as an implied application under Rule 263(1) sentence 1 VerfO, the reasoning required under Rule 263(1) sentence 2 VerfO as to why the amendment or addition was not already included in the original written statement is lacking.
101. Furthermore, it is not apparent from the facts of the case that the conditions for admitting the extension of the action pursuant to Rule 263(2) of the Rules of Procedure are met. Taking all circumstances into account, the plaintiff was unable to convince the court that the amendment in question could not have been made earlier with due care.
102. Insofar as the applicant stated at the hearing that it had been prompted to file the new application by the rapporteur's procedural order in the interim proceedings of 10 November 2025, this argument does not exempt it from demonstrating that the requirements under Rule 263 of the Rules of Procedure have been met. Furthermore, the reference in section I.1. was merely intended to clarify the references to recall and permanent removal from distribution channels. Insofar as reference is made to case law there, this reference clearly relates to the version of the aforementioned applications and was not to be understood as meaning that all applications made in those proceedings can now also be made in the present proceedings, irrespective of the requirements of R. 263 VerfO. Furthermore, with regard to the requests for information, recall, removal from distribution channels and destruction, the Rules of Procedure merely contained a reference to the order of the Court of Appeal of 30 May 2025 (UPC_CoA_845/2024 – Belkin v. Philips) and the decision of the Court of Appeal of

3 October 2025 (UPC_CoA_534/2024 – Belkin v. Philips). The plaintiff correctly understood this reference to mean that it was necessary to include a deadline in the applications.

B. Right to bring an infringement action

103. As the exclusive licensee, the plaintiff has a right of action under Article 47(2) EPC.
104. According to Article 47(2) of the EPC, the holder of an exclusive licence in respect of a patent has the right to bring an action before the court in the same way as the patent proprietor, provided that the patent proprietor has been informed in advance.
105. Insofar as the defendant points out that it is unclear whether a licence granted verbally is sufficient under the applicable national law and whether any formal defects have been remedied by the written confirmation in accordance with Annex K 4, this is irrelevant. The agreement in accordance with Annex K 4 is not merely a written confirmation of a licence previously granted verbally, but rather a renewed grant. This is evident from clause 1 of the agreement, which reads as follows:

*"Ms Katharina Schulz **hereby transfers all rights of use** to EP 2 061 575 to M-A-S Maschinen- und Anlagenbau Schulz GmbH. The parties clarify that this is a granting of exclusive rights of use. M-A-S Maschinen- und Anlagenbau Schulz GmbH **hereby accepts the transfer of these rights of use.**"*

(Emphasis added)

106. The defendant's argument that the plaintiff had not demonstrated whether the third-party defendant could also have transferred claims prior to 2 July 2018, the date of universal succession, and whether the conditions for the assignment of compensation and damages claims under the respective national law of the states named in the action had been met, is also unfounded.
107. Since Article 47(2) of the EPCU states that the holder of an exclusive licence is entitled "in the same way as the patent proprietor" to bring proceedings before the court, it is already doubtful whether it is necessary to establish a transfer of claims for the past to the holder of an exclusive licence.
108. In any case, such a transfer has taken place in accordance with the provision under point 3 of the agreement, which is to be assessed under Austrian law and is unambiguous in its wording. The fact that the third-party counter-defendant was entitled to the corresponding transfer follows from its position as the universal successor to the former patent holder, which by its nature encompasses all claims relating to the past.

C. Expert

109. The Chamber defines the expert, in agreement with the defendant, as a technical college graduate in mechanical engineering who is involved in the development and design of filter systems for plastic recycling plants at a manufacturer of such plants and who has several years of professional experience in this field. The plaintiff did not contest this.

D. Scope of protection of the contested patent

110. With regard to the scope of protection of the contested patent, the following applies:

I. Subject matter of the contested patent

111. The contested patent relates to a device for continuously filtering impurities from molten plastic.
112. According to the introductory remarks of the contested patent, such devices are intended to remove contaminants from plastics, in particular plastics to be recycled, in an economical manner prior to further processing. The mixture to be processed contains contaminants (e.g. adhesive strips, labels, aluminium caps) that need to be filtered out (para. [0002]).
113. The contested patent states that it is difficult to separate these residual materials by exploiting differences in specific density, particularly in the case of small particles of dirt. The situation is further complicated by the fact that the degree of contamination can be high. This increases the cleaning effort and naturally places a considerable strain on the filters provided (para. [0002]).
114. According to the contested patent, the plastic is therefore first melted after rough cleaning and then conveyed through the device (para. [0002]).
115. The contested patent refers to WO 2004/002715 A (Exhibit K 5; hereinafter: WO 715 or NK 1) as prior art for providing the aforementioned devices for filtering heavily contaminated masses. A filter body with holes on the jacket side, rotating in a housing, is used as a filter insert, which retains the contaminants depending on the size of the holes. The impurities are scraped off the inflow side of the filter insert by a scraper forming the discharge device and removed from the housing by the screw conveyor. The holes in such filters are made, for example, by electron beams or lasers and are usually drawn onto or attached to a cylindrical support body.
116. The contested patent cites two disadvantages of this well-known design: firstly, after a filtering process – for example, for repair or replacement – it is difficult to remove the filter insert from the housing using standard tools. Such a change is usually only possible with great effort, whereby the filter insert is usually destroyed. Secondly, relatively long downtimes must be accepted for the maintenance of such devices, and such filters are relatively expensive (para. [0002]).
117. The contested patent also refers to the device for cleaning a melt known from DE 42 40 461 C1 (Annex K 6; hereinafter: DE 461). In this device, the filters are held in a disc in such a way that they can be replaced, with the filter elements being replaceably accommodated in recesses arranged in a circular path. The individual filters are thus arranged in a kind of drum magazine, which makes it possible to constantly insert new filters into the flow channel through which the melt flows. In this flow channel

channel, the disc is rotated by the angular offset between two filter inserts. Continuous cleaning of the filter inserts is not provided for (para. [0003]).

118. Finally, the contested patent states that devices for cleaning flowable masses, in particular for filtering out cellulose, are known, for example from WO 96/38214 A1 (hereinafter: WO 214) and EP 655268 A2 (hereinafter: EP 268) (para. [0004]).
119. Based on this, according to the description of the contested patent, the task (the technical problem) underlying the contested patent is to create a device of the type described above which avoids the aforementioned disadvantages and, with as simple a design as possible, allows for quick and easy filter replacement while enabling a high degree of purification of the mass (para. [0005]).
120. To solve this problem, claim 1 of the contested patent protects a device for continuously filtering impurities from a plastic melt, which is characterised by a combination of the following features:
 1. Device for continuously filtering impurities from a plastic melt, comprising
 - 1.1 a filter insert, and
 - 1.2 a discharge device for impurities retained by the filter.
 2. The **filter insert** (3)
 - 2.1 is in the form of a hollow body of revolution,
 - 2.1.1 which is mounted so as to be rotatable about its axis of rotation relative to a housing, and
 - 2.1.2 through which the plastic melt flows;
 - 2.2 is arranged in a flow channel of the housing, between
 - 2.2.1 a feed channel for the plastic melt to be filtered and
 - 2.2.2 a discharge channel for the plastic melt to be filtered, and
 - 2.3 comprises a filter (5).
 3. The **filter** (5) is
 - 3.1 arranged at the front end of the rotary body;
 - 3.2 disc-shaped and
 - 3.3 coaxial with the axis of rotation (A).
 4. The **discharge device** comprises
 - 4.1 at least one conveyor screw (9)

- 4.2 at least one scraper (10).
- 5. The **screw conveyor** (9)
 - 5.1 is arranged with its axis of rotation preferably parallel to the disc plane and
 - 5.2 interacts with the filter insert (3).
- 6. The **scraper** (10)
 - 6.1 is arranged in the direction of rotation of the filter insert (3) behind the screw conveyor (9), and
 - 6.2 is positioned against the filter.

II. Design

121. Some features require explanation:

1. Design principles

122. According to Art. 69 EPC in conjunction with the Protocol on its interpretation, the patent claim is not only the starting point but also the decisive basis for determining the scope of protection of a European patent. The interpretation of a patent claim does not depend solely on its exact wording in the linguistic sense. Rather, the description and drawings must always be consulted as aids to the interpretation of the patent claim and not only to resolve any ambiguities in the patent claim. However, this does not mean that the patent claim serves merely as a guideline and that its subject matter also extends to what, after examination of the description and drawings, appears to be the protection sought by the patent proprietor. In applying these principles, adequate protection for the patent proprietor should be combined with sufficient legal certainty for third parties. The patent claim must be interpreted from the perspective of a person skilled in the art. These principles for interpreting a patent claim apply equally to the assessment of the infringement and validity of a European patent (UPC_CoA_335/2023, order of 26 February 2024, headnote 2 and p. 26 f. – 10x Genomics v. NanoString; UPC_CoA_1/2024, order of 13 May 2024, para. 26 – VusionGroup v. Hanshow; UPC_CoA_182/2024, order of 25 September 2024, para. 82 – Mammut v. Ortovox).

2. Interpretation in individual cases

123. That said, the following applies:

a) Structure of the claim

124. Patent claim 1 describes a device for continuously filtering impurities from a plastic melt under protection (feature 1).

125. The device comprises a filter insert (feature 1.1) and a discharge device for impurities retained by the filter (feature 1.2).

126. The filter insert is then described in more detail in feature group 2. According to feature

2.3, the filter insert comprises a filter. The design of the filter is then the subject of feature group 3.

127. The discharge device, as described in feature group 4, comprises at least one screw conveyor and at least one scraper as its components. The design of the screw conveyor is the subject of feature group 5, and that of the scraper is the subject of feature group 6.
128. However, the housing is not expressly mentioned as a component of a device according to the invention, even though the claim regarding the filter insert specifies requirements with regard to its arrangement in relation to a housing (features 2.1.1, 2.2).
129. The interaction of the aforementioned components in the operation of the device according to the invention can be seen in the description of the embodiment in paragraph [0019]: The filter insert is set in rotation, the mass is pressed through the filter and impurities are scraped off the filter by means of the scraper. The impurities are then discharged from the housing by the discharge screw (conveyor screw).

b) Device for continuous filtering (feature 1)

130. The specification that a device is claimed "for continuously filtering impurities from a plastic melt" is a statement of purpose. The device must therefore be designed in such a way that it is suitable for continuously filtering impurities from a plastic melt. The spatial and physical design required for this is taken by the specialist in particular from the further specifications of the claim.
131. With the term "continuous filtering", the claim refers to the filtering process, but not to cleaning. The parties rightly agree on this point.

c) Feature group 2 (filter insert)

132. Feature group 2 describes the filter insert in more detail.
133. With regard to the design of the filter insert, feature group 2.1 specifies that it is in the form of a hollow rotary body which is mounted in a housing so that it can rotate about its axis of rotation and through which the molten plastic flows.
134. What the contested patent understands by a *rotary body* is initially apparent from the specifications of the claim itself. The filter insert can rotate in the housing of a device according to the claim (see para. [0007]). This enables the filtering process already described, in which the filter insert is set in rotation and the mass is pressed through the filter (see para. [0019]). The term "rotating body" therefore refers to a rotatable design, which is further specified in feature 2.1.1 in that the rotating body is mounted so that it can rotate relative to a housing.
135. The understanding of the further specification, according to which it is a *hollow* rotary body, becomes clear with regard to feature 2.1.2. According to this, the filter insert is flowed through by the plastic melt. Because claim 1 is a device claim, the skilled person does not derive from it the description of a specific operating situation, but rather, comparable to a purpose or function specification, a requirement.

the design of the filter insert. This must be designed in such a way that the molten plastic can flow through it. This is specifically ensured by the fact that the rotating body is hollow. In this way, the filter insert ensures that the mass to be cleaned is transported through the device, as described in paragraph [0019]:

"Contaminated plastic mass to be filtered is fed into the device through channel 7 and from there transferred via ring channel 12, disc-shaped filter 5 and the cavity of the filter insert 3, which is designed as a rotating body, into discharge channel 8 and discharged from the device in a purified state."

