



**Decision by default  
of the Court of First Instance of the Unified Patent Court Local Division  
Munich  
issued on 11 October 2024**

PLAINTIFF

**i-mop Ltd**, Schwanheimer street 141, 64625 Bensheim, represented by  
the managing directors Rudolf Franke and Rainer Kenter, Germany,

represented by: Lawyer Hannes Jacobsen, CBH Rechtsanwälte, Ismaninger Straße 65a,  
81675 Munich.

DEFENDANT

**ARCORA International GmbH**, Marsstraße 9, 85609 Aschheim, Germany, represented by  
the Managing Director Sami Memili, ibid.

represented by: Rechtsanwalt Sebastian Schiller, Hoefler Partner, Pilgersheimer Straße  
20, 81543 Munich.

PATENT IN SUIT

European patent EP 3 760 094

JUDICIAL BODY/CHAMBER

Panel 2 of the Munich local division

PARTICIPATING JUDGES

This decision was issued by the presiding judge Ulrike Voß (rapporteur), the legally qualified  
judge Dr Daniel Voß and the legally qualified judge Mojca Mlakar.

LANGUAGE OF THE PROCEEDINGS

German

## OBJECT

Action for infringement - decision by default Art. 37 UPC Statute, Rule 355 RP.

## BRIEF PRESENTATION OF THE FACTS

The plaintiff is the proprietor of European patent EP 3 760 094 B1 (hereinafter the patent in suit, Annex CBH 9). The patent in suit, which relates to a floor cleaning device and whose language of the proceedings is German, was filed on 25 August 2010 and claims the priority of DE 10 2009 028 944 A1 of 27 August 2009. The application for the patent in suit was published on 6 January 2021; the reference to the grant of the patent in suit was published on 8 November 2023. Since 17 November 2023, the patent in suit has been a patent with unitary effect (Annex CBH 8).

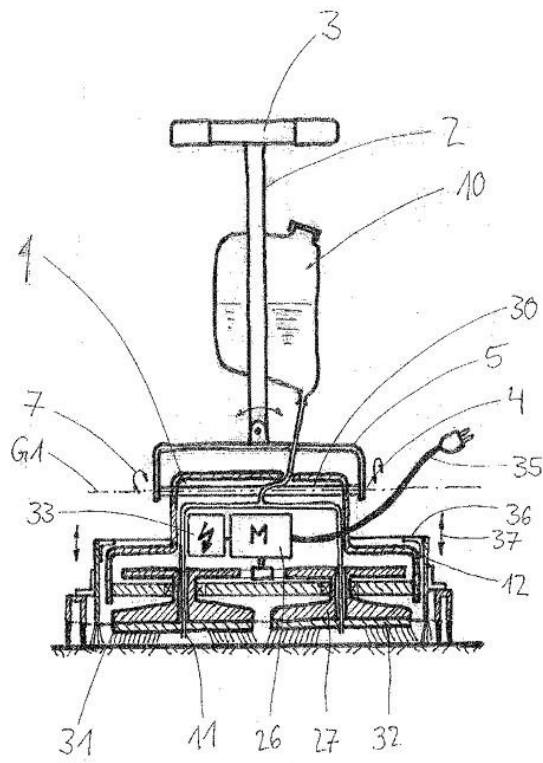
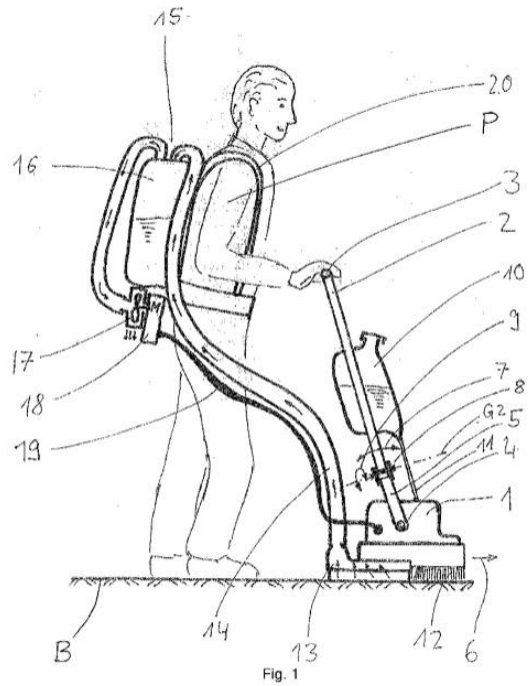
The patent in suit is in force. The opposition filed by Numatic International Limited, Numatic International GmbH, Numatic International B.V. and 4CleanPro S.R.L. with the European Patent Office in November 2023 has not yet been decided.

