



Hamburg - local  
division

**UPC\_CFI\_516/2024**  
**order**  
**of the Court of First Instance**  
**of the Unified Patent Court,**  
**issued on: 09/09/2024**

DATE OF RECEIPT OF THE APPLICATION:

09/09/2024 APPLICANT

**Koninklijke Philips N.V.**  
(Applicant) - High Tech Campus 52 -  
5656 AG - Eindhoven - NL

Represented by:  
Sönke Scheltz

DEFENDANT

**Shenzhen Yunding**  
**Information Technology Co.,**  
**Ltd.**  
(defendant) - Messe Berlin  
Messedamm 22 Hall 27 Stand P02 -  
14055 - Berlin - DE

DISPOSAL PATENT:

<i>Patent no.</i>	<i>Holder</i>
<b>EP3197316</b>	Koninklijke Philips N.V.

DECISION-MAKING BODY/CHAMBER:

Judges of the Hamburg local division:

This order was issued by the presiding judge and rapporteur Sabine Klepsch, the legally qualified judge Dr Stefan Schilling and the legally qualified judge András Kupecz.

LANGUAGE OF THE PROCEEDINGS: German

BRIEF DESCRIPTION OF THE FACTS:

The applicant is the registered proprietor of the European patent with unitary effect EP 3 197 316 B1 (hereinafter referred to as the patent in suit; Annex ES 11). The patent application was filed on 17 September 2015, claiming the priority of US patent 201462054417P dated 24 September 2014. The grant of the patent was published on 7 June 2023, the application for unitary effect was filed on 9 June 2023 and registered on 12 June 2023 and the decision was published on 12 July 2023. The dispositive patent is in force.

The patent-in-suit relates to a system and method for providing motivational feedback to a user prior to brushing. The relevant patent claim 1 is characterised by the following features:

1. An oral cleaning system that provides feedback to the user, the oral cleaning system includes
2. An electric toothbrush (10);
3. One or more sensors (26) on or in the toothbrush;
4. A processor (30) in the toothbrush that is configured to process sensor information,
5. received from one or more sensors during a user's first cleaning session; and
6. a feedback system (40) on or within the toothbrush that is responsive to the processor and configured to communicate brushing information to the user
7. at a time after the first cleaning session, but before a second cleaning session by the user.
8. The feedback system (40) includes a sensor (58) configured to detect whether the user has picked up or removed the toothbrush from the holder to activate the feedback system (40) to transmit the brushing information to the user when the sensor (58) has detected that the user has picked up or removed the toothbrush from the holder.

The defendant is a Chinese company based in Shenzhen, which manufactures toothbrushes and related accessories under the "Oclean" brand and sells them worldwide. The defendant's website is available at <https://de.oclean.com>. The defendant is an exhibitor at this year's IFA 2024 trade fair in Berlin at stand P02 in hall 27.

With her application for an injunction, the applicant is directed against electric toothbrushes of the defendant, which are sold under the trade mark "Oclean" with the designation "X Ultra S" (hereinafter: attacked embodiment 1) and "X Pro Digital" (hereinafter:

embodiment 2) will be offered at the IFA 2024 currently taking place in Berlin.

In a document dated 22 August 2024, the applicant sent a warning letter to the defendant and its Lithuanian distributors; the letter was accompanied by a draft application for interim measures. Among other things, the letter requested the defendant to refrain from offering and marketing the contested embodiment 1 and to submit a declaration to cease and desist with a penalty clause (see Annexes ES 04 and 05). Subsequently, on 29 August 2024, the defendant issued a cease-and-desist declaration subject to penalty, in which it undertook vis-à-vis the applicant to refrain from offering, placing on the market or importing for these purposes toothbrushes in the member states of the UPC that would implement claim 1 of the patent in suit (cf. Annex ES 06). Clause 3 was agreed as follows:

"This declaration is subject to German law. The exclusive place of jurisdiction for disputes arising from and in connection with this declaration and/or the facts on which the warning letter of 22 August 2024 is based is [sic] Hamburg."

The letter dated 29 August 2024 also confirmed that the products would no longer be offered and marketed. It also stated that the defendant would not be at IFA 2024. In a letter dated 3 September 2024, the applicant accepted the cease-and-desist declarations and pointed out to the defendant that the "X Pro Digital" model - challenged embodiment 2 - was also subject to the cease-and-desist declaration and requested it to refrain from offering and marketing this and other products that make use of the injunction patent. The defendant responded to this by email dated 4 September 2024 (Annex ES 09). It confirmed that the other asserted products - in particular the challenged embodiment 2 - would also no longer be offered and marketed. Subsequently, the defendant removed the challenged embodiments from its website <https://de.oclean.com>.

During her visit to IFA 2024 on 6 September 2024, the applicant discovered that the defendant was exhibiting and offering the contested embodiments at its stand in Hall 27, Stand P02.