136. With regard to the arrangement of the filter insert, the claim specifies that it is arranged in a flow channel of the housing (feature 2.2), between a feed channel and a discharge channel for the plastic melt to be filtered (features 2.2.1, 2.2.2).
137. However, the contested patent does not contain any further requirements regarding the hollow design of the filter insert. In particular, the contested patent specification does not contain any indication that it must be a body closed on all sides, which is also not mandatory according to the wording. It is necessary, but also sufficient, that the filter insert is designed in such a way that the plastic melt can flow through it.
138. The claim also does not specify which components the filter insert consists of. In the embodiment described in the contested patent, the filter insert comprises a filter shaft 4 and a ring disc 6, to which the filter disc 5 is attached. In the embodiment, the ring disc 6 and filter shaft 4 are hollow in order to allow the filtered plastic to flow through them (see Fig. 1, Fig. 2, para. [0015]). However, the claim is not limited to this design. In particular, the filter insert may have further components in addition to the filter shaft and ring disc, which together form a hollow rotary body. In the absence of any other specifications, however, the hollow rotary body may also be formed entirely by other components. The decisive factor is that the component or components are (jointly) designed in such a way that liquid plastic can flow through them.
139. The filter itself, which is inserted into the housing together with the filter insert (see para. [0007]), is also a component of the filter insert according to claim 1. This is clear from the wording in feature 2.3, according to which the filter insert comprises a filter (more on this in a moment).

d) Feature group 3 (filter)

140. As just mentioned, the filter insert comprises "a filter" (feature 2.3). The filter, whose function is to filter the contaminated mass (para. [0019]), is described in more detail in feature group 3 with regard to its arrangement and design.
141. According to feature 3.1, the filter is arranged at the front end of the rotating body. The term "front end" usually describes the front or front side of an object, as agreed between the parties. The contested patent is also based on this understanding. This is because the corresponding arrangement of the filter allows

the filter is immediately exposed and accessible when the housing is opened, which enables quick and easy filter replacement (see para. [0007]).

142. The disc-shaped design according to feature 3.2 makes it easier to install and remove the filter from the housing than was the case, for example, according to WO 715, which is discussed in paragraph [0002], according to which the holes in the filters are mounted or attached to a cylindrical support body. In addition, the disc shape of the filter enables particularly simple and cost-effective production (paragraph [0007]).
143. According to feature 3.3, the filter is also coaxial with the axis of rotation (A).
144. The claim does not impose any requirements on the design of the filter beyond the specifications mentioned. For example, as expressly stated in para. [0007] (column 2, line 34), it may be designed as a single piece or in several parts. Even with the possibility mentioned in the description of the embodiment in para. [0019] of an arrangement "on both sides of the ring disc 6" mentioned in the description of the embodiment in paragraph [0019], the contested patent refers to the multi-part arrangement. It should also be mentioned that paragraph [0007] also uses the term "filters" in the plural when describing the aforementioned design features, where it states:

*"Since **the filters** are always immediately exposed and accessible when the housing is opened due to their design, the invention enables quick and easy filter replacement."*

(Emphasis added)

145. Paragraph [0011] also refers to the filters in the plural ("The filters can then be replaced or serviced.").
146. However, the claim does not exclude the provision of such additional filters that do not meet the requirements of feature group 3. The exclusion of such additional components in a device according to the claim cannot be inferred from claim 1 at any point and does not follow in particular from the fact that the filter insert according to feature 2.3 comprises "a filter".
147. The defendant's argument that it is made clear with regard to other components of the device that more than one component may be used (feature 4.1: at least one screw conveyor, feature 4.2: at least one scraper), whereas this is not the case with regard to the filter, is correct. In this respect, however, it applies that, in the case of the components of the discharge device mentioned in feature group 4, any components that are present multiple times also become part of the discharge device. This is clarified in paragraph [0009], for example, where it states:

*"... One or more scrapers and/or discharge screws may be provided, **which complement the discharge device.**"*

(emphasis added)

148. However, any further filter lies outside the scope of the claim and, against this background, does not have to meet the requirements of feature group 3.

149. This view cannot be countered by the argument that the advantage of particularly easy dismantling for maintenance or replacement purposes cannot be achieved if there is another filter which – because it is not located at the front of the rotating body, for example – is not immediately exposed when the housing is opened. Since the skilled person may, but is not required to, provide additional filters, it cannot lead to an infringement if the advantages of the invention are not achieved with regard to such additional filters. It is sufficient that the desired advantages can be achieved with regard to the filter designed in accordance with the claims, i.e. in accordance with the specifications of feature group 3.
150. Furthermore, the design of the housing proposed by the contested patent, with two housing halves that can be separated from each other for maintenance purposes, resulting in all essential wear parts being exposed for maintenance purposes (see paragraphs [0007], [0011], [0018]), is not reflected in claim 1. As already mentioned, this does not even mention the housing as a mandatory component of a device according to the claim. In any case, the claim does not specify any requirements for the design of a possible housing. Rather, a design with two detachably connected housing parts is only the subject of subclaim 4. Apart from that, the contested patent also mentions in para. [0011] the case of removing the filter insert:

*"... The filter elements can then be replaced or serviced, **if necessary without having to remove the filter insert**, as the individual components are immediately accessible after separating the two housing halves and do not have to be laboriously removed."*

(emphasis added)

151. Although, as indicated in paragraph [0011], it may be advantageous to be able to replace the filter(s) without removing the filter insert, this does not mean that this would not be in accordance with the claim, even if one examines the preferred embodiment according to subclaim 4 or considers it to be mandatory within the scope of claim 1. With regard to WO 715, which is discussed in paragraph [0002], the contested patent does not mention as a disadvantage the fact that the filter insert must be removed for the purpose of repair or replacement. Rather, it sees the disadvantage of this design in the fact that removing the filter insert with standard tools is difficult, that replacement is only possible with considerable effort and that the filter insert is usually destroyed. It also cites relatively long downtimes for maintenance and the high price of such filters as disadvantages. However, the fact that the filter cannot be removed on its own is not the subject of the criticism levelled at WO 715.

e) Feature group 4 (discharge device)

152. According to feature group 4, the discharge device comprises at least one screw conveyor and at least one scraper as its components.
153. The function of the discharge device is to continuously clean the filter of impurities that the filter has retained (see paragraphs [0008], [0017]). It fulfils this function by providing the components described in more detail in the following feature groups.

f) Feature group 5 (conveyor screw)

154. The first component of the discharge device is the screw conveyor described in feature group 5.
155. According to feature 5.1, the screw conveyor is preferably arranged with its axis of rotation parallel to the disc plane (feature 5.1). The reference to the "disc plane" refers to the disc-shaped filter (see feature 3.2). Since the feature is only a preferred ("preferably") design, the specified relationship between the axis of rotation and the disc plane is not mandatory.
156. With regard to the further requirement that the screw conveyor "interacts" with the filter insert (feature 5.2), it should again be noted that claim 1 is a device claim. The screw conveyor must therefore be designed in such a way that it is suitable for interacting with the filter insert. Whether such interaction actually occurs during the operation of a specific device is not decisive.
157. The contested patent describes how this interaction can be designed in paragraph [0008]:

"The discharge device interacts with the filter in such a way that the filter surface is continuously passed by the discharge device due to the rotary drive, whereby impurities retained by the filter are continuously separated from the device by the discharge device (paragraph [0008])."

158. The expert will recognise from the context of the description that the discharge device referred to here is solely the screw conveyor and not (also) the scraper as a further component. The description first describes in para. [0008] the interaction of the discharge device without a scraper, i.e. the screw conveyor, and then describes in para. [0009] the possibility of additionally providing a scraper "to increase the cleaning effect of the discharge device". Since claim 1 mandatorily provides for a scraper, it is the task of the screw conveyor to pick up the material scraped off by the scraper and remove it from the housing (see paragraph [0012], more on this in a moment).
159. Against the background of the above explanation, the specialist understands that the interaction involves the interplay of the components. The screw conveyor must be designed in such a way that it can fulfil its functions with regard to the filter insert. This is the case, for example, when it removes contaminants filtered out by the filter as part of the filter insert from the device.
160. The defendant is of the opinion that the interaction between the screw conveyor and the filter insert requires continuous cleaning of the filter disc. It derives this from the fact that the contested patent in paragraph [0003] criticises the lack of continuous cleaning of the filter (specifically: filter inserts) in the prior art and sets the task of achieving a high degree of purification of the plastic melt in paragraph [0005]. According to the teaching of the contested patent, this high degree of purification is achieved by continuous cleaning of the filter disc, so that full filter performance is always available. In addition, the defendant refers to several passages in the general description and the presentation of the embodiment (see paragraphs [0007], [0008], [0009], [0017], [0019]), from which it follows that

continuous cleaning. The patent description states throughout that the filter element rotates during the filtration process (i.e. when the molten plastic passes through the filter) and is continuously cleaned by the discharge device (scraper and screw conveyor). According to the teaching of the contested patent, only partial or intermittent cleaning of the screw conveyor is not provided for, since continuous cleaning and thus the full filter area is necessary in order to achieve the high degree of cleaning of the plastic melt required for the task.

