



Düsseldorf local division
UPC_CFI_452/2023

Order
of the Court of First Instance of the Unified Patent Court
local division Düsseldorf
issued on 11 December 2023
concerning EP 3 466 498 B1

APPLICANT:

Ortovox Sportartikel GmbH, Rotwandweg 5, 82024 Taufkirchen, represented by the managing director ..., *ibid*,

represented by: Lawyer Miriam Kiefer, Lawyer Robert Knaps,
Kanzlei Kather Augenstein, Bahnstraße 16, 40212 Düsseldorf,

electronic address for service: ...

Contributing: Patent attorney Michael Siebel, law firm Hofstetter, Schurack &
Partner, Patent- und Rechtsanwälte PartG mbB,

RESPONDENT:

- 1. Mammut Sports Group AG**, Birren 5, 5703 Seon, Switzerland represented by its legal representatives, *ibid*,
- 2. Mammut Sports Group GmbH**, Mammut-Basecamp 1, 87787 Wolfertschwenden, Germany, represented by its legal representatives, *ibid*,

PATENT IN DISPUTE:

EUROPEAN PATENT NO. EP 3 466 498 B1

Decision-making body/chamber:

Judges of the Düsseldorf local division:

This order was issued by presiding judge Thomas, legally qualified judge Judge Dr Thom and the legally qualified judge Dr Schober.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: R. 212.1 VerFO - Order for provisional measures ex parte

BRIEF DESCRIPTION OF THE FACTS:

The applicant is the sole proprietor of the European patent EP 3 466 498 B1 (hereinafter referred to as the patent in dispute). The patent in dispute was filed in German on 9 October 2017. The patent application was published on 10 April 2019 and the mention of the grant of the patent in dispute was published on 4 December 2019. The patent in dispute is currently in force in the Federal Republic of Germany and the Republic of Austria, among other countries. The applicant has not declared an opt-out in relation to the patent in dispute.

No opposition was filed against the grant of the patent in suit. However, the defendant re 1) challenged the Swiss part of the patent in suit with an action for revocation dated 11 July 2023 (case number: 02023_012). With regard to the content of this nullity action, reference is made to Annexes KAP 15 to KAP 28. A decision by the Federal Patent Court of Switzerland on this nullity action is still pending.

The patent in suit protects an "avalanche transceiver" (hereinafter: avalanche transceiver) which, according to claim 1 of the patent in suit, is characterised by the following features:

1. Avalanche transceiver,
 - 1.1. with a transmitter unit (16) for transmitting at least one transmission signal (18),
 - 1.2. a receiver unit (16) for receiving at least one transmission signal (30) from at least one further avalanche transceiver (32),
 - 1.3. and with a control device (24) for controlling at least one loudspeaker (22),
2. wherein the control device (24) is designed to control the at least one loudspeaker (22) to output at least one voice message as a function of at least one event,
 - 2.1. wherein the at least one event is associated with a search for the at least one further avalanche transceiver (32),
3. wherein the avalanche transceiver (10) has the at least one loudspeaker (22) and the at least one loudspeaker (22) is designed to emit at least one sound signal,

characterized in that

4. the at least one audio signal is associated with the search for the at least one further avalanche transceiver (32),
5. wherein the control device (24) is designed to control the at least one loudspeaker (22) in such a way that the at least one audio signal is suppressed during the output of the at least one voice message or is output at a reduced volume.

In addition, the patent in suit in claim 13 protects a "method for operating an avalanche transceiver", which is designed as follows:

"Method of operating an avalanche transceiver (10) comprising a transmitter unit (16) for transmitting at least one transmitting signal (18), and a receiving unit (16) for receiving at least one transmitting signal (30) which is output by at least one further avalanche transceiver (32), in which a control device (24) of the avalanche transceiver (10) controls at least one loudspeaker (22), wherein the control device (24) controls the at least one loudspeaker (22) in such a way that the at least one loudspeaker (22) outputs at least one voice message, wherein the at least one loudspeaker (22) is controlled by the control device (24) as a function of at least one event, which is associated with a search for the at least one further avalanche transceiver (32), the avalanche transceiver (10) has the at least one loudspeaker (22) and the at least one loudspeaker (22) emits at least one audio signal, **characterised in that the at least one audio signal is associated with a search for the at least one further avalanche transceiver (32), in that the at least one audio signal is associated with the search for the at least one further avalanche victim search device (32), wherein the control device (24) controls the at least one loudspeaker (22) in such a way that the at least one audio signal is suppressed during the output of the at least one voice message or is output at a reduced volume.**"

