



Local division Mannheim
UPC_CFI_541/2024

Order
of the Court of First Instance of the Unified Patent Court issued on
20 December 2024
concerning EP 1 993 363 B1

APPLICANT:

G. Pohl-Boskamp GmbH & C. KG, legally represented
by its general partner, Boskamp GmbH, which is legally
represented by its managing director,
- Kieler Straße 11 - 25551 - Hohenlockstedt - DE

Represented by
Sebastian
Horlemann

RESPONDENTS:

1) **pharma-aktiva GmbH**, statutory
represented by its managing director,
- Eisenbahnstraße 49 - 66424 - Homburg
- EN

Represented by Matthias Ringer

2) **ALDI SOUTH Dienstleistungs-SE & Co.
oHG**, legally represented by its
personally liable partners,
- Burgstraße 37 - 45476 - Mühlheim an
der Ruhr - DE

Represented by Alexander von
Foullon

3) **ALDI Nord Deutschland Stiftung & Co.
KG**, legally represented by its general
partner, ALDI Nord Deutschland
Verwaltungs-
Foundation, legally represented by its
Executive Board,
- Eckenbergstraße 16b - 45307 - Essen -
EN

Represented by Alexander von
Foullon

- 4) **ALDI SE & Co KG**, legally represented by its personally liable shareholder, ALDI Nortorf Verwaltung SE, Nortorf, which is legally represented by its legal representative,
- An der Automeile 1 - 24589 - Nortorf - DE
- Represented by Alexander von Foullon
- 5) **Hofer Kommanditgesellschaft**, legally represented by its general partners
- Hofer Straße 1 - 4642 - Sattledt - AT
- Represented by Alexander von Foullon

DISPOSABLE PATENT:

EUROPEAN PATENT NO. EP 1 993 363 B1

PANEL/CHAMBER:

PANEL JUDGES of the Mannheim local division:

This Order was issued by the presiding judge Prof. Dr Tochtermann, the legally authorised qualified judge Böttcher as judge-rapporteur and the legally qualified judge Mlakar.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: R. 206 RoP - Application for interim measures

ORAL NEGOTIATION: 12 December 2024

BRIEF PRESENTATION OF THE FACTS:

1. The applicant seeks an order for interim measures against the defendants for alleged infringement of the European patent EP 1 993 363 B1 ("patent in suit") relating to a composition for combating ectoparasites and their eggs. The mention of the grant of the patent in suit filed on 17 July 2006, claiming the priority of 13 March 2006 of DE 202006004172 U, was published on 14 July 2010. The applicant is the registered proprietor of the dispositive patent in force in the Federal Republic of Germany and the Republic of Austria (Annex ASt 7).

2. The applicant, a pharmaceutical company which, inter alia, markets a lice remedy as a medical product under the name NYDA[®], is challenging a lice spray which is marketed in the Federal Republic of Germany under the name "Vitalis Läuse Spray" ("challenged embodiment I") and in the Republic of Austria under the name "Vitalis Läuse Spray" ("challenged embodiment I").
"ACTIV MED lice spray" ("attacked embodiment II") was distributed by the defendant.
3. Defendant 1, also a pharmaceutical company, is the manufacturer of the contested embodiments identified on the outer packaging. Defendants 2 to 5 belong to the Aldi South and North or Hofer Group. Defendant 2 provides services for several Aldi Süd subsidiaries in the Federal Republic of Germany. It is responsible for the joint purchasing and distribution of the goods to the individual Aldi Süd shops and is responsible for the content of the weekly advertising leaflet of the Aldi Süd Group and the content of the website <https://www.aldi-sued.de/de/homepage.html> , on which the weekly advertising leaflet can be accessed. The challenged embodiment I was advertised in the advertising brochure for the week of 12 August 2024 and distributed accordingly in Aldi Süd shops in the Federal Republic of Germany. Defendant 3 is the parent company of all Aldi Nord shops in the Federal Republic of Germany and is responsible for the content of the website <https://www.aldi-nord.de/>, on which the contested embodiment I was also advertised. Defendant 4 operates several Aldi shops in the Federal Republic of Germany, including the shop in which, according to the applicant's submission, an employee privately discovered a copy of the challenged embodiment I on 13 August 2024, and two shops in which, according to the applicant's submission, employees then made test purchases. Defendant 5 operates several Hofer shops in the Republic of Austria, including the shop in which, according to the applicant's submission, an employee purchased three copies of the attacked embodiment II in a test purchase on 17 September 2024. It is responsible for the content of the website <https://www.hofer.at/de/homepage.html>, on which the attacked embodiment II was advertised in the Republic of Austria.