161. This view cannot be accepted. The fact that the contested patent, under the interaction of the screw conveyor with the filter insert, only understands this to mean a "continuous" cleaning process in the sense of cleaning without interruptions or delays or even permanently at the same speed is not reflected in the claim, which only refers to "interaction". The fact that, according to the task at hand, a high degree of cleaning of the plastic melt is sought cannot limit the broader claim. In addition, according to the teaching of the contested patent, this objective is achieved, among other things, by providing a scraper which increases the cleaning effect of the discharge device (see para. [0009]). The passages from the patent specification cited by the defendant describe advantageous embodiments, but cannot limit the broader claim either.
162. However, even if one were to assume that the requirement for continuous cleaning could be inferred from this or another passage, this would not rule out interruptions in the cleaning of the screw conveyor. This is already the case because, as mentioned above, this is a device claim. As long as the screw conveyor is designed to enable continuous cleaning, the requirements of the claim would be met even from such a narrow perspective.

g) Feature group 6 (scraper)

163. The second component of the discharge device is the scraper mentioned several times above, which can be used to increase the cleaning effect of the discharge device compared to simply providing a screw conveyor (see paragraph [0009]). Insofar as the patent claim states that the discharge device comprises at least one scraper "next to" the at least one screw conveyor, the Chamber considers that this expresses that it is an additional component that increases the cleaning effect. However, the Board does not agree with the defendant's view, expressed in the oral proceedings, that this describes a spatial arrangement of the scraper "next to" the screw conveyor.
164. The scraper is arranged behind the screw conveyor in the direction of rotation of the filter insert (feature 6.1) and is positioned against the filter (feature 6.2).
165. The function of the scraper is to scrape material off the filter (see paragraphs [0012], [0013], [0018]), which is then transported out of the housing by the screw conveyor (see paragraph [0012]). A pressing device may also be provided to press the scraper against the filter (see paragraphs [0013], [0017]). However, this has not been included in the claim and is therefore not mandatory.
166. According to the teaching of the contested patent, the dead space between the screw and the scraper should be kept as small as possible

as possible (para. [0013]). Therefore, the contested patent describes it as advantageous if the scraper already forms part of the screw housing (para. [0013]), whereby, according to the understanding of the contested patent, the screw housing can consist of a housing half and the filter disc in addition to the scraper (cf. para. [0017]). However, such a design is not mandatory in the absence of a corresponding specification in the claim. Furthermore, as mentioned above, a design of the housing with two detachably connected halves is only reflected in subclaim 4, but not in claim 1.

167. The arrangement of the scraper in the direction of rotation of the filter insert "behind" the screw conveyor is not explained in detail in the contested patent. The contested patent specification refers to this feature both in the general description (para. [0009]) and in the description of the embodiment (para. [0017]), but without explaining it in detail.
168. The wording of the specification does not indicate that this refers to the arrangement of a complete component (scraper) in a specific direction (direction of rotation of the filter insert) behind another component. Nor does the embodiment shown in Figs. 1 and 2 show such a design. In addition, the contested patent mentions the possibility of designing the screw conveyor itself as a scraper (see para. [0012], subclaim 6). This argues against a view that the components must be strictly separated from each other.
169. From a functional point of view, it is crucial that contaminants scraped off by the scraper can be fed to the screw conveyor. According to the teaching of the contested patent, this is ensured by the arrangement of the scraper behind the screw conveyor in the direction of rotation. The contact area between the scraper and the screw conveyor is crucial here, because this is where the scraped-off contaminants are fed into the screw conveyor.
170. In contrast, the area of the scraper adjacent to the filter in the direction of rotation of the filter insert is irrelevant. In this respect, feature 6, according to which the scraper is positioned against the filter, ensures that the impurities are scraped off.
171. The central axis of the screw conveyor, on the other hand, is not relevant from a functional point of view.

E. (Un)founded nature of the counterclaim

172. The defendant's counterclaim for annulment is unsuccessful on the merits.
173. A lack of inventive step, which the defendant relies on alone, cannot be established on the basis of its submissions.

I. Standard

174. According to Art. 56 EPC, an invention is considered to involve an inventive step if it is not obvious to a person skilled in the art from the prior art.
175. According to the case law of the Court of Appeal, the following procedure must be followed when assessing inventive step (see UPC_CoA_464/2024, decision of 25 November 2025, headnotes 7 et seq., para. 131 et seq. – Meril v. Edwards; UPC_CoA_528/2024, decision of 25 November 2025, headnotes 10 et seq., para. 126 et seq. – Amgen v. Sanofi; see also UPC_CoA_335/2024,

order of 26 February 2024, p. 34 et seq. – Nanostring v. 10x Genomics):

176. First, it must be determined what the subject matter of the invention is, i.e. the objective task (the objective technical problem) must be identified. This must be assessed from the perspective of a person skilled in the art with their general technical knowledge at the time of filing or the priority date of the patent (relevant date). To this end, it must be determined what contribution the invention makes to the state of the art, not by considering the individual features of the claim, but by comparing the claim as a whole in conjunction with the description and drawings, taking into account the inventive concept underlying the invention (the technical teaching), which must be based on the technical effect or effects that the skilled person understands to have been achieved on the basis of the application with the claimed invention.
177. In order to avoid retrospective consideration, the objective problem should not contain any references to the claimed solution.
178. The claimed solution is obvious if, at the relevant time, the skilled person, starting from a realistic starting point in the prior art in the relevant field of technology and with the aim of solving the objective problem, would have arrived at the claimed solution and not only could have arrived at it.
179. The relevant technical field is the specific field relevant to the objective task to be solved, as well as any field in which the same or a similar problem occurs and which must be expected to be known to the person skilled in the specific technical field.
180. A starting point is realistic if its teaching would have been of interest to a person skilled in the art who, at the relevant time, wished to solve the objective problem. This may be the case, for example, if the relevant prior art already discloses several features similar to those of the claimed invention and/or addresses the same or a similar underlying problem as that of the claimed invention. There may be more than one realistic starting point, and the claimed invention must be inventive based on each of these starting points.
181. The skilled person has no inventive abilities or imagination and needs a clue or motivation that prompts them, starting from a realistic starting point, to take the next step towards the claimed invention. As a rule, a claimed solution is to be regarded as non-inventive/obvious if the skilled person would take the next step on the basis of the starting point or routinely and arrive at the claimed invention.
182. For inventive step to be present, it is not necessary to demonstrate an improvement in the claimed technical teaching over the prior art. Inventive step may also be present if the patent claims disclose a non-obvious alternative to the solutions known in the prior art.

II. Examination in individual cases

183. Measured against this, it cannot be determined on the basis of the defendant's submissions that there is a lack of inventive step.

1. NK 1 in conjunction with NK 2

184. The combination of NK 1, which is mentioned and appreciated in the contested patent, with NK 2 does not call into question the inventive step.

a) Determination of the objective purpose of the contested patent

185. In the opinion of the Board, the task can also be objectively defined as creating a generic device which, with the simplest possible construction, allows quick and easy filter replacement and enables a high degree of cleaning of the mass.

b) NK 1 as a starting point

186. NK 1 relates to a device for the continuous filtering of material mixtures, in particular for separating impurities from plastic melts (page 1, lines 1–3 of NK 1).

187. NK 1, as recognised in the contested patent, would have been of interest to a person skilled in the art who wished to solve the objective problem at the relevant time and thus represents a realistic starting point within the meaning of the principles set out above.

188. Figures 1 and 2 of NK 1 are shown below for illustrative purposes. Figure 1 shows a first embodiment of a separation device in a longitudinal section. Figure 2 shows a cross-section of the separation device from Figure 1:

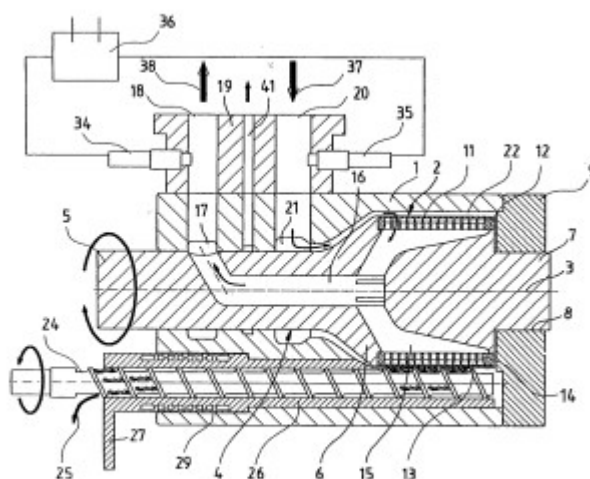


Fig. 1

filter area. The filter is extremely wear-resistant and can be easily replaced if necessary."

196. Against this background, there is no apparent motivation for the skilled person to seek an improvement in the design of the filter based on NK 1.
197. Because NK 1 leads the skilled person away from any need for improvement with regard to the design of the filter, they would not have routinely taken the next step either.

d) No obviousness of the claimed solution when NK 2 is taken into account

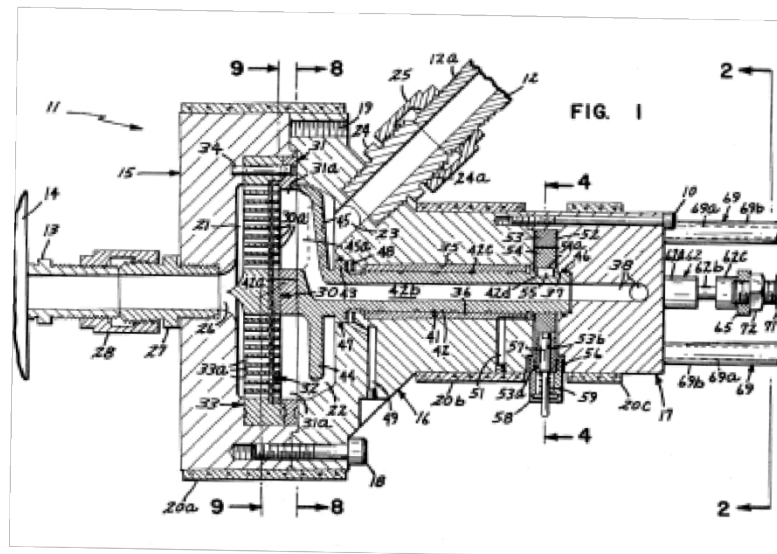
198. However, even assuming that the skilled person would have been motivated by NK 1 to seek an improvement in the design of the filter and that they would have referred to NK 2 for this purpose, the claimed solution cannot be regarded as obvious.

Contents of NK 2

199. NK 2 also shows a device for continuously filtering a flow of molten plastic. Column 1, lines 7 ff. of NK 2 states:

"The invention relates generally to filtering apparatus and is specifically directed to apparatus for continuously filtering a flow of melted plastic which includes a mechanism for purging the filter without interrupting."

200. Fig. 1 of NK 2 is shown for illustration purposes. Fig. 1 is a sectional view of a plastic filter device and shows a vertical plane running longitudinally through the device:



201. NK 2 discloses a fixed, disc-shaped filter (filter screen 32) made of wire mesh.
202. The arrangement of the filter components can be found in column 5, lines 26 ff.:

An assembly of filtration components is disposed in the outlet chamber 21 as shown in FIGS. 1 and 9. The assembly is cylindrical in shape to correspond to the configuration of the chamber 21, and comprises a collector plate 31, a first breaker plate 30, a filter screen 32 and a second breaker plate 33. Collector plate 31 and second breaker plate 33 are of the same diameter, and a shallow circular recess is formed in the latter so that the first breaker plate 30 and filter screen 32, which are of lesser diameter, are clamped therebetween."

203. The NK 2 describes the filtering process as follows:

As constructed, the assembly comprising plates 30, 31, 33 and screen 32 receive unfiltered plastic from the inlet chamber 12. The plastic flows through the triangular passages 31a without obstruction, and then moves through the breaker plate 30 and filter screen 32 before discharge through the breaker plate. Contaminants in the unfiltered plastic are retained by the wire mesh filter screen 32 and are collected in the respective triangular passages 31a."