With her application for an order for provisional measures, the applicant is directed against the offer and sale of the avalanche transceiver "Barryvox S2" (hereinafter: attacked design), which is shown in the following illustration:



Defendant 1) exhibited the attacked embodiment at the "ISSW" trade fair in Bend, Oregon (USA), from 8 October 2023 to 13 October 2023, where it was examined by employees of the applicant. At the beginning of November 2023, the applicant received information from a dealer that the attacked embodiment for 2024 could be pre-ordered via the B2B platform of the respondents' group. According to the general terms and conditions to be found on this platform, respondent 2) is responsible for offers and deliveries to the Federal Republic of Germany and the Republic of Austria. With regard to the further content of the platform, reference is made to Annex KAP 9.

Furthermore, the defendant 1) was present as a co-exhibitor at the "ISPO Munich 2023" trade fair, which took place in Munich from 28 November 2023 to 30 November 2023. The attacked embodiment, which received the "ISPO Award 2023" this year, was also exhibited at this trade fair.

In a document dated 28 November 2023, the applicant unsuccessfully issued a warning to the respondents. Please refer to Annex KAP 13 for the content of the respondents' reply.

APPLICATIONS BY THE PARTIES:

The applicant requests,

to recognise what happened;

additionally order the defendants to pay the costs and expenses of the proceedings.

FACTUAL AND LEGAL ISSUES:

In response to the applicant's warning, the defendants denied infringement of the patent in dispute out of court on the grounds that direction-dependent user guidance by an avalanche transceiver by means of voice messages and/or audio signals was prior art. The patent in suit had only been granted because the applicant had argued with the simultaneousness of voice and sound signals. However, the contested embodiment outputs either the sound or the voice signal. When the sound signal is output, the speech signal is neither generated nor suppressed nor produced at a reduced volume. The same applies vice versa for the voice signal.

In the nullity proceedings before the Federal Patent Court of Switzerland, the defendant 1) denied the novelty of the technical teaching protected by the patent in suit by referring to three documents (WO 2006/015721 A1; EP 2 527 011 A1; DE 2 9922 217 U1). In addition, respondent 1) has invoked the lack of inventive step there, combining the aforementioned documents with a large number of citations. With regard to the details, reference is made to the action for annulment (Annex KAP 15, in particular also the overview on p. 48 f.).

REASONS FOR THE ORDER:

The admissible application for an order for provisional measures is well-

founded. I.

According to the extract from the register submitted as Annex KAP 5, the applicant is the registered proprietor of the patent in suit and is therefore entitled to file an application pursuant to Art. 47 (1) UPCA.

II.

Furthermore, the Düsseldorf local division is convinced with sufficient certainty (R. 211.2 VerFO) that the applicant's right is infringed by the offer and distribution of the attacked embodiment within the Contracting Member States Germany and Austria (Art. 25(a) UPCA, Art. 26(1) UPCA). On the basis of the applicant's conclusive submissions, the attacked embodiment makes direct (claim 1) or indirect (claim 13) use of the technical teaching of the patent in suit.

1.

The out-of-court submissions of the defendants are not suitable to significantly deny the realisation of all features of patent claim 1. From the possibility

The defendants have not made use of the option to file a protective letter (R. 207 VerfO) despite the time that has passed since receipt of the warning.