Claim 1 of the patent in suit reads:

"Hand-guided soil tillage implement, comprising a ground part (1) with at least one tool (31) for soil tillage and a motor (26) for driving the at least one tool (31) and having a guide part (2) with a handle part (3), the guide part (2) being connected to the base part (1) via a first joint (4) which is adjustable in the machining direction (6) and has a joint axis (G1) transverse to the machining direction (6), wherein the guide part (2) has at the lower end below the centre but above the base part (1) a further joint (8) with a further joint axis (G2) extending transversely to the first joint axis (G1), about which the guide part (2) is adjustable transversely to the processing direction (6) in such a way that the base part (1) can be rotated by a user (P) parallel to the processing surface (B) about a vertical axis (A1) of the base part (1) by at least  $\pm 45^\circ$ , wherein the base part (1) has a liquid feed (11), and wherein a liquid tank (10) is provided for the liquid feed (11) and is attached to the base part (1) or to the guide part (2) above the further joint (8)."

For the wording of the "in particular" asserted subclaims 7, 15, 22 and 27, reference is made to the specification of the patent in suit.

Figures 1 and 3 of the patent in suit, which are superimposed below, show embodiments of a soil tillage implement according to the claim. Figure 1 shows a hand-guided soil tillage implement with a suction unit which is designed as a unit to be attached to the body. Figure 3 is a cross-section of the floor part with guide part and handle part of the floor tillage implement of Figure 1.



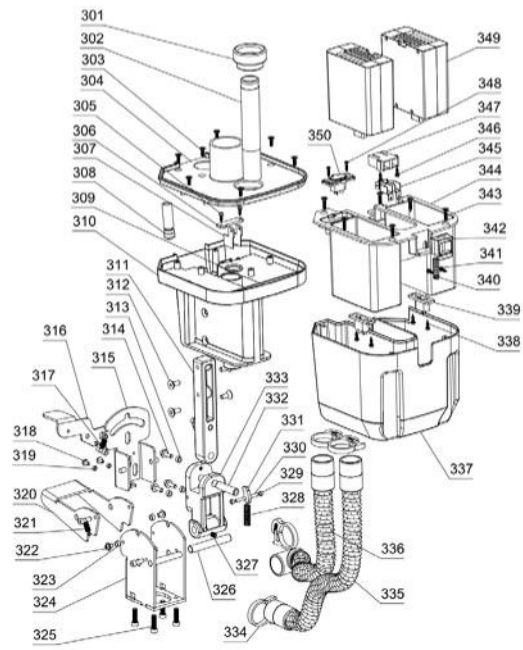
The defendant is a company based in Germany which, inter alia via its website [www.arcora.de](http://www.arcora.de) and at the CMS trade fair in Berlin in September 2023, offers and sells, inter alia, a floor cleaning machine with the article number SCR40BM, until 2023 under the name "Blancus 40" and then under the name "Tiger 40" (hereinafter attacked embodiment, Annexes CBH 7, CBH 11, CBH 12, CBH 13, CBH 14, CBH 15). The product data sheet offered for download on the website and the operating instructions also offered are written in German and English (Annex CBH 16). The defendant brings the attacked embodiment into the area of application of the UPCA in order to then offer, distribute and place it on the market there. The defendant sells its products in 43 countries worldwide.

The embodiment in question is a hand-operated, motorised floor treatment appliance with a fresh water tank that is used for scrubbing and vacuuming floors, whereby two rotating brushes or pads on a floor section clean the floor. It also has a handle or guide section that is connected to the floor section by means of an articulated arrangement. With the aid of the joint arrangement, the embodiment in question can be rotated by more than 45°.

To illustrate the design of the attacked embodiment, reference is made to the following illustration, which comes from the defendant's website (cf. page 29 of the statement of claim of 25 April 2024, <https://arcora.de/de/produkt/blancus-40-kompakte-scheuersaugaugermaschine>), and to the following exploded views 3 and 5 of the operating instructions of the attacked embodiment (Annex CBH 13):

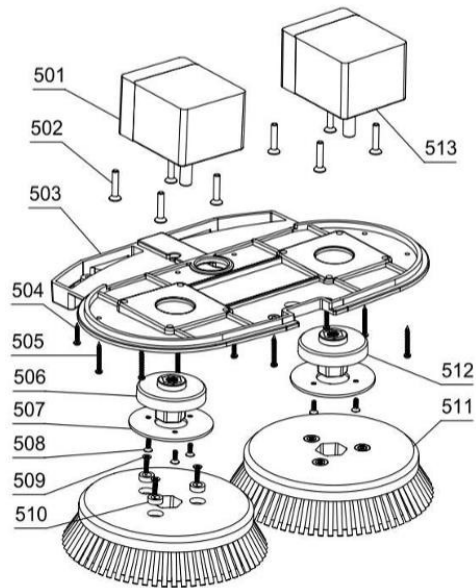


Explosion diagram 3



12

Explosion diagram 5



### MAIN ARGUMENTS OF THE PLAINTIFF

The plaintiff asserts a claim against the defendant for direct patent infringement. It is of the opinion that the attacked embodiment makes use of all features of claim 1 of the patent in suit and also of all features of the dependent sub-claims 7, 15, 22 and 27 of the patent in suit in accordance with the literal meaning. The defendant is using the patent in suit in a patent-infringing manner by bringing the attacked embodiment into the scope of the UPCA without its consent and offering it to third parties and placing it on the market within this scope.