PARTY APPLICATIONS:

4. The applicant requests that the following interim measures be ordered:

I. Defendant 1) is ordered to

1. to refrain from doing so,

a composition for killing ectoparasites and/or their eggs

in the territory of the Federal Republic of Germany and in the territories of the Republic of Austria and the Federal Republic of Germany,

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

which includes:

30-49% by weight, based on the composition, of a low-viscosity linear polysiloxane with a viscosity < 10 cSt, 35-65% by weight, based on the composition, of a higher-viscosity linear polysiloxane with a viscosity > 90 cSt and at least one spreading agent

(direct infringement of claim 1 of EP 1 993 363 B1).

2. For each individual violation of the Order pursuant to Section I.1., Defendant 1) shall pay a penalty payment of up to EUR 250,000.00 to the court (if necessary, repeatedly).

3. Defendant 1) is further ordered to surrender products pursuant to item I.1. in its direct or indirect possession to a person designated for enforcement in accordance with the provisions of the Republic of Austria and/or the Federal Republic of Germany in order to take them into custody.

4. Defendant 1) is further ordered to provide the following information in writing and in an organised list to the applicant's legal representatives within two weeks of service of the decision:

a. the names and addresses of all commercial customers and points of sale for which the product was intended in accordance with Section I.1,

b. the quantity of products manufactured and delivered in accordance with Section I.1. as well as the prices paid for the product in accordance with Section I.1,

c. the identity of third parties who were and/or are involved in the manufacture or distribution of the product in accordance with Section I.1.

II. The defendants 2) to 4) are ordered to comply,

1. to refrain from doing so,

a composition for the destruction of ectoparasites and/or their eggs in the

territory of the Federal Republic of Germany

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

which includes:

30-49% by weight, based on the composition, of a low-viscosity linear polysiloxane with a viscosity < 10 cSt, 35-65% by weight, based on the composition, of a higher-viscosity linear polysiloxane with a viscosity > 90 cSt and at least one spreading agent

(direct infringement of claim 1 of EP 1 993 363 B1).

2. For each individual violation of the Order in accordance with Clause II.1. the respective defendant 2) to 4) must pay a (possibly repeated) penalty payment of up to EUR 250,000.00 to the court.
3. The defendants under 2) to 4) are further ordered to surrender the products under II.1. which are in their direct or indirect possession to a person designated for enforcement in accordance with the provisions of the Federal Republic of Germany in order to take them into custody.
4. Respondents 2) to 4) are further ordered to provide the following information in writing and in an orderly list to the applicant's authorised representatives within two weeks of service of the decision:
 - a. the names and addresses of all commercial customers and points of sale for which the product was intended in accordance with Section II.1,
 - b. the quantity of products manufactured and delivered in accordance with Section II.1. as well as the prices paid for the product in accordance with Section II.1,
 - c. the identity of third parties who were and/or are involved in the manufacture or distribution of the product in accordance with Section II.1.

III. Defendant 5) is ordered to pay the costs,

1. to refrain from

a composition for the destruction of ectoparasites and/or their eggs in the territory of the Republic of Austria,

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

which includes:

30-49% by weight, based on the composition, of a low-viscosity linear polysiloxane with a viscosity < 10 cSt, 35-65% by weight, based on the composition, of a higher-viscosity linear polysiloxane with a viscosity > 90 cSt and at least one spreading agent

(direct infringement of claim 1 of EP 1 993 363 B1).

2. For each individual violation of the Order under section III.1., the defendant 5) must pay a penalty payment (repeated if necessary) of up to EUR 250,000.00 to the court.
3. Defendant 5) is further ordered to surrender the products pursuant to section III.1. in its direct or indirect possession to a person designated for enforcement in accordance with the provisions of the Republic of Austria in order to take them into custody.
4. Defendant 5) is further ordered to provide the following information in writing and in an organised list to the applicant's legal representatives within two weeks of service of the decision:
 - a. the names and addresses of all commercial customers and points of sale for which the product was intended in accordance with Section III.1,
 - b. the quantity of products manufactured and delivered in accordance with Section III.1. as well as the prices paid for the product in accordance with Section III.1,
 - c. the identity of third parties who were and/or are involved in the manufacture or distribution of the product in accordance with Section III.1.
- IV. The defendants are to be ordered to pay the applicant a provisional reimbursement of costs in the amount of EUR 11,000.00.
- V. The defendants are to pay the costs.
- VI. The above-mentioned Orders are effective and enforceable immediately.
5. The defendants request that the application for an Order for interim measures be rejected, that the applicant be ordered to pay the costs of the proceedings and that immediate enforceability be ordered in this respect. In the alternative to the rejection, they request that the Order for interim measures be made dependent on the provision of security by the applicant, the amount of which is to be determined by the court, but should not be less than EUR 250,000.