204. Regarding the design of the wire mesh filter, NK 2 states in column 5, lines 47 ff.:

"The filter screen 32 itself is made of wire mesh and may have various filtration sizes. Wire mesh filtration screens of this type are well known and commercially available."

A person skilled in the art would not have arrived at the claimed solution

205. Even if NK 2 had been taken into account, the skilled person would not have arrived at the claimed invention.

206. The disc-shaped filter of NK 2 is not designed to be rotatable, which also applies to the filter insert that comprises the filter. A combination of citations NK 1 and NK 2 would therefore not have led to a disc-shaped filter in which the filter insert is mounted so that it can rotate about its axis of rotation relative to the housing, as specified in feature 2.1.1 of the contested patent.

207. Furthermore, the filter of NK 2 is made of wire mesh. With such a design, as the plaintiff has argued without contradiction, it is technically impossible to remove contaminants from the filter using a scraper. Consequently, NK 2 does not disclose a scraper, but rather a backflush device (see, for example, column 7, lines 11 ff. of NK 1).

208. Insofar as the defendant considers design modifications to be possible in which the disc-shaped filter of NK 2 is used in a device in accordance with the specifications of the contested patent, these cannot in any case be regarded as obvious.

2. Further objections

209. Insofar as the defendant cites further citations in its counterclaim that are allegedly relevant to the assessment of the legal situation, it does not assert these in the context of specific attacks. They are therefore to be disregarded for the assessment of the merits of the counterclaim.

210. If the plaintiff in a nullity action invokes a lack of inventive step as grounds for its nullity action, it is not sufficient to merely name the documents on which it bases its attack. Rather, it is incumbent upon the plaintiff to explain the disclosure content of the relevant documents and, in addition, to explain specifically why and

in what way the skilled person would combine the individual documents with each other and thus arrive at the claimed solution without engaging in inventive activity. The defendant's submission does not do justice to this.

211. This view is also supported by the consideration that all attacks against the legal validity of the contested patent must, in principle, already be introduced into the proceedings with the counterclaim (see UPC_CFI_461/2024 (LK Hamburg), decision of 5 November 2024, Headnote 2 and para. 137 – Dolle v. Fakro; UPC_CFI_459/2023 (LK Düsseldorf), decision of 7 March 2025, p. 43 et seq. – Tridonic v. CUPOWER). The formulation of subsequent attacks constitutes an amendment to the counterclaim pursuant to Rule 263 of the Rules of Procedure, which requires the court's approval (UPC_CFI_461/2024 (LK Hamburg), decision of 5 November 2024, para. 138 – Dolle v. Fakro). This requirement for admission would be undermined if the citations introduced into the proceedings by the defendant without the formulation of specific attacks were taken into account in any combination.
212. However, even if the defendant's submission is understood to mean that the further citations represent an alternative to NK 2, this does not justify the lack of inventive step. For the reasons set out above, there is already a lack of motivation for the skilled person, and moreover, a combination of NK 1 with the further citations would not lead the skilled person to the claimed solution.

F. Merits of the infringement action

213. The infringement action is well founded.

I. Direct infringement

1. Literal realisation of all features

214. The contested embodiment makes literal use of the teaching of claim 1 of the contested patent.
215. The realisation of features 2.1 (hollow rotary body), 2.3/3.2 (a filter), 5/5.2 (interaction of the screw conveyor with the filter insert) and 6/6.1 (arrangement of the scraper behind the screw conveyor) can be established, as will be discussed shortly.
216. The realisation of the remaining features is rightly undisputed between the parties, so that no further explanation is required.
- a) Filter insert in the form of a hollow rotating body (feature 2.1)
217. The contested embodiment has a filter insert in the form of a hollow rotary body (feature 2.1).
218. Below is a sectional drawing taken from Annex B 5 which, according to the defendant's submission, shows the structure of the contested embodiment:

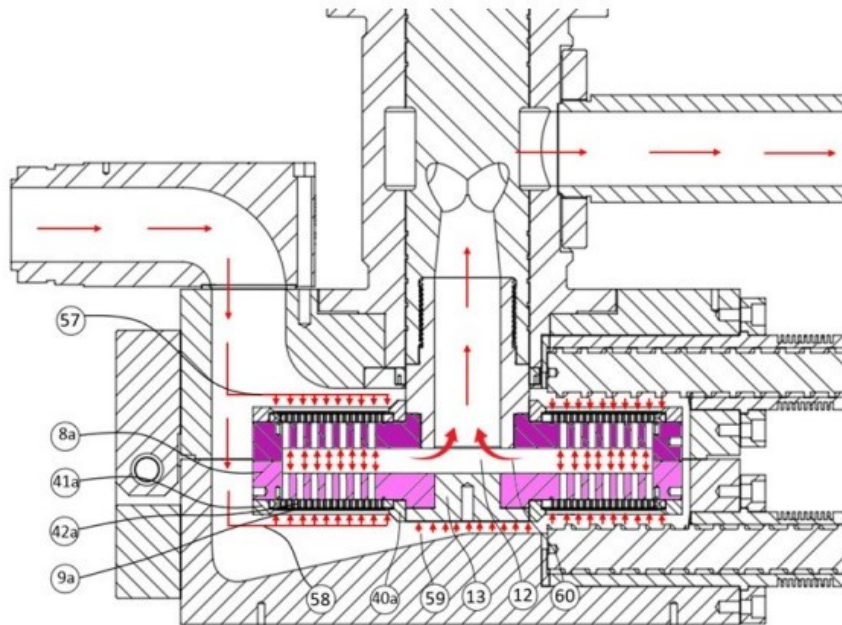


Abbildung 12 – Schnittzeichnung durch die angegriffenen Ausführungsformen

219. The defendant has highlighted in colour the components it refers to as frames, onto which the filters are mounted on both sides (filter carriers). The front filter carriers are highlighted in light purple and the rear filter carriers in dark purple.
220. The defendant argues that the red arrows show the path of the plastic melt through the contested embodiment. Accordingly, the melt flow enters through the feed channel on the left-hand side, divides into two channels (57, 58) and penetrates on both sides through one of the two disc-shaped filters mounted on the transparent filter carriers (light purple, dark purple). The pressure in the cavity between the filters is neutralised by the opposite convergence of the plastic melt in the cavity of the filter carriers, which penetrate either the front filter (9a) or the rear filter (9b). After passing through the filters, the partial flows combine in the main shaft (12) of the rotary body and the filtered plastic melt is discharged from the housing through the discharge channel.
221. The defendant also illustrates the carriers on which the filters are mounted with the following illustration of the individual components of the filter insert, which is also taken from Annex B 5:

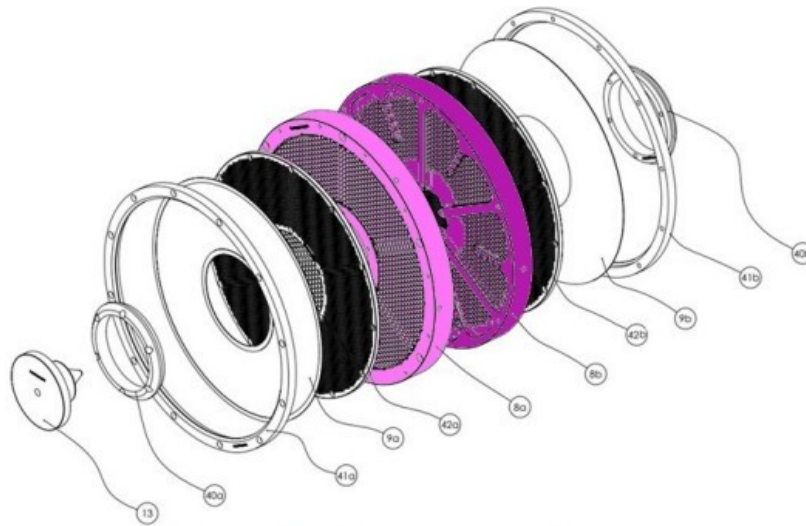


Abbildung 1 – Explosionszeichnung des Filtereinsatzes
bei den angegriffenen Ausführungsformen

222. Accordingly, the carrier is composed of two open frames (front filter carrier 8a, light purple, and rear filter carrier 8b, dark purple). The disc-shaped filters (front filter 9a and rear filter 9b, black) are screwed onto the carrier frames (8a and 8b) using retaining rings (40a, 41a and 40b, 41b). A sieve-like intermediate disc (42a and 42b) with coarser openings is inserted between the filters (9a and 9b) and the support frames (8a and 8b).
223. The defendant also shows the completely assembled filter insert in the following illustration in Annex B 5, with the screws for the retaining rings shown in purple:

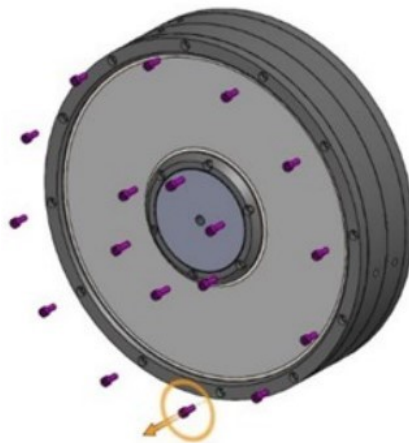


Abbildung 3 – Zusammengesetzter Filtereinsatz

224. Finally, with Annex B 5, the defendant submitted the following CAD sectional drawing through the filter carriers of the contested embodiment:

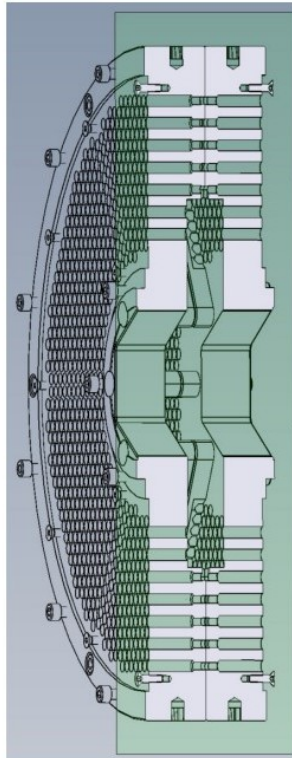


Abbildung 2 – CAD-Schnittzeichnung durch die Filterträger
der angegriffenen Ausführungsformen

225. On the basis of this submission, it can be established that the contested embodiment has a filter insert in the form of a hollow rotary body. This is formed by the two frames (8a and 8b) and comprises the filters (9a and 9b) attached on both sides. This is because, as discussed above, according to feature 2.3, the filter – or, more precisely, one of the filters – is a component of the filter insert.
226. The arrangement of both filters and frames, which are also indisputably designed to be rotatable relative to the housing, allows molten plastic to flow through. In Figure 12 above, it can be seen that the molten plastic flows through the filter elements into the interior of the component thus formed and from there can be directed into the discharge channel. It is therefore a hollow rotary body within the meaning of feature 2.1. Reference is made to the above design considerations.
227. It is irrelevant whether both filters of the contested embodiment are considered to be comprised of the filter insert in accordance with feature 2.3. Even if only the front filter designed in accordance with the claim (more on this in a moment) is regarded as a component of the filter insert referred to in feature 2.3, the rear filter is nevertheless a component thereof. This is because, as discussed above, feature group 2 does not exclude other components of the filter insert.
- b) (One) filter (features 2.3/3.2)
228. The contested embodiment comprises a filter which – in this respect undisputed – fulfils the requirements of feature group 3. In particular, it is disc-shaped and arranged on the front side of the rotary body.