### KEY PROCESS STEPS

The statement of claim dated 25.04.2024 was served on the defendant on 13.05.2024. The defendant, for whom a representative has been appointed, has not submitted a statement of defence.

By provisional order of 16 August 2024 (ORD\_47439/2024), the rapporteur pointed out the requirements for the issuance of a default decision and stated that, on the basis of the plaintiff's submission in the statement of claim, the court assumed that the use of claim 1 of the patent in suit had been conclusively demonstrated and that no conduct on the part of the defendant was apparent which would argue against the issuance of a default decision. The rapporteur also pointed out that not all of the legal consequences requested follow from the facts submitted by the plaintiff and explained in more detail the concerns that exist with regard to requests II to V of the statement of claim of 25 April 2024. The plaintiff was given the opportunity to comment on the judicial references within 14 days. Finally, it was pointed out in the provisional order of 16 August 2024 that a default judgment could be issued if the plaintiff dispelled the court's concerns and the defendant did not submit a statement after a deadline - yet to be set - for comments.

In a statement dated 30 August 2024, the plaintiff commented on the information and reworded the claims.

By provisional order dated 31 August 2024, the defendant was granted a period of 10 days to comment on the plaintiff's statement of 30 August 2024. The defendant was informed that a default judgement could be considered if it allowed this deadline to pass unused. The defendant has not submitted a statement.

### APPLICATIONS

After the plaintiff requested a declaration of patent infringement, injunction, damages, compensation, information and disclosure of the books, destruction and recall, publication and payment of costs by the defendant in the statement of claim dated 25 April 2024 and, in the event that the defendant does not reply or fails to take other ordered procedural steps, a default judgment (cf. pages 2 - 7 of the statement of claim dated 25 April 2024), it now applies for a default judgment in its pleading dated 30 August 2024 (see pages 2 - 7 of the pleading dated 30 August 2024):

- I. The European patent with unitary effect EP 3 760 094 B1 has been infringed by the defendant.
- II. The defendant is sentenced,
  1. refrain from using hand-held soil tillage implements,
    - a. having a ground part (1) with at least one tool (31) for working the ground and a motor (26) for driving the at least one tool (31) and having a guide part (2) with a handle part (3), wherein the guide part (2) is connected to the ground part (1) via a first joint (4) adjustable in the working direction (6) with a joint axis (G1) transverse to the working direction (6), wherein the guide part (2) has at the lower end below the centre but above the ground part (1) a further joint (8) with a further joint axis (G2) extending transversely to the first joint axis (G1), about which the guide part (2) is adjustable transversely to the processing direction (6) in such a way that the base part (1) can be rotated by a user (P) parallel to the processing surface (B) about a vertical axis (A1) of the base part (1) by at least +45°, wherein the base part (1) has a liquid feed (11), and wherein a liquid tank (10) is provided for the liquid feed (11) and is attached to the base part (1) or to the guide part (2) above the further joint (8),

to offer, place on the market, import or use or to possess for these purposes,

in particular,

b. when

the user can rotate the floor part about its vertical axis even when the guide part is set at an angle, and the floor part can be rotated by 90° about the vertical axis by rotating the handle part by 90° about the longitudinal axis of the guide part, and the floor part can also be rotated by a further 90° by rotating the handle part by a further 90°, so that the machining direction, which originally points away from the user, is now directed towards the user, and the user can move the base part first away from him and then towards him after rotating the base part by 180°, with the machining direction first running away from him and then towards him, and the base part can be rotated by the user parallel to the machining surface about the vertical axis by at least  $\pm 270^\circ$ , and the guide part is connected to the base part via the first joint and the further joint, and the first joint and the further joint together form a universal joint,

c. and, if the soil tillage implement according to section II.1.a

the soil tillage implement has at least one energy storage device for supplying the tool, and the at least one energy storage device is attached to the guide part, and the at least one energy storage device is removably attached,

d. and, if the soil tillage implement according to section II.1.a the liquid tank (10) attached to the guide part (2) is moulded longitudinally along the guide part (2), and a container for the liquid taken up by the base surface is arranged on the guide part and is connected via a hose to a liquid intake and a suction turbine, and the container for the liquid taken up is attached to the guide part above the further joint and is moulded longitudinally along the guide part,

e. and, if the soil tillage implement according to section II.1.a., b., c. and d.

die Flüssigkeitsaufnahme (13) eine Saugleiste (49) mit zwei Dichtlippen (28, 29) aufweist, die sich mindestens über die halbe Breite, vorzugsweise über die ganze Breite des Bodenteils (1) und um das Werkzeug (31) für die Bodenbearbeitung herum gebogen quer zur Bearbeitungsrichtung (6) erstreckt und in Bewegungsrichtung (6) gesehen hinter dem Werkzeug (31) für die Bodenbearbeitung angeordnet ist, wobei vorzugsweise die in Bewegungsrichtung (6) front sealing lip (28) is ribbed or has openings,

2. to pay to the court a repeated penalty payment of up to € 3,000 per infringing product in the event of any infringement of the order pursuant to the application under II.1.