FACTUAL AND LEGAL POINTS OF CONTENTION:

6. The applicant is of the opinion that the defendants directly infringe claim 1 of the patent in suit the chemically identical embodiments I and II. This was shown by an analysis of a

This is confirmed by the analysis of the specimen of the attacked embodiment I (Annexes ASt 12, 13). Accordingly, the low-viscosity dimethicone stated as an ingredient is dimethicone 1.5 cSt with a mass fraction of 43% based on the composition of the attacked embodiment I as determined by gas chromatography analysis. The high-viscosity dimethicone also indicated as an ingredient has a viscosity of over 90 cSt and proportion of 87 % of the evaporation residue determined by FTIR spectroscopy and accordingly a proportion by mass of 50 % based on the composition of the attacked embodiment I. The stated viscosity of the higher-viscosity dimethicone is almost certainly due to the fact that the viscosity of the attacked embodiment I is largely determined by the dimethicone and is almost identical to the viscosity of the lice spray NXDRA® express manufactured and sold by the applicant, in which a higher-viscosity polysiloxane [...] is used as the higher-viscosity polysiloxane. A rotational viscometer at 25 °C was used to determine the viscosity of the lice sprays.

7. The legal validity is sufficiently secured. For this to be the case, a dispositive patent does not have to have already survived a validity procedure.
8. A temporal urgency was given. In particular, the applicant pursued the infringement with the necessary vigour and diligence after an employee first discovered the infringing subject matter privately in an Aldi Nord shop on 13 August 2024 and drew attention to it and the applicant carried out the tests/analyses in its laboratories in the period from 28 August to 12 September 2024. The patent for the injunction would also expire in approx. 1.5 years. The balance of interests was also in favour of the applicant. The significantly more favourable price offered by the defendants, at approx. one fifth of the price of the applicant's product, would permanently undermine the price level.
9. In the opinion of the defendants, the applicant has not satisfied its burden of presentation and proof, in particular the analysis of the alleged infringing subject matter is insufficient. Defendant 1 denies with ignorance that the required suitability/certification was carried out with regard to the evaporation process. In the opinion of the defendants 2 to 5, the analysis results according to Annex ASt 12 are not comprehensible.

10. In the opinion of the defendants, the assumption of a secure legal existence requires that the patent in suit has already survived legal validity proceedings. Irrespective of this, even the minimum threshold of a predominant probability is not fulfilled in the case in dispute. The invention was not sufficiently disclosed for a person skilled in the art to carry it out. There is a lack of information in the patent specification at which temperature the required viscosities are to be determined and, in the opinion of the defendants 2 to 5, also a lack of specific measurement parameters of the measuring stand to be used and the shear rate. A specification of the temperature is essential due to the strong temperature dependence of the viscosity. The documents ASt 19 and ASt 20 now referred to by the applicant mentioned 20 °C on the one hand and 25 °C on the other, so there was no standard temperature to be used. Any attempt to eliminate the lack of disclosure would inevitably lead to an inadmissible extension. Moreover, the subject matter of the patent in suit was not inventive. From the publication DE 2 823 595 A1 (Annex D1, "D1"), a composition for combating ectoparasites by means of linear polysiloxane, also as an additional toxicant in a preparation which also has a lice-killing and/or egg-killing effect in other ways, was already known. On this basis, the skilled person had reason to also consider conventional preparations which still used insecticides, as for example in the publication DE 691 26 969 T2 (Annex D2, "D2"). Moreover, claim 1 of the patent in suit does not exclude other ingredients effective against ectoparasites in addition to the two linear polysiloxanes. The composition disclosed in D2 contains, inter alia, the , a spreading agent, a linear polysiloxane with a high viscosity of 100 cPs to 150,000 cPs and a linear polysiloxane with a low viscosity down to 5 cPs, whereby the unit cPs does not differ significantly from the unit cSt used in the patent in suit. It was irrelevant that the two linear polyalkylsiloxanes referred to were described in connection with hair conditioning because the skilled person was already aware of the efficacy of linear polysiloxanes as killing ectoparasites from D1 and also from the study by Burgess, Brown, Lee, "Treatment of head louse infestation with 4% dimeticone lotion: randomised controlled equivalence trial" (Annex D3, "D3"), which was published in 2005 and thus close in time to the priority date of the patent in suit. Therefore, the skilled person made the suggestion that the