Even if the challenged embodiment emits either a sound or a voice signal, as claimed by the defendants, this does not lead out of the scope of protection of the patent in suit. If the sound signal is temporarily not generated, the skilled person will recognise this as a temporary deactivation and thus suppression of this signal. The patent in suit does not deal at any point with the more detailed technical design of the suppression of the sound signal. Its realisation is therefore at the discretion of the skilled person. Since the patent claims at issue not only recognise the variant of outputting the sound signal at a reduced volume, but also permit complete suppression of the sound signal, there is no need to discuss further whether a temporary suspension of the signal generation also constitutes a reduction in volume (to zero). In this case, the variant of suppression is fulfilled.

Insofar as the respondents refer to (alleged) statements made by the applicant in the grant proceedings to justify their differing opinion, the grant file is not to be taken into account in principle when interpreting the patent. Art. 24 (1) (c) UPCA in conjunction with Art. 69 EPC conclusively determine which documents are to be used in the interpretation of the patent claims determining the scope of protection, namely the patent description and the patent drawings. Mere statements made during the grant procedure do not initially have any significance in terms of limiting the scope of protection. At most, they can have an indicative meaning as to how the person skilled in the art can understand the feature in question (cf. on German law similarly BGH, NJW 1997, 3377, 3380 - Weichvorrichtung II). However, there is no mention of the fact that the simultaneous output of sound signals and voice messages is absolutely necessary for the realisation of the technical teaching of the patent in suit, based on its overall content, in the statement referred to by the defendants before the court in the grant proceedings (cf. Annex KAP 14).

2.

The use of the attacked embodiment also requires the use of the method according to claim 13. Reference is made to the above explanations in order to avoid repetition. The other requirements for indirect patent infringement are also met, Art. 26 (1) EPC.

In particular, the subjective offence of contributory patent infringement is given. The defendants advertise the suitability of the attacked embodiment for supplementary voice output in all search phases. Thus, it is not only obvious from the circumstances that the defendants know that the accused embodiment is objectively suitable for patent infringing use, but also that the customers of the accused embodiment use it to carry out the patent-compliant process. The defendants should therefore have been aware of the objective suitability for use in accordance with the patent and the intention of the users.

III.

The legal validity of the patent in suit is secured to the extent required for the order of provisional measures. The local division is authorised under Art. 62 (4) UPCA in conjunction with Art. 62 (4) UPCA. R. 211.2 RoP the legal validity of the patent in suit.

1.

The fact that the patent in suit has not yet survived any adversarial legal validity proceedings does not preclude this. Even without such prior proceedings, the legal validity can be sufficiently secured. This is the case, for example, if the patent in question was published many years ago, but its legal validity has not been challenged, and the opposing party has not been able to present the relevant prior art either in pre-litigation correspondence or in a protective letter filed by it (see already UPC_CFI_177/2023 (LK Düsseldorf), order of 22 June 2023). If the patent in dispute is subject to such a parallel attack on the legal validity of the patent, this does not preclude the ordering of provisional measures. In such a case, it is rather the task of the adjudicating body to assess whether the legal validity is sufficiently secured despite such an attack. Irrespective of the delimitation of certain degrees of probability (see UPC_CFI_2/2023 (LK München), order of 19 September 2023, p. 58), this is in any case the case if the objections raised against the validity of the patent in suit are not capable of giving rise to justified doubts as to the validity of the patent in suit.

2.

Based on these principles, the legal validity of the patent in dispute is sufficiently certain. The patent in suit was granted in 2019 without any opposition being filed against its grant. From the action for revocation brought by the defendant 1) in Switzerland, it can be predicted which arguments the defendants are likely to put forward against the legal status of the patent in dispute. On summary examination, these do not give rise to any justified doubts as to the legal validity of the patent in suit.

a)