In a document dated 8 September 2024, the applicant applied to the Munich local division for the adoption of interim measures. The application was filed on 9. The petition was withdrawn by the Hamburg local division on 1 September 2024 and submitted on the same day.

#### APPLICATIONS BY THE PARTIES

The applicant requests:

- I. The defendant is ordered in the territory member states party to the UPCA to refrain from

An oral cleaning system that provides feedback to the user, the oral cleaning system includes

An electric toothbrush (10);

One or more sensors (26) on or in the toothbrush;  
A processor (30) in the toothbrush configured to process sensor information received from one or more sensors during a user's first brushing session;  
and  
a feedback system (40) on or within the toothbrush responsive to the processor and configured to communicate brushing information to the user at a time after the first brushing session but before a second brushing session by the user;

characterised in that

the feedback system (40) includes a sensor (58) configured to detect whether the user has picked up or removed the toothbrush from the holder to activate the feedback system (40) to transmit the brushing information to the user when the sensor (58) has detected that the user has picked up or removed the toothbrush from the holder.

- EP 3 197 316 Claim 1, direct infringement -

to offer or place on the market in the territory of one or more of the Contracting Member States of the UPCA and/or to import or possess for the said purposes.

- II. For each individual violation of the order under Section I., the defendant shall pay a penalty payment (which may be repeated) of up to EUR 250,000 to the court.
- III. The defendant is ordered to hand over all products mentioned in section I. under its control at the IFA 2024 trade fair, Messe Berlin, Messedamm 22, 14055 Berlin, to a bailiff to be commissioned by the applicant for the purpose of safekeeping, which will continue until a final decision has been made on the existence of a claim for destruction between the parties or an amicable settlement has been reached.
- IV. Orders the defendant to pay the costs.
- V. Pursuant to R. 13.1 (q) RoP, it is requested that the applicant be authorised not to submit translations of English-language annexes.

REASONS FOR THE ORDER:

The admissible application for interim measures is well-

founded. I.

The fact that the contested embodiment directly infringes the patent the defendant has at no time denied that the company has infringed the terms of the agreement. On the contrary, against the background of the statements in the warning letter of 22 August 2024 and the draft application for an injunction attached to it, the defendant did not deny this.

interim measures, a declaration to cease and desist with a penalty clause was issued (Annex ES 06). In response to the applicant's letter of 3 September 2024 (Exhibit ES 08), in which it was pointed out that the challenged embodiment 2 was also subject to the declaration of discontinuance and in this respect was also requested to refrain from offering and placing on the market, the defendant did not deny an infringement of the injunction patent, but confirmed that the further asserted products, in particular the challenged embodiment 2, would no longer be offered and distributed. On this basis and after a summary examination on the basis of the application, the court is able to find an infringement.

## II.

The matter is also urgent due to the world's largest consumer electronics trade fair IFA 2024, which is already underway (R. 209.2 lit. b) RoP). There are no indications of unreasonable delay on the part of the applicant, R.

211. 4 RoP. The applicant has only been aware of the exhibition of the contested embodiments at IFA 2024 since 6 September 2024.

## III.

On this basis, the Court, exercising its discretion (R. 209.1, 211.3 RoP), considers it appropriate and justified to issue an interim injunction as shown in the operative part (Art. 62(1), 25 UPCA). The applicant has credibly demonstrated that it would suffer irreparable damage as a result of a delay (R. 212.1 RoP). The "IFA 2024" is an important leading trade fair with considerable relevance for the entire industry. It enables the defendant to make contact with potential customers and thus establish its own market presence. It is obvious that the exhibition of the contested design at this trade fair can lead to a loss of sales or market share for the applicant that can hardly be reversed. The products of both parties are substitutable, direct competitors.

The seizure order is based on Art. 62 para. 3 UPCA in conjunction with R. 211.1 (b) RP. R. 211.1 (b) RoP. Such an order appears appropriate and necessary, taking into account the interests of the parties. It is not apparent that the defendant has an interest in retaining in its possession copies of the contested embodiments exhibited at IFA 2024.

Insofar as the Hamburg local division has also threatened to impose penalty payments in the event of non-compliance, this threat is based on R. 354.3 RoP. The number of products or the number of days is already a fixed figure for calculating the penalty payments. 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 on this basis in accordance with R. 354.4 RoP.

In contrast, the applicant cannot demand provisional reimbursement of costs from the defendant, R. 211.1 (c) RoP. The Rules of Procedure only provide for a basic decision on costs in proceedings on the merits (see R. 118.5 RoP), but not in proceedings for an order for interim measures. The costs of the summary proceedings are generally to be **claimed** in the main proceedings. In summary proceedings

possible order for provisional reimbursement of costs (R. 211.1 (d) RoP) requires a corresponding quantified application, which is lacking here.