229. The fact that there is another filter located not at the front but at the rear of the rotating body does not, according to the interpretation described, preclude infringement.
230. Nor does the fact that the rear filter is not immediately accessible when the housing is opened and that the entire filter unit must be removed and dismantled in order to replace both filter discs preclude the realisation of the feature. Reference is made to the above statements. As explained there, the possibility of removing the entire filter unit also remedies the disadvantage existing in the prior art, according to which this was difficult to achieve with conventional tools, among other things. Apart from that, it has not been argued that, in the contested embodiment, it would not also be possible to remove only the front filter, which is designed in accordance with the claim, for maintenance purposes, and not the additional rear filter.

c) Interaction of the screw conveyor with the filter insert (features 5/5.2)

231. The contested embodiment indisputably has a screw conveyor. This is designed in such a way that it can remove the contaminants from the filter insert and convey them out of the device. Based on the above understanding, there is therefore interaction between the screw conveyor and the filter insert within the meaning of feature 5.2.
232. The defendant explained the mode of operation by stating that, in the contested embodiment, the pressures present in the system are measured at various points, whereby determining, among other things, the degree of contamination of the plastic melt to be filtered. If the degree of contamination is low, the filter insert remains stationary. In the absence of rotation of the filter insert, the scraper no longer removes any contaminants. When the filter discs come to a standstill, the screw conveyors also stop rotating after a certain delay. When the filter discs start rotating again, the screw conveyors also start rotating again, again after a certain delay.
233. The mode of operation described does not preclude the realisation of a feature according to the above interpretation. The screw conveyor is designed to remove impurities filtered out by the filter from the device. The fact that it rotates at different speeds during operation of the system, up to a complete standstill, is not decisive for the interaction. As described above, the feature does not require the filter to be cleaned without interruption. Apart from that, it cannot be determined that this mode of operation has any effect on the design of the screw conveyor, which is the only decisive factor in the context of the device claim. Rather, the defendant itself argues that this function of the contested embodiment only occurs during operation of the system and is not visible from the outside.

d) Arrangement of the scraper behind the screw conveyor (features 6/6.1)

234. The contested embodiment also has a scraper which is arranged behind the screw conveyor in the direction of rotation of the filter insert (features 6/6.1).

aa) Design in accordance with Annex K 11

235. In a presentation from 2020 (Annex K 11, p. 5), the arrangement of the components is shown as follows, with the defendant adding an arrow to the illustration to indicate the direction of rotation of the filter disc, as well as two auxiliary lines to illustrate the centre of the screw conveyor axis (green) and the point of contact of the screw conveyor on the filter surface (yellow):

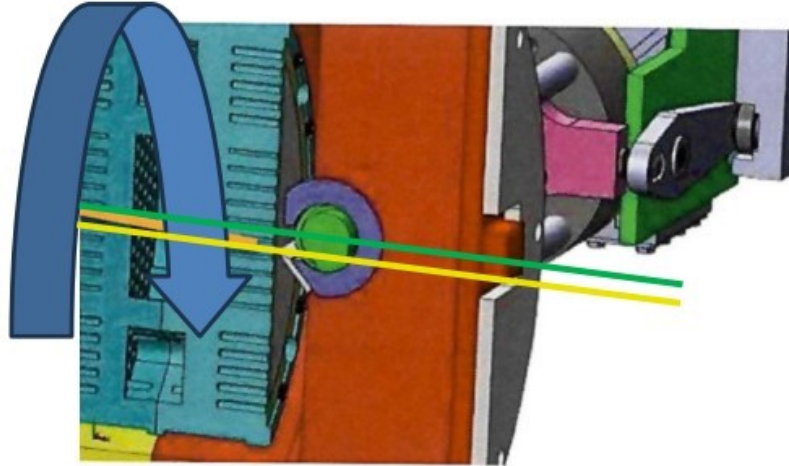


Abbildung 17 – Abbildung aus S. 5 der Anlage K 11

blauer Pfeil: Drehrichtung der Filterscheibe;
grüne Linie: Achsmittelpunkt der Förderschnecke;
gelbe Linie: Ansetzpunkt des Schabers

236. The defendant itself does not dispute that this is a characteristic arrangement. It merely claims that the presentation dates from 2020 and is technically outdated. However, since it has not issued a cease-and-desist declaration in this regard, the design remains relevant.

bb) Current design of the contested embodiment

237. With regard to the (current) design of the contested embodiment, the defendant refers to the sectional drawings shown below:

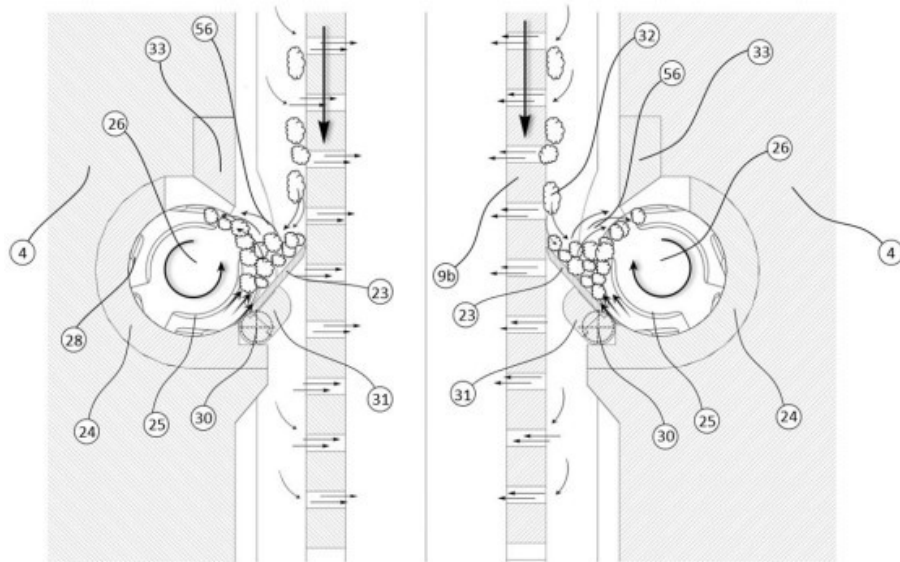


Abbildung 18 – Schnittzeichnung durch die angegriffenen Ausführungsformen

238. In addition, the defendant submits the following CAD drawing in which it has marked the centre of the screw conveyor with a horizontal line in green, the attachment point of the scraper with a horizontal line in yellow and the direction of rotation of the filter disc in blue:

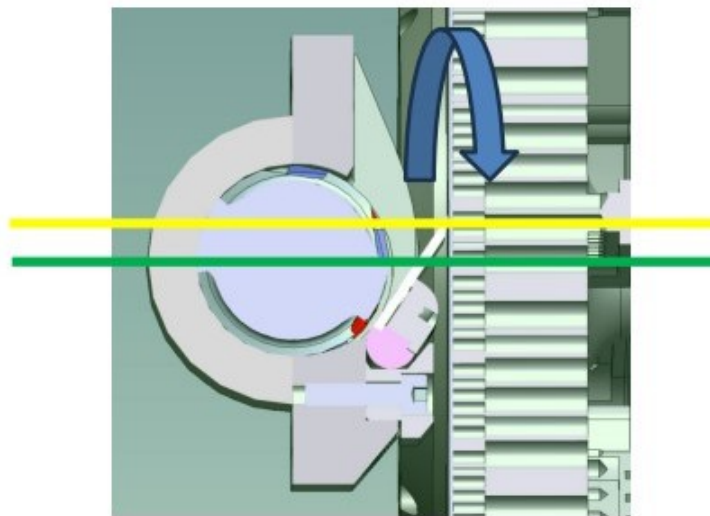


Abbildung 19 – CAD-Schnittzeichnung durch die angegriffenen Ausführungsformen

239. The defendant argues that in the contested embodiment, the scraper touches the surface of the filter disc well in front of the centre of the screw conveyor and not in front of it. The technical reason for the chosen arrangement is that contaminants scraped off by the scraper collect in the space between the scraper and the screw conveyor. The impurities are initially trapped in the collection chamber and are pushed by subsequent particles into the opening of the screw conveyor or into the screw flights, so that they are picked up by the screw conveyor and discharged.
240. Based on the above understanding, it can also be determined that the feature is realised in the current design of the contested embodiment.

The area of the scraper adjacent to the screw conveyor is arranged behind the screw conveyor in the direction of rotation of the filter insert, as illustrated by the modification of Figure 19 prepared by the defendant, in which the relevant area is marked with a red arrow:

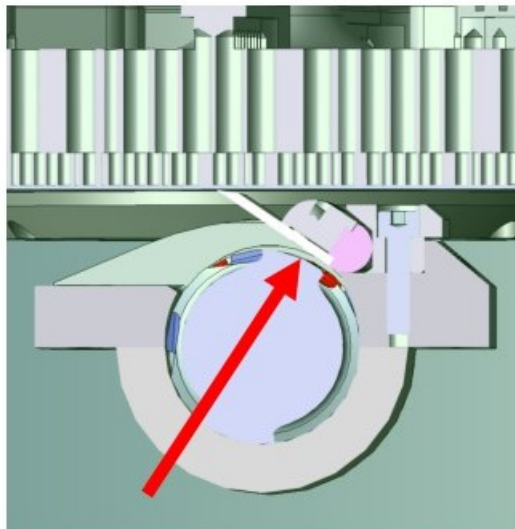


Abbildung 17 – CAD-Schnittzeichnung durch die angegriffenen Ausführungsformen

241. The defendant's view that the end area is located above the screw and not behind it cannot be accepted. The specified arrangement between the scraper and the screw refers to the direction of rotation of the filter insert. The arrangement of the scraper "above" or "below" the screw conveyor is not relevant in this context.
242. The defendant does not dispute that the arrangement enables the scraped-off contaminants to be fed to the screw conveyor.
243. Insofar as the defendant argues that the provision of a dead space between the scraper and the screw conveyor has certain technical advantages, this argument is not sufficient to dispute the realisation of the feature.

e) Defendant's submission on the further development of the prior art

244. The defendant's submission on how it developed the contested embodiment on the basis of various prior art references is irrelevant for the assessment of patent infringement. The same applies to its submission that it had applied for a patent for various aspects of its further development with PCT application WO 318 (Exhibit B 10).

2. Acts of use pursuant to Art. 25(a) EPGÜ

245. Acts of use by the defendant pursuant to Art. 25(a) EPGÜ can be established.

a) Website (Exhibit K 8)

246. The defendant offered the contested embodiment by advertising it on the German-language website (Exhibit K 8) within the meaning of Art. 25(a) EPC.