Two of the citations cited by the first respondent (WO-A1-2006/015721 [Annex KAP 17, hereinafter: WO '721] and EP 299 22 217 U1 [Annex KAP 19, hereinafter: EP '217]) to substantiate the alleged lack of novelty are prior art already taken into account in the grant procedure and, in the case of WO '721, even recognised in detail in the specification of the patent in suit. The third, allegedly novelty-destroying citation EP 2 527 011 A1 (Annex KAP 18, hereinafter EP '011) does not mention the output of a voice message at any point. In addition, both WO '721 and DE '217 disclose solutions in which no conventional bearing search is used, but rather position signals, for example in the form of GPS signals. As a result, a single transmission of the position information of the person or object to be searched for to the searcher is sufficient for successful location (see WO '721, p. 5, lines 21 - 25 and EP '217, p. 3, second paragraph). The problem of the interaction between the sound signals used for localisation and additionally emitted voice messages, which is the basis of the invention and is to be solved by means of the control of the loudspeaker according to the invention, does not arise from the outset with such a design. Against this background, WO '721 in any case lacks the disclosure of a control device which controls a loudspeaker in such a way that a sound signal is suppressed or output at a reduced volume during the output of at least one voice message (feature 5). The same applies to EP '217, which also does not disclose a control device in the aforementioned sense.

b)

Since in the solutions disclosed in WO '721 and EP '217 the buried person is located via the reception of a position signal and not via sound signals and therefore, as stated above, the problem of the interaction between the buried person and the sound signal, on which the patent in suit is based, arises.

between the sound signal used for localisation and additionally issued voice messages, these are not likely to be suitable as the closest prior art from the outset. Insofar as the respondent nevertheless wishes to combine WO '721 with a large number of documents (Annexes KAP 20 to KAP 26) and thus justify the lack of inventive step, it is not apparent what reason the skilled person should have to refer to and combine these other documents. Firstly, none of these documents relate to avalanche transceivers. Secondly, they all deal with issues that do not arise with avalanche transceivers. The same applies to the extent that the defendant relied on a combination of DE '217 with some of the aforementioned documents in its action for annulment. Why the skilled person should combine the technical teaching disclosed in DE '217 with Ayuso et al. (Annex KAP 27) is not apparent, if only because the latter deals with a new search technique in which the strength of the received signal is used to locate the buried avalanche transceiver. However, DE '217 wants to distinguish itself from such solutions (see DE '217, p. 3, second paragraph). For this reason, it is also not apparent why the skilled person should combine DE '217 with EP '011. The sole use of EP '011 in the context of the discussion of the inventive step is not convincing, if only because there is no room for considerations of equivalence, which the respondent 1) makes use of, in the context of the assessment of the inventive step.

IV.

The order for provisional measures is necessary in the present case to prevent the continuation of the infringement (see R. 206.2 (c) VerFO).

1.

Due to the circumstances in this case, the order of the requested provisional measures is urgent in terms of time (R. 209.2 (b) VerFO).

The urgency required for the ordering of provisional measures is only lacking if the injured party has been so negligent and hesitant in pursuing his claims that, from an objective point of view, it must be concluded that the injured party is not interested in enforcing his rights quickly, which is why it does not seem appropriate to allow him to take advantage of provisional legal protection (see also UPC_CFI 2/2023 (LK München), order of 19 September 2023, p. 84 f.). There are no indications of this in the present case. Even if the applicant was already able to inspect the attacked embodiment at a trade fair in the USA at the beginning of October 2023, it first became aware of its offer within the Contracting Member States on 3 November 2023. Only slightly less than a month then passed before the application for an order for provisional measures was filed. Against this background, there can be no question of delayed action. This is all the more true as the applicant also had to take into account extensive submissions by the defendant in the nullity proceedings before the Federal Patent Court of Switzerland in the context of the preparation of summary proceedings. Finally, the challenged embodiment was honoured with the "ISPO Award 2023" immediately before the application for an order for provisional measures was filed. The applicant also had to take this into account when developing its litigation strategy, for which it should also be granted some time.

2.

The order for provisional measures is justified due to the damage suffered by the applicant.

by the defendant's infringing product offering is also necessary from a factual point of view.