composition according to D2 to omit the insecticide and instead increase the proportion of the two linear polysiloxanes mentioned therein. The way in which this is done is a matter for the skilled person and is furthermore suggested by the explicit disclosure of D1 of values between 5 and 100% by weight. This encourages the skilled person to make a considerable increase because it means that a lot helps a lot. In addition, D1 provides the skilled person with information on how to determine a suitable quantity by testing.

11. Even assuming that the applicant only became aware of this on 13 August 2024, the applicant had waited longer than the standard period of one month to file the application for interim measures on 20 September 2024, which was detrimental to urgency, especially since more than two weeks had elapsed between the test purchase and the start of the alleged investigations. The balance of interests was also in the applicant's favour. The challenged designs are promotional products with a usually short sales period. They had long since been withdrawn from the market in Germany and Austria and the declaration of discontinuance (Annex D4) issued by defendant 1 had been concealed in the application in an abuse of rights. According to its submission, defendant 1 is destroying its stocks and has informed Aldi Süd, Aldi Nord and Hofer that the contested designs should no longer be available in the shops and has requested that they be destroyed. Potential customers do not procure the challenged designs in stock, but only when needed, so that irretrievable damage to the applicant is not to be feared from this point of view either.
12. In the opinion of the defendants, a claim for information cannot be pursued by way of interim measures. Otherwise, the main proceedings would be anticipated.
13. With regard to the further details of the facts of the case and the matter in dispute, reference is made to the documents submitted together with the annexes.

REASONS FOR THE ORDER:

14. The Mannheim local division of the Unified Patent Court has jurisdiction for the application for interim measures (see I.). The application does not lack a need for legal protection (see II.). It must be assumed that the applicant is entitled to file the application and is the patent proprietor and that the defendants have infringed the patent with the challenged embodiments (see III., VI., VII.). The legal validity of the patent subject to the injunction is sufficiently secured for the Order of provisional measures (see VIII.). The balancing of interests to be carried out is in favour of the applicant (see IX.). This justifies the interim measures to the extent ordered (see X.).

I. Responsibility

15. The jurisdiction of the Mannheim local division of the Unified Patent Court for the application for interim measures against the respondents arises from Art. 31, 32(1)(c) UPCA in conjunction with Art. 7(2), Art. 71b No. 1 Regulation (EU) 1215/2012 and Art. 33(1)(a), 33(1)(b) Regulation (EU) No. 1215/2012. Art. 7(2), Art. 71b No. 1 Regulation (EU) 1215/2012 and Art. 33(1)(a), 33(1)(b) UPCA. The connection required under Art. 33(1)(b) UPCA with regard to respondent 5, which distributes the attacked embodiment II in the Republic of Austria and has its registered office there (see Düsseldorf local division, Order of 6 September 2024, UPC_CFI_1/2024) is given, as respondent 5 rightly does not deny. Like defendant 2, defendant 5 belongs to the Aldi-Süd Group and was supplied by defendant 1 as the manufacturer of the challenged embodiment II.

II. Need for legal protection

16. The need for legal protection for the application for interim measures has not ceased to exist as a result of the declaration to cease and desist (Annex D4) submitted by Defendant 1. The declaration to cease and desist does not refer to the patent-compliant features. Insofar as a list of ingredients is shown on the outer packaging incorporated therein, it is not clear from the declaration to cease and desist, even when viewed in isolation, that the promise to cease and desist covers all products with these ingredients, irrespective of the other circumstances. The declaration to cease and desist therefore does not prevent the sale of the contested embodiments under a different name and in different outer packaging and is therefore

insufficient. This applies all the more since - as was shown at the oral hearing - the declaration to cease and desist was issued in response to a warning under competition law, which objected to the categorisation of the challenged embodiments by defendant 1 as a Class I medical device under competition law. The respondents' accusation that the applicant had concealed this declaration of discontinuance in an abuse of rights when filing the application, which might well have been relevant in other circumstances, is therefore not valid under given circumstances. Rather, this context confirms that the applicant was not intended to be indemnified by the declaration of discontinuance with regard to claims for injunctive relief under patent law and is not indemnified in this respect from the relevant objectified horizon of the recipient. In any case, the declaration of discontinuance of defendant 1 does not work in favour of the other defendants.