III. The defendant is further ordered, within a period of 45 days after service of the judgement, to pay, in accordance with R. 118.8 VerfO,

1. to provide the plaintiff, in a list structured for each month of a calendar year and by infringing products, from 6 January 2021, with the information listed below on the products referred to in point II.1. in order to calculate the damages to which the plaintiff is entitled, including the defendant's profit from 8 November 2023 and for the calculation of reasonable compensation from 6 January 2021 to 7 November 2023, by providing information on

- a. the origin and distribution channels of the products;
- b. the quantities delivered, received or ordered and the prices paid for the products;
- c. the identity of all third parties involved in the manufacture or distribution of the products;

and for the period from 8 November 2023 additionally via

d. the costs, broken down by individual cost factors and the profits realised;

whereby copies of the corresponding purchase documents (namely invoices, alternatively delivery notes) must be submitted as proof of the information, whereby details requiring confidentiality outside the data subject to disclosure and notification may be blacked out;



2. to hand over to a bailiff to be appointed by the plaintiff for the purpose of destruction at the defendant's expense any product which is directly or indirectly in its possession or owned by the defendant and which is referred to in section II.1;
  3. Recall the infringing products referred to in section II.1. by informing the third parties from whom the infringing products are to be recalled that this court has found that the products infringe the European patent with unitary effect EP 3 760 094 B1, whereby the defendant must give the third parties a binding undertaking to reimburse the costs incurred, to bear the packaging and transport costs incurred, to reimburse the customs and storage costs associated with the return of the products and to take back the products.
- IV. The defendant is ordered to pay the plaintiff provisional damages in the amount of € 50,000.
- V. It is established that the defendant
1. is obliged on the merits to compensate the plaintiff for any further damage it has suffered or will suffer in the future for all past and future acts pursuant to section II.1,
  2. to pay the plaintiff reasonable compensation for all acts pursuant to Section II.1 in the Federal Republic of Germany for which damages are not already payable pursuant to Section V.
- VI. The defendant is ordered to pay the costs and expenses of the proceedings.
- VII. In the event that the defendant does not reply or fails to take other ordered procedural steps, a default judgement pursuant to R. 355 is applied for.

#### REASONS FOR THE DECISION

The admissible action is well-founded. As a result of the defendant's default, a decision by default must be issued against the defendant in accordance with Article 37(1) of the UPC Statute and Rule 355(1)(a) of the Rules of Procedure.

#### **I.**

Pursuant to Article 37 (1) of the UPC Statute and Rule 355 (1) of the Rules of Procedure, the court has the discretion (wording in the three procedural languages: "can", "may", "peut être") to issue a decision by default against a defendant subject to four conditions. Three of them relate to the admissibility of a default judgement, the fourth to its substantive merits.

A decision by default is admissible if, firstly, the plaintiff applies for such a decision (Article 37(1) UPC Statute, Rule 355(1) of the Rules of Procedure), secondly, the defendant has failed to perform an act incumbent upon it within the period prescribed by the Rules of Procedure and the Rules of Procedure authorise the issue of a decision by default in this respect.

(Rule 355(1)(a) of the Rules of Procedure) or does not submit a written response to a document served in the course of the proceedings (Art. 37(1) of the UPC Statute) and, thirdly, the time limit for responding to the claim or counterclaim has expired and it is therefore ensured that service of the claim or counterclaim was effected in such a way that the defendant had sufficient time for his defence (Rule 355(3) of the Rules of Procedure).

The issuance of a decision by default is substantiated if the facts presented by the plaintiff justify the claim asserted and the procedural behaviour of the defendant does not preclude the issuance of a decision by default (Rule 355 (2) VerfO).

All of these requirements are met in the present case.

## 1.

The issuance of a default judgement is permissible.

Both in the statement of claim dated 25 April 2024 and in its pleading dated 30 August 2024, the plaintiff applied for a default judgment to be issued in the event that the defendant does not respond or fails to take other ordered procedural steps.

The action of 25 April 2024 was served on the defendant on 13 May 2024. Service was duly effected in accordance with Rule 271 VerfO. The defendant did not take advantage of the three-month period to respond to the action, which expired on 13 August 2024 in accordance with Rule 23 of the Rules of Procedure; it did not submit a response.

The defendant therefore failed to submit a written response to a document initiating proceedings that had been served. For this situation, Article 37(1) of the UPC Statutes expressly provides for the possibility of issuing a decision by default.