As the applicant has explained in detail and substantiated with the help of an affidavit (Annex KAP 29), the "ISPO Munich" trade fair is the leading trade fair for winter sports and winter tourism. A considerable number of advance sales can also be expected following this trade fair. This is all the more true since the contested design was honoured with the ISPO Award there. Even though sales of the contested design to end customers will not begin until summer 2024, the relevant transactions are already being concluded with retailers. In the current pre-order phase, commercial customers are currently placing binding orders for the products that they will receive from the manufacturers next summer and then offer to end customers in their shops. In addition, the contested design is a direct competitor product to a product of the applicant ("Ortovox Diract Voice"). Since every pre-order of the contested embodiment fulfils a demand that the applicant could otherwise have met, every pre-ordered copy of the contested embodiment already constitutes irreparable damage for the applicant. Since the applicant has not granted any licences for the patent in dispute, only the applicant is currently on the market with the special function of voice output (in combination with the search based on sound signals).

In order to grant the applicant effective legal protection in such a market environment, it is necessary to order provisional measures. In proceedings on the merits, an oral hearing can be expected within one year (see Rules of Procedure, Preamble, point 7.). Such a procedure would therefore not effectively prevent the sale of the contested design for the 2024/2025 winter season.

V.

The balancing of interests to be carried out pursuant to Art. 62(2) UPCA in conjunction with Art. R. 211.3 of the Rules of Procedure is also in favour of the applicant.

1.

The more certain the court is that the right holder is asserting the infringement of a valid patent, that there is a need to issue an injunction due to factual and temporal circumstances and that this is not precluded by possible damages suffered by the opponent or other justified objections, the more likely it is that the issuance of an injunction is justified. On the other hand, the sooner there are relevant uncertainties with regard to individual circumstances relevant to the weighing of interests that are detrimental to the court's conviction, the court will have to consider as a milder measure the authorisation of the continuation of the alleged infringement subject to the provision of security or even the dismissal of the application (UPC_CFI_2/2023 (LK München), order of 19 September 2023, p. 98).

2.

Having said this, the issuance of the requested order is also justified after weighing up the interests involved.

The patent in dispute protects an easily comprehensible technical teaching. Based on their pre-trial submissions, the defendants have not been able to deny the infringement conclusively submitted by the applicant. With regard to the legal situation, the local division has comprehensive submissions from both sides from parallel nullity proceedings conducted in Switzerland. On this basis, it is not possible for the defendants

has not yet succeeded in raising reasonable doubts about the legal validity of the patent in dispute. Due to the increased attention generated by the leading trade fair "ISPO Munich", which is reinforced by the ISPO Award, it is important for the applicant, as the manufacturer and distributor of a directly competing product of the contested embodiment, to obtain effective legal protection by means of an order for provisional measures and thus prevent the occurrence of irreparable damage. The interest of the defendants in starting the sale of the attacked embodiment must take second place. Their interest is sufficiently taken into account by the order of a security deposit to secure possible enforcement damages.

VI.

The Court, exercising its discretion (R. 209.2 RP), considers the issuance of an interim injunction to be appropriate and justified (Art. 62(1), 25(a), 26(1) UPCA).

The confiscation order is based on R. 211.1 (b) VerfO.

Insofar as the local division has also threatened to impose penalty payments in the event of non-compliance, this threat is based on R. 354.3 VerfO. With the number of products or the number of days, a value for the calculation of the penalty payments is already fixed. However, setting a maximum limit per product or day gives the local division the necessary flexibility to also take into account the behaviour of the infringer in the event of an infringement and to be able to set an appropriate penalty payment based on this in accordance with R. 354.4 VerfO. The differentiation between the distribution of the contested design and permanent behaviour, such as offers on the Internet, takes sufficient account of the principle of proportionality.

VII.

The order for provisional measures requested by the applicant without a prior hearing of the defendants appears appropriate and necessary in the present case (R. 209.2 (c) of the Rules of Procedure in conjunction with R. 212.1 of the Rules of Procedure). Taking into account its supplementary submissions in its document dated 7 December 2023, the applicant has succeeded in making it credible that it is threatened with irreparable damage without the issuance of an ex parte order due to the delay associated with the involvement of the opposing party.

1.