III. Eligibility to apply and patent ownership

17. As the patent proprietor, the applicant is entitled to file an application pursuant to Art. 47(1) EPC. Insofar as the letter "o" was missing in the applicant's legal form supplement "GmbH & Co. KG" in the information on the request, this was an obvious clerical error in the circumstances. Following the applicant's explanations in her Reply, the respondents rightly did not return to this in their duplicates. The rebuttable presumption pursuant to R. 8.5(c) RoP that the applicant entered in the registers is the substantively authorised proprietor of the German and Austrian parts of the dispositive patent has therefore not been rebutted.

IV. Technical context of the dispositive patent and problem definition

18. The patent relates to a composition for combating ectoparasites, in particular head lice, and their eggs (nits). According to the patent specification, the eggs are often encased in protective sheaths which cannot be penetrated by many toxic substances (para. [0002]). Neither the lice nor their eggs could be eliminated by normal hair washing, but only by local treatment with suitable agents, in particular insecticides. The patent specification criticises the very efficient, active ingredients of such agents used in Germany, such as allethrin, lindane, permethrin and pyrethrum, on the grounds that there are toxicological concerns

and, more recently, the development of resistance has been observed. Many of the various cosmetic and medical products developed as alternatives have proven to be less or not at all efficient. However, the use of linear siloxane polymers is a promising approach. For example, patent application DE 2 823 595 discloses the use of a quantity of linear siloxane polymers, in particular dimethicone, whereby dimethicones with a viscosity of 100 to 1000 cSt described as being most effective in combating lice. For the control of arthropods, a composition with a volatile and a non-volatile siloxane polymer is disclosed in patent application EP 1 215 965. The latter is preferably a cyclic siloxane such as cyclopentasiloxane or cyclomethicone, which is used in an amount of 95.5- 97.5 per cent by weight of the composition. The patent in suit criticises the previously known compositions on the grounds that, although some are satisfactory for combating lice, they have a low effectiveness against eggs and therefore do not reliably destroy eggs. Moreover, they are potentially harmful to health (para. [0003] to [0006]).

19. Against this background, the patent of disposition sets itself the task of providing a toxicologically acceptable, yet highly effective composition for combating ectoparasites and their eggs (cf. para. [0007]).

20. As a solution, the patent for disposition proposes a composition according to claim 1, the features of which can be organised and translated as follows:

| | |
|---|--|
| 1. composition for killing ectoparasites and/or their ova, comprising | 1. composition for the destruction of ectoparasites and/or their eggs, comprising |
| 1.1 30-49 wt.-%, based on the composition, of a low viscosity linear polysiloxane having a viscosity < 10 cSt, | 1.1 30-49 % by weight, based on the composition, of a low-viscosity linear polysiloxane with a viscosity < 10 cSt |
| 1.2 35-65 wt.-%, based on the composition, of a higher viscosity linear polysiloxane having a viscosity > 90 cSt, and | 1.2 35-65 % by weight, based on the composition, of a higher viscosity linear polysiloxane with a viscosity > 90 cSt and |
| 1.3 at least one spreading agent. | 1.3 at least one spreading agent |

According to the patent specification, it was surprisingly found in experiments that such compositions are highly effective against both lice and their eggs. As a result of the absence of cyclic siloxanes, these compositions are very well tolerated. They have a very low surface tension and at the same time a high spreading ability. Without wishing to commit itself to a theory of the mode of action, the patent specification assumes that such compositions could penetrate deep into the tracheae and tracheoles of the adult head lice and their larvae and into the air passages (aeropyles) of the nits due to their very favourable creeping properties. There, the volatile siloxanes evaporate, causing the composition in the trachea or nits to thicken more and more and eventually form clumps. As a result, the lice, larvae and nits were separated from the gas exchange and suffocated (para. [0009], [0017]).