It is irrelevant that the Rules of Procedure themselves do not expressly provide for the issue of a decision by default for this type of default - Rule 27 (2), (3), (4) of the Rules of Procedure in conjunction with Rule 24 (1) of the Rules of Procedure only concerns a decision by default in the event of failure to remedy formal defects and Rule 355 (3) of the Rules of Procedure mentions the necessity of the expiry of the time limit for replying, but does not mention the possibility of a decision by default as a consequence of this. The express provision in Art. 37 UPC Statute is sufficient. It is not necessary for such an express provision to be present (twice) both in the UPC Statutes and in the Rules of Procedure. If one wanted to assume a conflict between the Rules of Procedure and the UPC Statutes due to the lack of explicit mention in the Rules of Procedure, this would have to be resolved in favour of Art. 37 para. 1 UPC Statutes in accordance with point 1 of the preamble to the Rules of Procedure. The UPC Statutes take precedence over the Rules of Procedure. Apart from this, the aforementioned paragraph 3 of Rule 355 of the Rules of Procedure indicates that the Rules of Procedure consider the issuance of a decision by default in the event of failure to file a statement of defence to be possible by implication in any event.

The deadline for filing a statement of defence expired on 13/08/2024. As a result, the defendant had sufficient time to defend itself in court. It was also given the opportunity to comment on the plaintiff's statement of 30 August 2024 within 10 days. It therefore had a total of around 4 months to defend itself against the action. The need for a response and/or statement and the time limit for the defence were

Moreover, the defendant was informed of the consequences of default by the court both in the provisional order of 16 August 2024 and in the provisional order of 31 August 2024.

## 2.

The issuance of a default judgement is justified.

According to the plaintiff's conclusive and undisputed factual submission, the challenged embodiment makes direct use of the technical teaching of the patent in suit in accordance with the literal meaning. The defendant uses the patent in suit without the plaintiff's consent. The claims asserted by the plaintiff are justified. There is no apparent procedural behaviour on the part of the defendant that speaks against the issue of a default judgment.

### a)

The invention relates to a hand-operated floor tillage implement for tilling floors by scrubbing, polishing or grinding.

The patent in suit explains at the outset that DE 698 12 963 T2 discloses a hand-guided soil tillage implement with a ground part and a guide part. The ground part has at least one tool for tilling the soil and a motor for driving the tool. The guide part is connected to the ground part by means of two articulated joints. A first joint is adjustable in the working direction and has a joint axis transverse to the working direction. A second joint has a second joint axis extending transversely to the first joint axis, about which the guide part can be adjusted transversely to the machining direction (paragraph [0002]; paragraph details without reference are those of the patent in suit). The patent in suit considers it to be disadvantageous that in this known soil tillage implement the second joint is arranged above the soil part ([paragraph [0002]).

As further prior art, the patent in suit describes EP 0 978 249, from which a device for treating surfaces is known, in particular for cleaning and polishing, which provides a joint between a holding device and the base part which can be moved in at least two directions. This joint enables the user to adjust the handle height to the personal height of the user by tilting the holding device and to move the device forwards and backwards in the direction of processing, as well as to carry out lateral movements with the device (paragraph [0003]). The patent in suit criticises the arrangement of the joint on the side of the base part and protruding parts on the base part. This restricts lateral movement (paragraph [0004]).

The patent in suit also recognises DE 196 22 856 A1, which discloses a manually guided surface scrubbing device which has at least one, preferably two disc brushes and at least one roller brush, and which is moved on wheels. Furthermore, a suction bar is provided, which is preferably attached to the rear end of the cleaning device and which is connected via a hose to a container for collecting dirty water. A container for cleaning fluid is also attached to the surface scrubbing device (paragraph [0007]). According to the patent in suit, this surface scrubbing device has the disadvantage that its weight is increased by the liquid containers attached to the device itself, and that the wheels allow easy movement in a linear direction, but do not allow any real manoeuvrability in a lateral direction (paragraph [0008]).

The patent in suit also describes devices known from DE 203 02 630 U1 (paragraph [0005]) and EP 0 560 523 A2 (paragraph [0009]) as well as back hoovers (paragraph [0006]), but without criticising them.

Based on the prior art, the patent in suit is objectively based on the task of providing a floor preparation device which, in addition to polishing or grinding, also enables wet cleaning and is easily movable and operable by hand (cf. in this respect also the subjective task description in paragraph [0010]).

To solve the problem, the patent in suit in claim 1 proposes a device whose features can be categorised as follows:

1. Hand-guided soil tillage implement, comprising
  - 1.1 a base part (1) with
    - 1.1.1 at least one tool (31) for soil cultivation and
    - 1.1.2 a motor (26) for driving the at least one tool (31)
  - and
  - 1.2 a guide part (2) with a handle part (3).
2. The guide section (2)
  - 2.1 is connected to the base part (1) via a first joint (4) adjustable in the machining direction (6) with a joint axis (G1) transverse to the machining direction (6);
  - 2.2 has a further joint (8) at the lower end below the centre but above the base part (1) with a further joint axis (G2) running transversely to the first joint axis (G1),
    - 2.2.1 about which the guide part (2) can be adjusted transversely to the machining direction (6) in such a way that the base part (1) can be rotated by a user (P) parallel to the machining surface (B) about a vertical axis (A1) of the base part (1) by at least  $\pm 45^\circ$
3. The base part (1) has a liquid feed (11).
4. A liquid tank (10) for the liquid supply (11) is provided and attached to the base part (1) or to the guide part (2) above the further joint (8).