#### IV.

The legal validity of the injunction patent is secured to the extent required for the issuance of a preliminary injunction. The reference to the grant of the provisional patent was published in July 2023 without any opposition having been filed against the provisional patent to date. The subject matter of the injunction patent was also filed for patent in Japan, USA and China and in all these countries the respective patent was granted with essentially identical scope of protection, despite independent searches by the respective patent offices. The defendant was also not able to present any relevant prior art - from its point of view - before the court.

#### V.

The court issued the interim measures without first hearing the defendant. As already stated in section III, the applicant has made a prima facie case that it would suffer irreparable harm as a result of a delay (R. 212.1 RoP).

There is no need to order the provision of security in the present case. Pursuant to R. 211.5 sentence 1 RoP, the court may require the provision of appropriate security for any appropriate compensation to be paid by the defendant for the damage that the defendant is likely to suffer in the event that the court cancels the order for interim measures. Unless the specific case - as here - exceptionally requires otherwise, this option should generally be utilised. The decision to order interim measures is based on only a preliminary assessment of the factual and legal situation, which is inherently uncertain. In addition, the interim measure represents a considerable encroachment on the rights of the patent infringer, who is massively restricted in the exercise of his economic activity. This uncertainty and the intensity of the interference can only be taken into account by ordering the provision of security (Tilmann/Plassmann, Einheitspatent, Unified Patent Court, Rule 211 para. 32). In the present case, the defendant has submitted a declaration of discontinuance in which it has undertaken to no longer offer and/or place on the market and/or import for the aforementioned purposes the attacked embodiments. The prohibition of corresponding acts with the present order can therefore not justify any damages.

#### VI.

Insofar as the applicant initially submitted the application for interim measures to the Munich local division, which was not communicated to the Hamburg local division in the application (R. 13 (h) RoP), the Hamburg local division assumes an oversight, since both the cease-and-desist declaration in item 3 (Annex ES 06) mentions Hamburg as the place of jurisdiction and the draft application for interim measures attached to the warning letter of 22 August 2024 addresses the Hamburg local division (Annex ES 05).

#### ORDER

- I. The defendant is ordered in the territory member states party to the UPCA to refrain from

an oral cleansing system that provides feedback to the user, comprising the oral cleansing system:

An electric toothbrush (10);  
one or more sensors (26) on or in the toothbrush;  
a processor (30) in the toothbrush configured to process sensor information received from one or more sensors during a user's first brushing session;  
and  
a feedback system (40) on or within the toothbrush responsive to the processor and configured to communicate brushing information to the user at a time after the first brushing session but before a second brushing session by the user;

characterised in that

the feedback system (40) includes a sensor (58) configured to detect whether the user has picked up or removed the toothbrush from the holder to activate the feedback system (40) to transmit the brushing information to the user when the sensor (58) has detected that the user has picked up or removed the toothbrush from the holder.

- EP 3 197 316 Claim 1, direct infringement -

to offer or place on the market in the territory of one or more of the contracting member states of the UPCA and/or to import or possess for the aforementioned purposes.

- II. For each individual violation of the order under I., the defendant must pay a (possibly repeated) penalty payment of up to EUR 250,000 to the court.
- III. The defendant is ordered to hand over all products mentioned in section I. under its control at the IFA 2024 trade fair, Messe Berlin, Messedamm 22, 14055 Berlin, to a bailiff to be commissioned by the applicant for the purpose of safekeeping, which will continue until a final decision has been made on the existence of a claim for destruction between the parties or an amicable settlement has been reached.
- IV. This order is provisionally enforceable.
- V. The remainder of the application is rejected.
- VI. The applicant is authorised not to submit translations of English-language annexes.

NOTE ON DELIVERY:

This order is to be presented in person at the "IFA 2024" trade fair in Berlin by the applicant's authorised representatives together with a copy of the application.

the order in question, including the evidence and other documents on which the order is based (R. 212.2, 276.1 RoP).

REFERENCE TO THE RIGHT TO REVIEW:

The respondent 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 RoP).

INFORMATION ABOUT THE APPEAL:

The respondent may appeal against this order within 15 days of its notification (Art. 73(2)(a), 62 UPCA, R. 220.1(c), 224.2(b) RoP).

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

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

INFORMATION ON ENFORCEMENT (ART. 82 EPGÜ, ART. ART. 37(2) UPC AGREEMENT, R. 118.8, 158.2, 354, 355.4 ROP):

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.

ORDER DETAILS:

Order no. ORD\_50890/2024

UPC number:

UPC\_CFI\_516/202

4Type of transaction: Not available

No. of the related procedure Application No.: 50855/2024

Type of application: Application for interim measures (Rule 206 of the Regulation)

Sabine  
Maria  
Klepsch

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Presiding judge and rapporteur Sabine Klepsch

Stefan  
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Legally qualified judge Dr Stefan Schilling



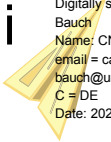
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For the Deputy Chancellor