247. The offering is to be understood in an economic sense and is not based on the legal understanding in the sense of a binding contractual offer. An offer therefore does not need to contain all the details that would be necessary for the immediate conclusion of a contract by mere acceptance of the offer (UPC_CoA_534/2024 et al., decision of 3 October 2025, para. 205 – Belkin v. Philips).
248. On the defendant's website, the contested embodiment is presented as follows, among other things:



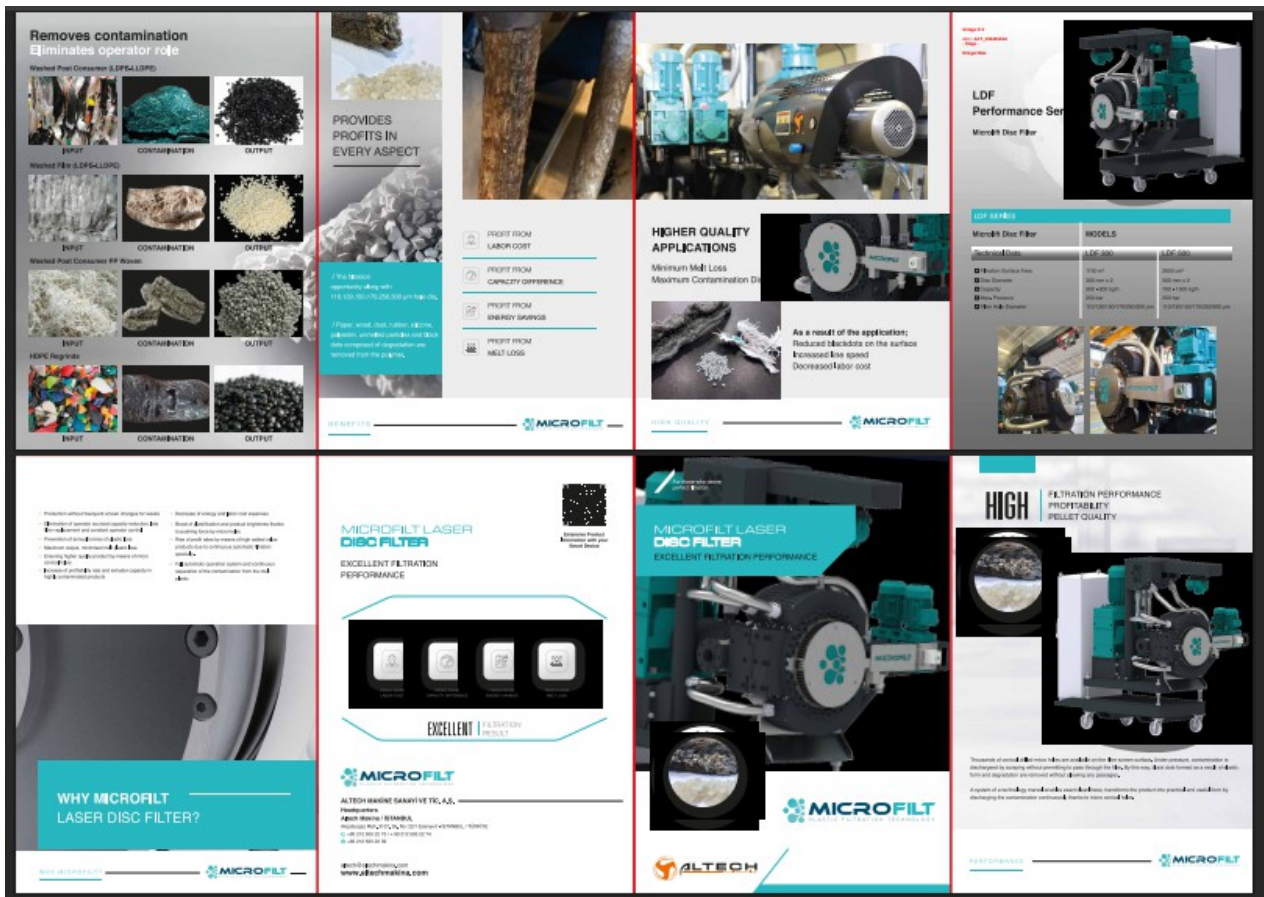
250. In addition, the following information is included:

Micro-Laserfilter		MODELLE	
Technische Daten		LDF 300	LDF 500
Filtrierfläche	cm ²	1150	2450
Siebdurchmesser	mm	300	500
Kapazität	kg/h	300 - 600	700 - 1500
Max. Druck	bar	250	250
Filter Lochdurchmesser	µm	150/200/250/300/350	150/200/250/300/350

249. Based on the above principles, this description constitutes an offer. The depiction of further technical details of the contested embodiment was not necessary for the existence of an offer.
250. The defendant's further objection that the offer is only directed at German-speaking customers does not call into question the existence of an act of use.

b) Flyer (Exhibit K 9)

251. The presentation in the English-language flyer (Exhibit K 8), which, according to the defendant's submission, was "offered and distributed" by the defendant, also constitutes an offer within the meaning of Article 25(a) EPGÜ.
252. The flyer is presented as follows:



253. In this respect, the defendant merely counters the existence of an offer by arguing that the LDF models are only presented in general terms and without technical details. However, as with the advertisement on the website, this is irrelevant to the existence of an offer.

c) Offer dated 17 October 2022 (Exhibit K 10)

254. An offer within the meaning of Art. 25 lit. a) EPGÜ also exists in the form of an offer attributable to the defendant with regard to the contested embodiment Microfilt LDF 500 to a customer in Belgium (Exhibit K 10).

255. The fact that this offer is dated 17 November 2022 and was therefore made before the EPGÜ came into force does not call into question the risk of repetition established by it. This risk was not eliminated before the EPGÜ came into force, for example by issuing a cease-and-desist declaration (see Tilmann/Plassmann, Einheitspatent, Einheitliches Patentgericht [Unitary Patent, Unified Patent Court], 1st edition 2024, Art. 89 EPGÜ marginal no. 25).

256. The fact that Altek Endüstri is named in the offer rather than the defendant does not preclude the defendant's responsibility for the offer.

257. An "infringer" within the meaning of Article 63 EPC in conjunction with Article 25 EPC is also someone who does not themselves carry out the acts referred to in Article 25 EPC, but to whom the acts of the principal infringer are attributable because they are an instigator, co-perpetrator or accomplice (UPC_CoA_534/2024 et al., decision of 3 October 2025, para. 180 – Belkin v. Philips).

258. The present case concerns complicity in this sense. The plaintiff has argued that Altek Endüstri is the defendant's sales arm. It has stated that the defendant participates in this distribution by supplying the products in dispute to Altek Endüstri. The defendant is also aware of the distribution of the products in the EU. The defendant merely counters this by arguing that Altek Endüstri is not merely the defendant's sales arm, but a legally separate company registered with the Istanbul Chamber of Commerce under a different registration number. In doing so, it has not significantly refuted the above argument, which demonstrates the defendant's complicity in the distribution.
259. The defendant is therefore responsible for the offer made by Altek Endüstri for distribution purposes. At the same time, its responsibility for the distribution of the contested embodiment is established.
- d) Presentation according to Annex K 11
260. The presentation in accordance with Annex K 11, the originator of which is undisputedly the defendant acting under a previous name, also constitutes an offer.
261. Insofar as the defendant claims that this was a purely internal presentation, its statement remains vague. The defendant asserts that the presentation was sent "for internal purposes to its **distribution partners** in Austria" and was never published by the defendant or Altek Endüstri. The defendant subsequently supplemented its submission by stating that the presentation was sent to the email address of Mr [REDACTED] v. As Annex B 4, it has they submitted a written statement from their managing director stating that the presentation had "never been published by the defendant or the separate company Altek Endüstri ...".
262. This description does not indicate that the presentation was not published by an export company other than Altek Endüstri, which the defendant uses. The fact that such other export companies exist can be inferred from the defendant's submission elsewhere (see rejoinder, para. 49: "The contested embodiment is distributed via separate export companies, including Altek Endüstri ..."). Apart from that, it remains completely unclear [REDACTED] and why it is both a "distribution partner" and "internal".
263. The fact that the presentation dates from 4 September 2020, i.e. before the EPGÜ came into force, is irrelevant for the reasons stated above.
264. Insofar as the defendant claims that the presentation is technically outdated and incorrectly depicts the position of the scraper, this does not alter the outcome. On the one hand, the defendant does not assert that the earlier design does not constitute an infringement, but rather considers it to be in accordance with the claims with regard to the arrangement of the scraper itself. Furthermore, as already mentioned, the defendant has not issued a cease-and-desist declaration with regard to the earlier design of the contested embodiment.

e) Trade fair in Amsterdam

265. Finally, the defendant did not contest the plaintiff's assertion that the defendant also exhibits at Europe-wide trade fairs, such as the "PRS Europe" trade fair on 19/20 June 2024 in Amsterdam.

II. Indirect infringement

266. The offering and supplying of filters also constitutes an indirect patent infringement. However, this only applies insofar as the filters are intended for the defendant's systems. Insofar as filters intended for the plaintiff's systems are concerned, however, exhaustion has occurred.

267. According to Article 26(1) EPC, the defendant may not, without the plaintiff's consent, in the territory of the contracting member states in which the contested patent has effect, to persons other than those entitled to use the protected invention, means relating to an essential element of the invention for the use of the invention in that territory, if they know or ought to have known that these means are suitable and intended for use in the invention.

1. Requirements

268. The filters are objectively suitable for use in the invention according to patent claim 1. The defendant rightly does not dispute this.

269. These are also means that relate to an essential element of the invention. The filters are expressly mentioned in feature 2.3 and feature group 3. They are also linked to technical advantages of the invention, namely easy accessibility and simple and cost-effective manufacture.

270. It can be established that the offer and/or delivery take place within the territory and also serve to use the invention within the territory (double territorial reference). Reference is made to the comments on acts of use in the context of direct patent infringement.

271. Furthermore, the subjective elements of indirect patent infringement are also present. The defendant knows that the means are suitable and intended for use in the invention. It was aware of both the objective suitability for use within the meaning of claim 1 of the contested patent and the corresponding intention of its customers, or should at least have been aware of this.

272. It is not to be expected that the filters will be used with systems other than those of the plaintiff and the defendant. Insofar as the defendant points to the possibility of redesigning the filter discs by drilling (additional) holes, whereby the filters could be made suitable for other systems, it cannot be inferred from the submission that this is a realistic scenario and that customers would actually act in this sense.