V. Interpretation of patent claim 1

Some features require further explanation:

21. The viscosities required in centistokes ($cSt=0.01 \text{ St} = 0.01 \text{ cm}^2/\text{s} = 1 \text{ mm}^2/\text{s}$) in features 1.1 and 1.2 are to be understood as specified in the temperature range that prevails on the human head at room temperature. It is true that the patent specification does not expressly state the temperature to which the basically temperature-dependent viscosities refer. However, it follows from the presumed mode of action of the composition according to the patent described in para. [0009] that the characteristic properties must be present in the normal range of application of the composition according to the patent, whereby the killing effect is determined after 45 minutes according to the patent specification (para. [0016]). It follows from this that the required viscosities must in any case be present at the above-mentioned temperature when the composition acts on the lice, larvae and eggs during conventional application. The allocation in the unit centistokes indicates the required viscosities as kinematic viscosities.
22. A patent spreading agent is an agent that favours the distribution of the composition over the hair (para. [0009]). In addition, it may favour the very good creeping properties of the patented composition (see par. [0009]).

VI. Realisation of patent claim 1 by the attacked embodiments

23. It must be assumed that the features of claim 1 of the patent in suit have been realised. The defendants have not specifically disputed the substantiated allegation of realisation made by the applicant, who has the burden of presentation and proof in this respect (Rule 171.2 RoP). For this purpose, it is not sufficient to dispute the proper performance of the analyses carried out by the applicant on the weight proportions and viscosities. On the outer packaging of the contested embodiments, low and high viscosity dimethicones are indisputably indicated as contained ingredients. On the contrary, the defendant 1 - especially as the manufacturer of the contested embodiments - should have specifically denied the alleged weight proportions and viscosities of the low-viscosity dimethicone and the high-viscosity dimethicone. No other standards are appropriate for the defendants 2 to 5. They are not the manufacturer of the contested embodiments. However, if this were relevant at all, it would have been incumbent on them to enquire about the properties of the contested embodiments from defendant 1 as their supplier and manufacturer. The defendants do not assert that the attacked embodiments would not have the values claimed by the applicant, irrespective of the reliability of their own investigations. Accordingly, it is irrelevant in particular whether the applicant's employees complied with *lege artis* requirements in their analyses and whether a capillary viscometer should have been used instead of a cone-plate rotational viscometer or whether the values determined should have been converted. The fact the applicant determined the viscosity at 25 °C is also irrelevant, as the defendants do not claim a different viscosity at temperature ranges other than the temperature of the human head at room temperature. For the above reasons, it is also irrelevant that the applicant - as far as can be seen
- only analysed the contested embodiment I. In any case, the defendants do not dispute the alleged identical chemical composition of the attacked embodiments I and II.

VII. Infringements of rights by the defendants

24. Due to the undisputed manufacture of the attacked embodiments in Germany and the distribution of the attacked embodiment I in Germany and

of the contested embodiment II in Austria, which is to be seen as an offering and a placing on the market, the respondent 1 has infringed the exclusive right of the applicant as the proprietor of the German and Austrian parts of the patent in suit pursuant to Art. 25(a) UPCA. Respondents 2 to 4 have also infringed the said exclusive right in Germany. The advertising on the aforementioned German websites or in the prospectus available there, for the content of which the defendant 2 and the defendant 3 are indisputably responsible, constitutes an offering for sale in the Federal Republic of Germany under patent law, because the attacked embodiment I is thereby offered for sale there. The possibility of a direct purchase via the aforementioned websites is not necessary for this. In any case, it is sufficient that the recipients are aware of the Aldi South and Aldi North branches as sources of supply. Since defendant 4 indisputably operates Aldi North shops where the challenged embodiment I could be purchased, it also infringes the exclusive right of the applicant with regard to the German part of the patent in suit, namely by offering, placing on the market and possessing for the purposes mentioned. The same applies with regard to the Austrian part of the patent in suit for defendant 5, which indisputably advertised the contested embodiment II on its Austrian website and offered and sold it for sale in its shops in Austria.

VIII. Legal validity of the patent

25. The legal status is to be regarded as sufficiently secured for the Order of interim measures.
26. A sufficiently certain conviction of the legal validity, which is required in addition to other prerequisites for the Order of provisional measures, is lacking if the court considers it to be predominantly probable that the patent is not legally valid. If the order for interim measures is the subject of bilateral proceedings, the burden of presentation and proof for facts relating to the lack of validity of the patent subject to the injunction and other circumstances supporting the defendant's position lies with the defendant according to general principles (see Court of Appeal, Order of 26 February 2024, UPC_CoA_335/2023, GRUR 2024, 527 para. 92 et seq.).