**b)**

The defendant is wrongly using claim 1 of the patent in suit.

**aa)**

The contested embodiment realises all the features of claim 1 of the patent in suit in accordance with the wording.

In the statement of claim, the plaintiff has conclusively submitted the fulfilment of all characteristics. It has substantiated that it is a hand-guided soil tillage implement according to feature 1, which has a ground part within the meaning of features 1.1, 1.1.1 and 1.1.2. It has also substantiated that the contested embodiment has a guide part in accordance with feature 2, which is connected to the floor in accordance with a joint arrangement in accordance with features 2.1 and 2.2, so that the guide part can be adjusted in the working direction about this joint in accordance with feature 2.2.1. The plaintiff has also substantiated that the joint arrangement of the contested embodiment forms a universal joint between the guide part and the base part, so that a user can rotate the base part parallel to the machining surface by at least 45° about a vertical axis of the base part, even when the guide part is inclined and in particular when it is swivelled about the further joint axis transverse to the machining direction, by rotating the guide part about its longitudinal axis. According to the plaintiff's substantiated submissions, the contested embodiment can in any event be rotated by  $\pm 270^\circ$  about the vertical axis. Finally, the plaintiff has substantiated that the attacked embodiment has a liquid tank and a liquid supply according to features 3 and 4.

**bb)**

According to the equally conclusive submission of the plaintiff, the defendant offers the attacked embodiment within the scope of the UPCA, in particular in Germany pursuant to Art.

25 a) UPCA. This is done, inter alia, by means of offers on the defendant's website in German and English and by exhibiting the attacked embodiment at the CMS trade fair in Berlin in September 2023. The plaintiff has also submitted that the defendant places the attacked embodiment on the market, uses it, imports it for the aforementioned purposes or possesses it within the meaning of Art. 25 a) UPCA. These acts of use take place without the plaintiff's consent.

**cc)**

The facts submitted by the plaintiff in relation to points aa) and bb) are undisputed in the absence of a reply by the defendant pursuant to Rule 171 (2) of the Rules of Procedure and must therefore be taken as the basis for this decision.

Moreover, pursuant to Rule 13 (1) (m) of the Rules of Procedure in conjunction with Rule 171 (1) of the Rules of Procedure, the plaintiff submitted evidence in the statement of claim within the meaning of Rule 170 (1) (a), (c), (d) of the Rules of Procedure, which would have been used to prove the plaintiff's disputed facts if the defendant had disputed the facts. Among others, Annexes CBH 7, CBH 11, CBH 12, CBH 13, CBH 14, CBH 15, CBH 16 substantiate the plaintiff's factual submissions.

**c)**

The claims asserted by the plaintiff arise from the direct patent infringement of claim 1 of the patent in suit.

**aa)**

According to Art. 25 a) UPCA in conjunction with Art. 64 para. 2 a), para. 4 UPCA, the finding of patent infringement is justified.

**bb)**

Taking into account the circumstances of the case, the plaintiff also has a right to prohibit the continuation of the infringement pursuant to Art. 25 a) UPCA in conjunction with Art. 63 para. 1 UPCA. The defendant may not continue to offer or distribute within the scope of the UPCA. The same applies to use, importation and possession.

The threat of a penalty payment for the omission arises from Art. 63 para. 2 UPCA, Art. 82 para. 1, 4 UPCA, Rule 118 para. 8 RP, Rule 354 para. 3 RP. The amount of EUR 3,000.00 stated in this respect is, on the basis of the undisputed plaintiff's submission, based on the profit to be realised and a typical sales price of the attacked embodiment. The stated amount is not, as the wording "... in the amount of up to ..." makes clear, a fixed amount. Rather, it is a maximum amount. In the context of any enforcement proceedings, it therefore remains possible to take into account the specific circumstances of any infringement.

**cc)**

Furthermore, the defendant must provide information pursuant to Art. 25 a) UPCA in conjunction with Art. 67 UPCA, including submission of supporting documents. Apart from the interest in the pure information that the patent proprietor receives under Art. 67 (1) UPCA, his interest in being able to check the accuracy of this information, at least on a random basis, is also worth recognising (Düsseldorf Local Chamber, decision of 3 July 2024, UPC\_CFI\_7/2023). The possibility of redaction takes into account any confidential information, Rule 190 para. 1 sentence 2 VerfO.

Furthermore, the applicant has a right to the transmission of information which it reasonably requires for the purpose of its legal defence pursuant to Art. 68 para. 3 a), b) UPCA i. V. m. Regel 191 S. 1 Alt. 2 VerfO to the side. The application submitted in the written submission dated 30 August 2024 under III. 1 does not raise any concerns with regard to the manner in which the information is provided or its proportionality.