273. The defendant has not questioned the fact that the plaintiff's systems make use of claim 1 of the contested patent.

2. Acts of use

274. The plaintiff claimed that the defendant had offered filters at the "Fakuma" trade fair in Friedrichshafen, Germany, from 17 to 21 October 2023, both as replacement parts for the plaintiff's systems and as replacement parts for the defendant's systems. The defendant had posted a photo of the trade fair stand on social media. The filter on the right (recognisable by the design of the edge and the size dimensions) is a replacement part (exclusively) for the plaintiff's systems, while the other filters shown relate to the defendant's systems. The image is shown below:



275. In addition, the plaintiff refers to another presentation by the defendant on social media, whereby the filter disc shown at the bottom right is the one that is used (exclusively) for the plaintiff's systems. The image on social media is shown below, whereby the Chamber has cropped the image:

LASER DRILLED SCREENS for PLASTIC RECYCLING
INDUSTRY
#plastic #recycling #plasticsrecycling #sustainability
Übersetzung anzeigen



28 2 direkt geteilte Beiträge
Gefällt mir Kommentar Direkt teilen Senden

276. The defendant counters this argument by stating that the illustrations do not show any technical details of the filter discs and that it is therefore not possible to determine whether the filter discs are suitable for the plaintiff's systems. It did not dispute that the acts of use cited by the plaintiff had actually taken place and that the filter discs depicted were those offered for the plaintiff's systems and for the defendant's systems.

3. Exhaustion

277. Insofar as filters intended for use in the claimant's systems are concerned, exhaustion has occurred.

a) Requirements for exhaustion

278. According to Article 29 of the EPC, the rights conferred by the European patent do not extend to acts relating to a product protected by the patent after the product has been placed on the market in the European Union by the patent proprietor or with his consent.

279. The right to which the patent holder is entitled under the patent is therefore limited throughout the Community if these conditions are met. The lawful purchaser of a product placed on the market by the patent holder or with his consent is entitled to use it for its intended purpose, to sell it to third parties or to offer it to third parties for one of these purposes.

280. The intended use of a patented product also includes the usual maintenance and restoration of its usability if the functionality or performance of the specific product is wholly or partially impaired or eliminated due to wear and tear, damage or other reasons. However, intended use does not include any measures that amount to remanufacturing a patented product. The patent holder's exclusive right to manufacture is not exhausted when a copy of the patented product is placed on the market for the first time (UPC_CFI_248/2024, decision of 22 August 2025, para. 234 – BRITA v. AQUASHIELD).

281. If a part of a patented product is exchanged or replaced, it must therefore be examined whether this exchange or replacement constitutes permissible use in accordance with the intended purpose or whether it constitutes an impermissible new manufacture of the patented product. The decisive factor here is whether the replacement preserves the identity of the specific product already on the market or whether a new product based on the invention is created. This is assessed on the basis of a weighing up of the interests worthy of protection of the patent holder in the economic exploitation of the invention on the one hand and the purchaser in the unhindered use of the specific product placed on the market in accordance with the invention on the other, taking into account the unique nature of the patented product (UPC_CFI_248/2024, decision of 22 August 2025, para. 235 – BRITA v. AQUASHIELD).
282. One aspect to be considered in this assessment is whether the replacement or substitution of the part in question can normally be expected during the product's service life and whether, as a result, the market or consumers can reasonably expect to be able to continue using the purchased product or to use it multiple times by means of the replacement part. If this is the case, it can generally be assumed that this is a normal maintenance measure and therefore a permissible use of the patented product placed on the market. The situation is different in exceptional cases where the technical effects of the invention are reflected precisely in the replaced part. In this case, the replacement of the part means that the technical and economic advantages of the invention are realised once again and the identity of the product originally placed on the market is lost (UPC_CFI_248/2024, decision of 22 August 2025, para. 236 – BRITA v. AQUASHIELD).

b) Examination in individual cases

283. In application of these principles, exhaustion has occurred.
284. Replacing the filter is a normal and therefore permissible maintenance measure. The filter is a wearing part that is replaced on average every two to four weeks during normal operation of a plastic filter system.
285. Nor can it be established that the technical effects within the meaning of the principles set out are specifically reflected in the filters. Even if the disc-shaped design of the filters is an essential aspect of the invention, it is only one of several aspects that are also significant according to the teaching of the contested patent. For example, the front-end arrangement of the filter is also important, but this is not reflected in the filter itself. The overall structure of the device according to the invention and the interaction of the components are also important in order to achieve the advantages of the teaching of the contested patent. It cannot therefore be assumed that replacing the filters in accordance with the principles described above would negate the identity of the device.

G. Legal consequences

286. With regard to the legal consequences, the following applies:

I. Legal consequences of direct patent infringement

1. Injunction

287. Taking into account the circumstances of the case, the plaintiff has a right to prohibit the continuation of the infringement pursuant to Art. 25(a) EPCU in conjunction with Art. 63(1) EPCU.
288. The fact that the plaintiff based its application for an injunction on the wording of the patent claims is not objectionable (see UPC_CFI_2/2023 (Munich Regional Court), decision of 19 September 2023, p. 82 et seq. – Nanostring v. 10x Genomics on Article 62(1) EPC).
289. The Chamber considers the prohibition of any patent infringement to be appropriate as the content of the injunction. The wording in the operative part of the decision corresponds to Art. 25(a) EPC. Insofar as the plaintiff also demands, without further justification, the prohibition of "manufacture", it is not apparent that this constitutes use of the patent.
290. It was not necessary to differentiate between the individual acts of use. In particular, the Chamber considers it appropriate to prohibit the defendant from manufacturing within the states in which the contested patent is in force, regardless of the fact that it has so far manufactured the contested embodiment outside the contracting member states, namely in Turkey. Such an order is in line with the plaintiff's interest in the effective enforcement of its property right. Since the plaintiff is also not entitled to manufacture the contested embodiment in the contracting member states relevant here, such an order does not disadvantage it (see UPC_CFI_712/2025 (LK Düsseldorf), order of 5 December 2025, para. 386 – Roche v. Menarini).
291. Nor was it necessary to differentiate between whether or not acts of use had already been established in individual Contracting Member States. According to Art. 34 EPCU, the decisions of the court apply to the territory of those Contracting Member States for which the European patent has effect.

2. Recall, removal from distribution channels and destruction

292. The order to recall the directly infringing products from the distribution channels is justified under Article 25(a) EPGÜ in conjunction with Article 64(2)(b), 4 EPGÜ. The latest version of the plaintiff's application is also unobjectionable from the point of view of specificity.
293. The final removal from distribution channels could be ordered pursuant to Art. 25 lit. a) EPGÜ in conjunction with Art. 64 para. 2 lit. d), para. 4 EPGÜ. According to the wording of the EPGÜ, final removal from distribution channels is an independent measure that is separate from the recall. It accompanies the recall, whereby removal can only be considered if the infringer has the factual and legal means to do so. The formulation of concrete and sufficiently specific measures must be based on this (see UPC_CFI_7/2024 (LK Düsseldorf), decision of 3. July 2024, p. 30 – Kaldewei v. Bette; UPC_CFI_16/2024 (LK Düsseldorf), decision of 14 January 2025, p. 36 et seq. – Ortovox v. Mammut). The latest version of the plaintiff's application

takes sufficient account of this. The defendant's view that such an order can only be considered in exceptional cases, such as when the product poses a health risk, cannot be accepted.

294. The order for destruction is based on Art. 25(a) EPGÜ in conjunction with Art. 64(2)(e) and (4) EPGÜ.
295. The order to recall, permanently remove the products from distribution channels and destroy them is not disproportionate within the meaning of Article 64(4) EPC. The burden of proof for the lack of proportionality lies with the infringer (UPC_CoA_534/2025 et al., decision of 3 October 2025 – Belkin v. Philips). The defendant has not complied with this requirement with its general references to disproportionateness. In particular, the general reference to devastating effects on the environment and the possibility of other measures is insufficient.
296. As requested by the plaintiff, the period running from the notification pursuant to Rule 118(8) sentence 1 of the Rules of Procedure was already to be included in the decision with regard to the order for recall, removal from distribution channels and destruction (UPC_CoA_534/2024, decision of 3 October 2025, headnote 7 and para. 240 – Belkin v. Philips). The period of 30 days after service of the notification within the meaning of Rule 118(8) sentence 1 of the Rules of Procedure requested by the applicant appears reasonable. Insofar as the defendant, on the other hand, stated in the oral hearing that a period of four to six weeks would be appropriate, it cannot be determined that such a long period would be necessary. The defendant did not give any specific reasons for this.
297. Article 72 EPCU does not impose any time limit on the claims described. This is already the case because Article 72 EPCU only mentions actions in connection with all forms of financial compensation. The measures referred to in Article 67 EPCU are not covered by this (see Tilmann/Plassmann, Unified Patent Unified Patent Court, Article 72 EPCU, marginal number 38).

3. Provision of information

298. Furthermore, the applicant has a right to information pursuant to Article 25(a) EPCU in conjunction with Article 67 EPCU. There are no concerns regarding the requested form of information.
299. With regard to the right to information, as taken into account by the applicant in its application, the time limit running from the notification pursuant to Rule 118(8) sentence 1 of the Rules of Procedure had to be included in the decision (UPC_CoA_845/2024, order of 30 May 2025, headnote 1 and para. 40 – Belkin v. Philips; UPC_CoA_534/2024, decision of 3 October 2025, headnote 7 and para. 240 – Belkin v. Philips). The period of 30 days after service of the notification sought by the applicant within the meaning of Rule 118(8) sentence 1 of the Rules of Procedure also appears reasonable in this respect.
300. Nor does Article 72 of the EPCG impose any time limit on the claims described, because claims for information are not covered by this provision (see Tilmann/Plassmann, Unified Patent Unified Patent Court, Article 72 EPCG, marginal number 38).

4. Determination of liability for damages on the merits

301. The determination of the award of damages on the merits is possible on the basis of

Article 68(1) EPC.

a) Requirements

302. The requirements of Art. 68(1) EPCU are met. The defendant should in any case have known that its actions infringed the contested patent.

b) No limitation period

303. The expiry of the limitation period under Article 72 EPCU does not preclude the requested award of claims since 7 September 2013. According to this provision, which in the Chamber's view is solely applicable, without prejudice to Article 24(2) and (3) EPC, actions relating to all forms of financial compensation may be brought no later than five years after the applicant became aware or should reasonably have become aware of the last event giving rise to the action.

304. According to Article 72 of the EPC, the limitation period begins to run upon the last event giving rise to the action. In particular, patent-infringing acts by the defendant may be considered events in this sense. Pursuant to Article 72 EPCU, the applicant – in this case the plaintiff – must have become aware of these acts or should reasonably have become aware of them. Without this subjective requirement being met, the limitation period does not begin to run.

305. The defendant's submission does not sufficiently indicate that the plaintiff had knowledge of the defendant's patent-infringing actions earlier than five years prior to the filing of the action. It is undisputed between the parties that the plaintiff has had such knowledge since 19 October 2023. This means that the statute of limitations does not apply. Knowledge at a point in time five years prior to the filing of the action would have been decisive in this regard.

306. Insofar as the defendant understands Article 72 EPC as a time limit for financial claims dating back to the past, this view has no basis in the wording of the provision.

5. Provisional damages

307. Pursuant to Rule 119 of the Rules of Procedure, the Court may, under conditions it determines, award provisional damages to the successful party, which shall at least cover the provisional costs of the damages and compensation proceedings on the part of the successful party. The plaintiff is seeking an amount of EUR 100,000 and has justified this on the basis of the damage it has suffered as a result of the defendant's infringing acts.