The fact that the "ISPO Munich 2023" trade fair had already ended at the time of the application for the order for provisional measures does not prevent this. It is true that sales transactions at a trade fair, which are typically intended to be prevented by the order for provisional measures, can naturally no longer be successfully prevented after such an event. However, taking into account its supplementary submissions, the applicant has now comprehensibly demonstrated that a considerable number of business transactions can also be expected after the end of the trade fair. The majority of the transactions will be concluded before Christmas. Added to this is the fact that the product cycle lasts longer, as burial detection devices, unlike conventional ski equipment, for example, are not necessarily purchased every season. As the parties' products are also direct competitors' products that can be substituted (cf: UPC_CFI_177/2023 (LD Düsseldorf), order of 22 June 2023, p. 6), the irreparable damage suffered by the applicant increases day by day. This can only be prevented by an immediate order.

2.

A prior hearing of the defendant does not promise any such gain in knowledge,

that, against the background of the damage threatening the applicant, it would be justified to wait until an order is issued (cf: Bopp/Kircher, Handbuch Europäischer Patentprozess, 2nd ed., § 22 para. 113). The petitioner sent the respondents a pre-judicial warning. The reaction of the legally represented respondents is available to the local division as an important source of information (R. 206.3 (b) Verfo, see Annex KAP 13). Since the defendants were not able to significantly deny an infringement of the patent in dispute in their defence to the warning letter, there is no reason to expect such a high probability that a wait-and-see approach would be justified, even in the context of a (renewed) hearing of the defendants. This applies all the more since the defendants have waived the filing of a protective letter and the associated opportunity to deepen their defence even after the warning.

With regard to the legal validity, the local division has before it both the action for revocation brought by the respondent 1) before the Federal Patent Court of Switzerland and the petitioner's defence in this regard (Annexes KAP 15 and KAP 16). Therefore, the local division is already in a position to form a sufficiently comprehensive picture of the legal validity of the patent in suit. A hearing of the defendants therefore also promises at best a limited gain in knowledge in this respect.

VIII.

Pursuant to R. 211.5 Verfo, the court must order the provision of a security if the order for provisional measures - as in this case - is made without first hearing the defendant. Special circumstances that could exceptionally speak against such an order in the present case have neither been presented nor are apparent. Therefore, the local division has made the enforceability of the order in the present case dependent on the provision of such security. As long as this security has not been provided, the order is not enforceable. The imposition of periodic penalty payments (Art. 82 (4) UPCA, R. 354.4 Verfo) can only be considered for infringements in which the security has already been provided and the defendant concerned has been demonstrably informed in a formalised form that the security has been provided.

As far as the amount of the security deposit is concerned, this should cover the legal costs, other costs due to the enforcement and possible compensation for damages incurred or likely to be incurred, R. 352.1 Verfo. However, it is difficult for the local division to estimate the amount of possible enforcement damages at the time this order is issued. Against this background, the security set is based on the amount in dispute. Even if the amount in dispute does not necessarily correspond to the risk of damage, it does provide an indication of the economic importance the applicant attaches to the matter. The security set on this basis protects the defendants at least for the initial period of enforcement of the ex parte order. It is up to them to apply for a review of the ex parte order in a timely manner (R. 212.2 Verfo in conjunction with R. 197.3 and .4 Verfo) and, in this context, to provide more detailed information on the risks to be secured by means of a security deposit.

IX.

The Rules of Procedure only provide for a basic decision on costs in proceedings on the merits (see R. 118.5 Verfo), but not in proceedings for an order for interim measures. The costs of summary proceedings are generally to be claimed in the main proceedings. An order for provisional reimbursement of costs (R. 211.1 (d) Verfo), which is possible in summary proceedings, requires a corresponding quantified application, which is lacking here.