27. According to these criteria, it is not to be regarded as predominantly probable that the dispositive patent is not legally valid.

Feasibility

28. Contrary to the respondents' view, the ground for invalidity of Art. 138(1)(b) EPC, which requires that the European patent does not disclose the invention clearly and completely enough to enable a person skilled in the art to carry it out, is not given with overwhelming probability.

29. As discussed above, it can be inferred from the patent in suit, even without express indication, that the viscosities required in features 1.1 and 1.2 must in any event be present in the usual temperature range of application to the human head at room temperature. Even if one wanted to assume that body temperature could also be considered in this context in addition to room temperature and that the relevant range is therefore vague because the viscosity of a liquid can change in such a range, as the defendants believe, this would not change the assessment. Since the patent claim requires a minimum value for the higher viscosity polysiloxane and a maximum value for the lower viscosity polysiloxane, the skilled person - according to the uncontradicted submission of the first defendant, a chemist with a doctorate and several years of professional experience in the field of agents for combating ectoparasites such as head lice - will take account of any uncertainties, in particular due to a possible variance in the temperature of the areas of application, with his expertise and technical knowledge by applying a safety margin or safety deduction, the determination of which is based on his knowledge and expertise. -The defendant must apply a safety margin or deduction, the determination of which he is familiar with as a specialist and which ensures that the required minimum or maximum value is complied with in the entire temperature range considered for conventional use. Apart from this, the defendants do not argue that linear polysiloxanes exhibit a significant temperature dependence of their viscosity in the range of body and room temperature. They certainly do not argue that this is the case for the dimethicones expressly mentioned in the patent specification as linear polysiloxanes, which are relevant for the present infringement issue. Even if the subject-matter of claim 1 were not sufficiently disclosed for other polysiloxanes and this were to be detrimental to the legal status, the applicant could restrict itself to dimethicones in this situation, which would be in its favour.

should in any case be taken into account when weighing up the interests involved. For the same reasons, it is irrelevant that no information is provided in the patent specification on the specific other measurement parameters and the shear rate. The defendants do not explain which specific other measurement parameters should be taken into consideration, for what reasons and with what uncertainties, and why this results in considerable differences in the viscosities to be determined. With regard to the shear rate, there is also the fact that, according to the defendants' own statements under 2 to 5, it is a property of the liquid to be analysed. Insofar as it also determines the viscosity, it is therefore included in the required viscosity to be measured.

Inventive activity

30. The ground for invalidity of lack of inventive step according to Art. 138(1)(a), 52(1) EPC cannot be accepted with an overwhelming probability either.
31. Citation D1, discussed in the patent specification (para. [0004] as prior art, discloses a composition for controlling ectoparasites and their eggs, which may contain, in addition to an active toxicant, a toxic amount of a linear siloxane polymer having a viscosity below about 20,000 cSt. addition to an active toxicant, a toxic amount of a linear siloxane polymer having a viscosity which is below about 20,000 cSt, preferably less than about 10,000 cSt and in particular about 1,000 cSt or less (see D1, claim 1, p. 4, lines 21 to 24, p. 6, lines 8 to 11). The polymer is generally used in a concentration of about 5 wt. % to 100 % by weight, preferably from about 10 % to 100 % by weight (D1, p. 6, lines 5 to 6). The effective amount depends on the polymer used in the individual case, the inert, pharmaceutically compatible carrier used in the individual case and other components present, whereby the killing of at least 50 % of the ectoparasites, determined after a 2-minute immersion test as described, is required for an effective amount (D1, p. 5, lines 24 to 35). From the test results presented with several compositions, the publication deduces that the dimethicones tested with a viscosity range of 100 to 1000 cSt below 15 wt.% showed the highest activity in terms of lice extermination (D1, p. 11, lines 1 to 7). Thus, the use of two linear polysiloxanes according to the claim and the use of a spreading agent are not disclosed to the skilled person with novelty.

32. Contrary to the opinion of the defendants, the skilled person does not arrive at the teaching of claim 1 of the patent in suit on the basis of D1 in conjunction with D2 and/or D3.