308. Even though Rule 119 VerFO allows for the award of provisional damages on a lump-sum basis, there must be a sufficient factual basis for the award. Against this background, the plaintiff's submission must show that his claim is based on a plausible estimate based on specific facts.

309. The plaintiff's submission does not do justice to this. It pointed out that the defendant not only offers and distributes the systems, but also the filters for the defendant's and the plaintiff's systems. In its reply, it added that the defendant's systems are offered at

at a price of EUR 135,000. The price for a filter is significantly above EUR 1,000. These filters must be replaced at intervals of one to several weeks. The plaintiff had sold a total of approximately 50 systems based on the invention in Europe. At the hearing, the defendant claimed that it had sold a single-digit number of devices in the relevant countries. Taking this up, the plaintiff argued that with seven systems sold, the defendant's turnover was already at one million euros.

310. On the basis of this submission, it cannot be determined that the damage of EUR 100,000 is a plausible estimate. As far as the defendant's turnover discussed in the oral hearing is concerned, this alone does not say anything about the damage incurred by the plaintiff. As far as the filters are concerned, the plaintiff did cite a figure based on the 50 systems it sold, from which it might be possible to draw conclusions about the larger number of filters required for these systems. However, as discussed above, the offering and delivery of filters for the plaintiff's systems does not constitute an indirect patent infringement due to exhaustion. With regard to the filters for the defendant's systems, the Chamber lacks a sufficient factual basis to assess the amount of damage incurred by the plaintiff.

6. Threat of coercive measures

311. The threat of a penalty payment for non-compliance (Art. 63(2) EPC) does not give rise to any concerns. This also applies when considering aspects of proportionality.
312. The threatened penalty payment of up to EUR 50,000 per device and up to EUR 7,500 per filter gives the Chamber the necessary flexibility to take into account the circumstances of the individual case, including the behaviour of the infringer, in the event of an infringement and, on this basis, to be able to set an appropriate penalty payment in accordance with Art. 82(4) sentence 2 EPGÜ in conjunction with R. 354(4) VerfO. Therefore, the imposition of a fixed sum does not appear appropriate, and the chosen range – including the maximum amount – does not raise any concerns with regard to certainty.

II. Legal consequences of indirect infringement

313. With regard to the indirect infringement of the contested patent, the plaintiff's right to prohibit the continuation of the infringement follows from Art. 26(1) EPCU in conjunction with Art. 63(1) EPCU. It is not apparent that the risk of direct patent infringement by the defendant's customers can be sufficiently countered by a relative prohibition, for example on the basis of warning notices (see UPC_CFI_74/2024 (LK Munich), order of 27 August 2024, p. 59 – Hand Held v. Scandit), is not apparent. Rather, it is clear that the filter discs offered by the defendants can only be used for their own systems and thus infringe the patent. The possibility mentioned by the defendant that customers could drill (additional) holes in the filter discs is also not to be taken into account at this point. Even if certain filter discs intended for the defendant's systems could be used in the plaintiff's systems as a result of such modification, it is not apparent that customers would act in this way. Customers who wish to purchase filters distributed for the defendant's systems would have no use for such modified filters.

314. However, the order to recall, permanently remove from distribution channels and destroy individual components that are only affected by indirect infringement cannot be demanded. Since products that only give rise to allegations of indirect patent infringement are not "subject matter of the patent", there is generally no scope for ordering a recall and removal from distribution channels (UPC_CFI_140/2023 (LK Mannheim), decision of 22 November 2024, para. 184 – Panasonic v. OPPO; UPC_CFI_16/2024 (LK Düsseldorf), decision of 14 January 2025, p. 37 – Ortovox v. Mammüt). This also applies to the ordering of destruction.
315. Nor is a different assessment warranted because filters can only be used in a manner that infringes the patent and, against this background, as explained above, the ordering of an absolute prohibition is justified. The question of whether the ordering of a recall, removal from distribution channels and destruction in the case of an indirect patent infringement can be justified in exceptional cases if there are no other possible uses for the products in question can be left open. In any case, unlike in the case of an absolute prohibition, distribution opportunities in patent-free countries are also relevant in this respect. The plaintiff has not demonstrated that such distribution opportunities do not exist.

H. Decision on costs

316. Pursuant to Art. 69(2) EPC in conjunction with R. 118.5 RPO, a decision on costs must be made.
317. Since the plaintiff was unsuccessful in part of its infringement action, in particular with regard to the recently requested submission of evidence of indirect patent infringement with respect to filter discs sold for the plaintiff's systems, and with regard to the requested order of further legal consequences also due to the indirect patent infringement, it is justified to impose part of the costs of the infringement action on the plaintiff and to oblige the defendant to bear the remaining costs.
318. The defendant's counterclaim was unsuccessful. The defendant must therefore bear the costs thereof.

I. Security

319. Pursuant to Art. 82(2) EPC, Rule 118(8) sentence 2, Rule 352(1) RPO, the court may make any order or measure subject to the provision of security, the amount of which it shall determine. However, the defendant has not presented any circumstances that could give rise to this.

J. Reimbursement ceiling

320. The upper limit for reimbursable representative costs is based on the Administrative Committee's decision on the upper limits for reimbursable costs of 24 April 2023 (D - AC/10/24042023_D) in conjunction with the Administrative Committee's decision of 24 April 2023 on the guidelines for determining court fees and the upper limit for reimbursable costs of the prevailing party (D-AC/09/24042023_D). Pursuant to Section II. 2. Paragraph 4 of the latter decision, the value of the infringement action

and the value of the counterclaim for annulment, both of which are pending before the same Board, shall be added together to determine the amount of the recoverable costs. Therefore, the determination of the reimbursement ceiling in the present case is based on a total value in dispute of EUR 1,000,000, resulting in a total reimbursement ceiling of EUR 112,000.

321. During the oral proceedings, the parties agreed that the reimbursable costs for both the infringement action and the counterclaim for annulment would be mutually recognised up to an amount of EUR 100,000.

Slovenia for use in the above-mentioned devices in the aforementioned areas;

whereby only the offering and delivery of such filters that are suitable and intended for the defendant's systems is prohibited.

- II. In the event of any violation of the orders pursuant to I.1. and/or I.2., the defendant shall pay the court a penalty of up to EUR 50,000 per device pursuant to I.1. and a penalty of up to EUR 7,500 per filter pursuant to I.2.
- III. The defendant is ordered to
 1. within a period of 30 days after delivery of the notification within the meaning of Rule 118(8) sentence 1 of the Rules of Procedure and, where applicable, the certified translation of the applicant in a structured list for each month of the calendar year and for each infringing product infringing products, to provide information on the acts of infringement committed since 7 September 2013 in accordance with I.1. and I.2., specifying
 - a) the origin and distribution channels of the infringing products;
 - b) the quantities produced, manufactured, delivered, received or ordered and the prices paid for the products referred to in I.1. and I.2. and
 - c) the identity of all third parties involved in the distribution of the products referred to in I.1. and I.2.;
 2. within a period of 30 days after delivery of the notification within the meaning of R. 118 (8) sentence 1 VerfO and, if applicable, the certified translation at the expense of the defendant
 - a) to destroy, at its own expense, the products referred to in I.1. which are in its direct or indirect possession and/or ownership, or, at its discretion, to hand them over to a bailiff to be appointed by the applicant for the purpose of destruction;
 - b) recall the products referred to in I.1. and placed on the market since 7 September 2013 from commercial customers in writing, referring to the patent infringement status of the products as determined by the Unified Patent Court and with a binding commitment to reimburse any fees and bear the necessary packaging and transport costs as well as the customs and storage costs associated with the return, and to take back the products, providing the claimant with a sample of the recall letters and a list of the addressees packaging and transport costs as well as customs and storage costs associated with the return, and to take back the products, whereby the plaintiff shall be provided with a sample of the recall letters and a list of the addressees with their names and postal addresses or, at the defendant's discretion, a copy of all recall letters;

3. within a period of 30 days after delivery of the notification within the meaning of Rule 118(8) sentence 1 of the Rules of Procedure and, where applicable, the certified translation, to remove the products referred to in I.1. , which have been on the market since 7 September 2013, from the distribution channels, in particular by taking the following measures:
 - a) the defendant must take all possible and reasonable measures to identify the locations and owners of the products referred to in point I.1.
 - b) insofar as the defendant itself has legal or actual control over the products referred to in I.1., the legally permissible and reasonable measures must be taken to ensure that these products come into the direct possession of the defendant and remain there;
 - c) insofar as the defendant has neither legal nor actual power of disposal over the products referred to in I.1. , it must take all legally permissible and reasonable measures to induce the persons who have claims for surrender or destruction against the holders of the power of disposal of the products to assert these claims and/or to support these persons in asserting these claims.
- IV. In all other respects, the action for infringement is dismissed.
- V. The counterclaim for annulment is dismissed.
- VI. The plaintiff shall bear 30% of the costs of the infringement proceedings and the defendant shall bear 70%. The defendant shall bear the costs of the counterclaim for annulment.
- VII. The value in dispute for the action and for the counterclaim for annulment is set at EUR 500,000 in each case.
- VIII. The upper limit of the reimbursable representation costs is set at a total of EUR 112,000 for the action and the counterclaim for annulment.
- IX. The orders under I. and III. shall only be enforceable after the plaintiff has notified the court of which part of the orders it intends to enforce and, if necessary, has submitted a certified translation of the orders into the official language of the contracting Member State in which enforcement is to take place, and after the defendant has been served with the notification and the (respective) certified translation.

Presiding Judge Thomas	Ronny Thomas Digital signed by Ronny Thomas Date: 2025.12.08 19:33:36 +01'00'
Legally qualified judge Dr Schumacher	Jule Kathrin Schumacher Digitally signed by Jule Kathrin Schumacher Date: 09/12/2025 06:55:02 +01'00'
Legally qualified judge Mlakar	MOJCA MLAKAR Digitally signed MOJCA MLAKAR Date: 2025.12.08 19:12:29
Technically qualified judge Roselinger	Kerstin Roselinger Digitally signed by Kerstin Roselinger Date: 08.12.2025 18:54:45
For the Assistant Registrar	HEIKE BETTINA ELVIRA Strysio Digital Signed by HEIKE BETTINA ELVIRA Strysio Date: 09/12/2025 07:29:37

INFORMATION ON APPEALS:

Any party whose claims have been rejected in whole or in part may appeal against this decision to the Court of Appeal within two months of its notification (Art. 73(1) EPC, R. 220(1)(a), 224(1)(a) RPE).

Information on enforcement (Art. 82 EPCU, Art. 37(2) EPGs, R. 118(8), 158(2), 354, 355(4) R. 118(8), 158(2), 354, 355(4) R. 118

A certified copy of the enforceable decision shall be issued by the Deputy Registrar at the request of the enforcing party, R. 69 RegR.

This decision was announced in open court on 10 December 2025. Presiding Judge

Thomas

Ronny
Thomas

Digital
signed by Ronny
Thomas
Date: 2025.12.10
09:00:28