**dd)**

The obligation to surrender any product in the direct or indirect possession or ownership of the defendant to a bailiff for destruction is based on Art. 64 para. 2 e) UPCA.

The plaintiff's right to recall the patent-infringing products from the distribution channels follows from Art. 64 para. 2 b) UPCA. In this respect, the defendant must request the owners of the accused embodiment to return it to it in return for reimbursement of costs (Düsseldorf Local Chamber, decision of 3 July 2024, UPC\_CFI\_7/2023).

There are no indications that the surrender and/or recall within the meaning of Art. 64 para. 4 UPCA appears disproportionate.

**ee)**

The determination of the period within which the information must be provided, the information must be transmitted and the information must be surrendered for destruction and recall is based on Rule 118 (8) of the CPR, Rule 354 (1) of the CPR.

**ff)**

Pursuant to Rule 119 of the Rules of Procedure, the court may award provisional damages to the successful party, which should at least cover the anticipated costs of the damages and compensation proceedings.

The amount awarded is based on the plaintiff's estimate. In this respect, it has submitted that sales prices of up to EUR 3,000.00 can be achieved on the market with the attacked embodiment, while the purchase price of the attacked embodiment is likely to be EUR 1,000.00. Based on the defendant's market presence, the advertising and the offer of the attacked embodiment in September 2023 at a large, important trade fair, where sales are typically concluded, as well as the other acts of use, it can be assumed that a not inconsiderable number of infringing acts have occurred. The placing on the market of 20 to 30 units of the contested design would already result in damages of between EUR 30,000.00 and EUR 45,000.00. The plaintiff estimates the expected costs for the damages and compensation proceedings at EUR 10,000.00 to EUR 20,000.00.

This estimate is plausible. The facts presented by the plaintiff in this respect are undisputed in the absence of a response from the defendant.

**gg)**

The plaintiff is entitled to a declaration of liability for damages on the merits. The basis of the defendant's liability for damages is Art. 64 UPCA in conjunction with Art. 68 UPCA. The defendant, which is an industry-specialised company, has in any case negligently infringed the patent in suit. Since the plaintiff cannot quantify the claim for damages without information from the defendant through no fault of its own, the plaintiff has a legitimate interest in its determination.

The plaintiff's claim for determination of the obligation to pay compensation is based on Section 33 PatG, Art. II § 1 IntPatÜG. In this respect, too, the plaintiff is dependent on the information provided by the defendant, from which the necessary interest in a declaratory judgement follows.

**d)**

There is no evidence of any procedural behaviour on the part of the defendant that could prevent the issuance of a decision by default within the meaning of Rule 355 (2) of the Rules of Procedure. The defendant has not submitted a statement of defence; it has not responded to the proceedings.

**3.**

In view of all this, the court exercises its discretion to issue a default judgement, taking into account the interests of both parties. Ultimately, the fact that the parties have agreed out of court to bring about a default judgement has also been taken into account.

**II.**

Insofar as the new version of the applications in the pleading of 30 August 2024 is to be seen as a partial withdrawal of the action, as the plaintiff no longer seeks an order for final judgement.

removal from the distribution channels and no longer the publication of the decision, it remains to be seen whether this type of partial withdrawal of the action falls under Rule 263(3) of the Rules of Procedure or under Rule 265(1) of the Rules of Procedure (see for the withdrawal with regard to individual defendants: Court of Appeal, order of 4 June 2024, UPC\_CoA183/2024; Local Chamber Munich (Panel 2), decision of 13 August 2024, UPC\_CFI\_513/2023). In both cases, partial withdrawal of the claim is permissible. Pursuant to Rule 263(3) RP because it is an unconditional limitation of the claim. Pursuant to Rule 265, because the defendant has no apparent legitimate interest in a decision by the court on the withdrawn claims. The defendant was given the opportunity to comment on the plaintiff's statement of 30 August 2024. It did not make use of this opportunity.

### III.

The decision on costs is based on Art. 69 para. 2 UPCA in conjunction with Rule 118 para. 5 RP. The plaintiff has to bear 10 % of the costs as a result of the partial withdrawal of the action. The remaining costs are to be borne by the defendant.

### IV.

The enforceability of the decision by default follows from Art. 82 (1) sentence 2 UPCA, Rule 354 RP and Rule 355 (4) RP. In the present case, the court sees no reason to suspend enforcement pursuant to Rule 355(4)(a) of the Rules of Procedure or to make enforcement dependent on the provision of security pursuant to Rule 355(4)(b) of the Rules of Procedure.

