



**Local Division  
Düsseldorf**

**UPC\_CFI\_ 7/2023**

**Procedural order  
of the Court of First Instance of the Unified Patent Court Local Division  
Düsseldorf  
issued on 01.12.2023  
concerning EP 3 375 337 B1**

Plaintiff:

**Franz Kaldewei GmbH & Co. KG**, legally represented by its general partner, Kaldewei Verwaltungsgesellschaft mit beschränkter Haftung, which is represented by its managing director ..., ..., ..., ... and ..., Beckumer Str. 33-35, 59229 Ahlen, Germany,

represented by: Cordula Schumacher, attorney-at-law, and Benjamin Schnäbelin, attorney-at-law, ARNOLD RUESS Rechtsanwälte PartmbB, Königsallee 59a, 40215 Düsseldorf, Germany

Electronic address for service: ...

Defendant:

**Bette GmbH & Co KG** , legally represented by its general partner, Bette Verwaltungs- und Beteiligungsgesellschaft mit beschränkter Haftung, which is represented by its managing director ..., Heinrich-Bette-Str. 1, 33129 Delbrück, Germany

represented by: Lawyer Jens Künzel, LL.M., KRIEGER MES & GRAF v. der GROEBEN PartG mbB., Bennigsen-Platz 1, 40474 Düsseldorf

electronic delivery address: ...

STREITPATENT:

EUROPEAN PATENT NO. EP 3 375 337 B1

ADJUDICATING BODY/CHAMBER:

Local Chamber Düsseldorf JUDGES:

This order was issued by the presiding judge Thomas, the legally qualified judge Dr Thom as rapporteur and the legally qualified judge Kupecz.

LANGUAGE OF PROCEDURE: German

SUBJECT: Rule 37.2 RP in conjunction with Art. Art. 33 para. 3 UPCA

Reasons for the order:

Since the parties did not raise any objections to such a procedure, the question of how to proceed with regard to Art. 33 para. 3 UPCA could already be decided before the conclusion of the written procedure and answered in the sense of a procedure according to Art. 33 para. 3 lit. a) UPCA.

Even if, according to R. 37.1 RP, the panel is to decide on the procedure under Art. 33(3) UPCA by order as soon as possible after the conclusion of the written procedure, it may, according to R. 37.2 of the Rules of Procedure may make an earlier decision if it takes into account the submissions of the parties and grants them the right to be heard. Such an early decision is justified and necessary in the present case due to the current situation of the court, which is in its infancy. As parts of the panel are currently only employed on a part-time or case-by-case basis, it appears appropriate for reasons of procedural economy to obtain the assignment of the technical judge at an early stage in order to be able to take this into account in the scheduling as early as possible. Otherwise, there would be a considerable risk of delays if the technical judge is only called in during the interim proceedings and is already otherwise prevented from attending.

The local division exercises its discretion to hear both the infringement action and the counterclaim for a declaration of invalidity (Art. 33 (3) (a) UPCA). Such a joint hearing of the infringement action and the counterclaim for a declaration of invalidity appears to make sense for reasons of efficiency alone. It is also advantageous in terms of content, as it allows a decision to be made on both the legal status and the question of infringement on the basis of a uniform interpretation by the same panel of judges in the same composition. Such a uniform approach is all the more justified if the complexity of the technology at issue - as in this case - is in the

known spectrum of patent disputes is rather moderate and the number of legal disputes is also manageable.

Arrangement:

For these reasons, the Düsseldorf Local Court, after hearing the parties, orders that it will hear both the infringement action and the counterclaim for a declaration of nullity.

Order to the rapporteur:

The rapporteur shall request the President of the Court of First Instance to assign a technically qualified judge to the panel.

Issued in Düsseldorf on 01.12.2023

NAMES AND SIGNATURES

Presiding Judge Thomas

Legally qualified judge Dr Thom

Legally qualified judge Kupecz

DETAILS OF THE ARRANGEMENT:

ORD\_581034/2023 for main file reference ACT\_459767/2023

UPC number: UPC\_CFI\_7/2023

Type of proceedings: Action for infringement and action for annulment