ORDER:

I. The defendants are ordered to refrain from doing so,

1. Avalanche transceivers

in the Federal Republic of Germany and/or the Republic of Austria, to offer, place on the market or use or import or possess for these purposes, with at least

a transmitter unit for transmitting at least one transmission signal,

a receiver unit for receiving at least one transmission signal from at least one further avalanche transceiver,

and with a control device for controlling at least one loudspeaker,

wherein the control device is designed to control the at least one loudspeaker to output at least one voice message depending on at least one event,

wherein the at least one event is associated with a search for the at least one further avalanche transceiver,

wherein the avalanche transceiver has the at least one loudspeaker and the at least one loudspeaker is designed to emit at least one sound signal,

characterised in that

the at least one audio signal is associated with the search for the at least one other avalanche transceiver,

wherein the control device is designed to control the at least one loudspeaker in such a way that the at least one sound signal is suppressed during the output of the at least one voice message or is output at a reduced volume;

2. Devices suitable for carrying out a method for the operation of a la- wine burial detector

in the Federal Republic of Germany and/or the Republic of Austria for use in the Federal Republic of Germany and/or the Republic of Austria,

wherein the method comprises at least the following:

a transmitter unit for transmitting at least one transmission signal,

a receiver unit for receiving at least one transmission signal which is emitted by at least one further avalanche transceiver,

in which a control device of the avalanche transceiver controls at least one loudspeaker,

wherein the control device controls the at least one loudspeaker in such a way that the at least one loudspeaker emits at least one voice message,

wherein the at least one loudspeaker is activated by the control device as a function of at least one event which is associated with a search for the at least one further avalanche transceiver,

the avalanche transceiver has at least one loudspeaker and the at least one loudspeaker emits at least one sound signal,

characterised in that

the at least one audio signal is associated with the search for the at least one other avalanche transceiver,

wherein the control device controls the at least one loudspeaker in such a way that the at least one sound signal is suppressed during the output of the at least one voice message or is output at a reduced volume.

- II. For each individual infringement of the above order, the defendants must pay the court a (possibly repeated) penalty payment of up to EUR 10,000.00 per product and/or, in the case of continuous offences such as offers on the Internet, up to EUR 30,000.00 per day.
- III. The defendants are further ordered to hand over the avalanche transceivers referred to under I. or devices suitable for carrying out a procedure for operating an avalanche transceiver to a bailiff for the purpose of safekeeping, which shall continue until the existence of a claim for destruction has been finally decided between the parties or an amicable settlement has been reached.
- IV. This order is only enforceable if the applicant has provided security in favour of the defendants in the form of a deposit or bank guarantee in the amount of EUR 500,000.

NOTE ON DELIVERY:

This order is to be served on the respondents by the applicant's authorised representatives by way of party service together with a copy of the application for this order, including the evidence and other documents relied upon.

the order, a copy of the Chairman's note of 4 December 2023 and the Applicant's statement of 7 December 2023 relating thereto, as well as the Notice on interim measures and instructions for access to the proceedings (to be provided by CMS) (R. 212.2, R. 276.1 RP).

NOTICE THAT THE MAIN PROCEEDINGS MUST BE INITIATED WITHIN A TIME LIMIT:

If the main proceedings are not initiated within a maximum period of 31 calendar days or 20 working days, whichever is longer, from the date of service on the respective respondent, the court may, on application by the respondent concerned, order that the present order be cancelled or otherwise cease to have effect (Art. 62 (5), 60 (8) UPCA, R. 213.1 RP).

DETAILS OF THE order:

Main file reference ACT_589655/2023

UPC number: UPC_CFI_452/2023

Type of proceedings: Application for an order for provisional measures

Issued in Düsseldorf on 11 December 2023 NAMES

AND SIGNATURES

Presiding judge Thomas

Legally qualified judge Dr Thom

Legally qualified judge Dr Schober

for the Deputy Chancellor Strycio

REFERENCE TO THE RIGHT TO REVIEW

The respondents may request a review of the present order within 30 days of the enforcement of the measure (Art. 62(5), 60(6) UPCA, R. 212.3, 197.3 RP).

INFORMATION ON ENFORCEMENT (ART. 82 EPGÜ, ART. 37 (2) EPGs, R. 118.8, 158.2, 354, 355.4 VERFO)

A certified copy of the enforceable decision or enforceable order is issued by the Deputy Registrar on application by the enforcing party, R. 69 RegR.