### DECISION

For the aforementioned reasons, the following decision is issued by way of a decision by default:

- I. The European patent with unitary effect EP 3 760 094 B1 has been infringed by the defendant.
- II. The defendant is sentenced,
  1. refrain from using hand-held soil tillage implements,

having a ground part (1) with at least one tool (31) for working the ground and a motor (26) for driving the at least one tool (31) and having a guide part (2) with a handle part (3), the guide part (2) being connected to the ground part (1) via a first joint (4) which is adjustable in the working direction (6) and has a joint axis (G1) transverse to the working direction (6), the guide part (2) having, at the lower end below the centre but above the ground part (1), a further joint (8) with a further joint axis (G2) extending transversely to the first joint axis (G1), about which the guide part (2) can be moved transversely to the working direction (6), but above the base part (1) has a further joint (8) with a further joint axis (G2) extending transversely to the first joint axis (G1), about which the guide part (2) can be adjusted transversely to the machining direction (6) in such a way that the base part (1) can be rotated from a user (P) parallel to the machining surface (B) about a vertical axis (A1) of the base part (1) by at least + 45°, wherein the base part (1) has a liquid feed (11), and wherein a liquid tank (10) for the liquid feed (11) is provided in the base part (1).



and is attached to the base part (1) or to the guide part (2) above the further joint (8),  
to offer, place on the market, import or use or to possess for these purposes;

2. to pay the court a repeated penalty payment of up to EUR 3,000.00 per infringing product in the event of any infringement of the order pursuant to the application under II.1.
- III. The defendant is further ordered, within a period of 45 days after service of the judgement, to pay the costs of the proceedings within the meaning of R. 118.8 VerfO,
1. to provide the plaintiff, in a list structured for each month of a calendar year and by infringing products, from 6 January 2021, with the information listed below on the products referred to in point II.1. in order to calculate the damages to which the plaintiff is entitled, including the defendant's profit from 8 November 2023 and for the calculation of reasonable compensation from 6 January 2021 to 7 November 2023, by providing information on
    - a. the origin and distribution channels of the products;
    - b. the quantities delivered, received or ordered and the prices paid for the products;
    - c. the identity of all third parties involved in the manufacture or distribution of the products;

and for the period from 8 November 2023 additionally via

- d. the costs, broken down by individual cost factors and the profits realised;
- whereby copies of the corresponding purchase documents (namely invoices, alternatively delivery notes) must be submitted as proof of the information, whereby details requiring confidentiality outside the data subject to disclosure and notification may be blacked out;
2. to hand over to a bailiff to be appointed by the plaintiff for the purpose of destruction at the defendant's expense any product which is directly or indirectly in its possession or owned by the defendant and which is referred to in section II.1;
  3. Recall the infringing products referred to in section II.1. by informing the third parties from whom the infringing products are to be recalled that this court has found that the products infringe the European patent with unitary effect EP 3 760 094 B1, whereby the defendant must give the third parties a binding undertaking to reimburse the costs incurred, to bear the packaging and transport costs incurred, to reimburse the customs and storage costs associated with the return of the products and to take back the products.
- IV. The defendant is ordered to pay the plaintiff provisional damages in the amount of EUR 50,000.00.

- V. It is established that the defendant
1. is obliged on the merits to compensate the plaintiff for any further damage that it has suffered or will suffer in the future for all past and future actions pursuant to section II.1,
  2. to pay the plaintiff reasonable compensation for all acts pursuant to Section II.1. in the Federal Republic of Germany for which compensation has not already been paid pursuant to Section II.  
V.1. compensation is to be paid.
- VI. The partial withdrawal of the action is authorised. In this respect, the proceedings are terminated.
- VII. Orders the defendant to pay 90 % of the costs and the plaintiff to pay 10 %.
- VIII. The default judgement is enforceable.

INFORMATION ON THE OBJECTION

A party against whom a decision by default has been issued may file an objection to the decision by default within one month of service of the decision, Rule 37 para. 1 sentence 2 UPC Statutes, Rule 356 VerfO.

INFORMATION ON ENFORCEMENT

Information on enforcement: Art. 82 UPCA, Art. 37 para. 2 UPC, Rule 118 para. 8, 158 para. 2, 354, 355 para. 4 VerfO.

A certified copy of the enforceable judgement is issued by the Deputy Registrar at the request of the enforcing party, R 69 RegR.

DETAILS OF THE DECISION

UPC\_Number: UPC\_CFI\_193/2024  
Procedure number: ACT\_22922/2024

NAMES AND SIGNATURES

Ulrike Voß Presiding Judge, Rapporteur	Digitally signed by <b>Ulrike Voß</b> Ulrike Voß Date: 2024.10.08 08:51:03 +02'00'
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Dr Daniel Voß Legally qualified judge	<b>Daniel VOSS</b> <sup>Voß</sup> Digitally signed by Daniel Date: 2024.10.08 09:01:55 +02'00'
Mojca Mlakar Legally qualified judge	<b>MOJCA MLAKAR</b> Digitalno podpisal MOJCA MLAKAR Date: 2024.10.08 09:48:54 +02'00'
For the Deputy Chancellor	<b>Anja Mittermeier</b> Digitally signed by Anja Mittermeier Date: 2024.10.08 13:09:05 +02'00'