33. Citation D2 discloses compositions for controlling lice with insecticides, namely synthetic pyrethroids and natural pyrethrins (D2, p. 6, p. 16, p. 26, in each case under "Ingredients effective against lice"), synthetic pyrethroids being the synthetic analogues of natural pyrethrins (D2, p. 5 para. 2). The aim of the caveat is to provide stable, easy-to-use compositions with reduced safety risks for humans, particularly at high storage temperatures. However, siloxanes conventionally added to encapsulate and thus stabilise mixtures of natural pyrethrins and synthetic pyrethroids did not prevent the separation of the active ingredients in hair treatment compositions such as shampoos, lotions and conditioning agents at temperatures above 38 °C, which - once it has occurred - is not reversible. In contrast, compositions of synthetic pyrethroids and natural pyrethrins in the mixing ratios according to the invention have a wide range of activity, which is why they can be used in lower doses, thereby improving the safety of the treatment. At the same time, they are also stable at higher storage temperatures, i.e. the active ingredients do not separate from the hair treatment composition (see D2, in particular p. 3 para. 2 to p. 4 last para.). For shampoo compositions containing such mixtures to combat lice (D2, p. 6), the publication proposes to incorporate silicone compounds as optional components in order to ensure conditioning benefits for the hair and to facilitate the removal of dead lice and their eggs (D2, p. 12 under "Optional components"). Non-volatile silicone materials are for this purpose in amounts of 1 wt% to 10 wt% of the compositions according to the invention. Non-volatile silicone-containing compounds are preferred in this respect and are used in amounts of 0.1 wt.% to 10 wt.% of the compositions according to the invention.

%, preferably from 0.25 wt.% to 3 wt.% are used in the composition. Non-volatile silicones are preferably selected from the group consisting of polyalkylsiloxanes, polyalkylarylsiloxanes, polyethersiloxane copolymers and mixtures thereof. Accordingly, useful polyalkylsiloxanes include, for example, polydimethylsiloxanes (PDMS) with viscosities in the range of 5 to 15,000,000 centipoise

(cP) at 25°C, useful polyalkylarylsiloxanes for example polymethylphenylsiloxanes having viscosities from 5 to 15,000,000 cP at 25°C and useful polyethersiloxane copolymers for example polypropylene oxide [and] modified polydimethylsiloxanes (D2, p. 12 below to p. 13 below). Claim 4 of D2 provides an ovicidal/pediculicidal hair treatment composition in shampoo form according to any one of claims 1 to 3, additionally comprising from 1% to 10% by weight of a non-volatile silicone material, which silicone material is preferably selected from the group consisting of polyalkylsiloxanes, polyalkylarylsiloxanes, polyethersiloxane copolymers and mixtures thereof, whose viscosity at 25°C is from 100 cPs to 150,000 cPs. Claim 7 of D2 provides an ovicidal/pediculicidal composition for hair treatment according to in particular claim 6, which additionally comprises from 0.2 wt% to 5 wt% of volatile and non-volatile silicones selected from the group consisting of polyalkylsiloxanes, polyalkylarylsiloxanes and mixtures thereof.

34. In a first step, the skilled person already had no reason to consider the claims D2. The objectively underlying task of the patent in suit is to find a highly effective composition in which insecticides are avoided or at least reduced by using alternative means for killing ectoparasites and/or their eggs, because insecticides are toxicologically questionable on the one hand and resistance can develop on the other (para. [003]). The skilled person will therefore not consider claims that use insecticides as the sole means of killing in the search for alternative means, even if they claim to provide a toxicologically acceptable composition. However, even if the skilled person would nevertheless consider citation D2, a combination of citations D1 and D2 does not lead to the teaching of the patent in suit. Firstly, the skilled person considering citation D2 has no reason, in a second step, to use the polysiloxanes used there merely as conditioning agents as an agent for killing lice and their eggs and to increase their weight proportion for this purpose. It is true that a person skilled in the art may be familiar with the killing effect of D1 and D3 in particular. However, it is not clear why he should consider the mixtures provided in D2 as conditioning agents for this purpose. Neither D2 nor D1 or

D3 contain an indication that such mixtures are also (particularly) suitable for killing. Furthermore, it is not apparent why the skilled person, chosen a polysiloxane with a viscosity of 100 cPs to 150,000 cPs as provided for in claim 4 of D2, should choose the additional polysiloxane with a viscosity of less than 10 cSt, as may be provided for in claim 7 of D2. Even if he refers to the third paragraph on p. 13 of D2 for this purpose, it is not clear why he should orientate himself at the lower end of the range of 5 to 15,000,000 cP stated there, which may include the range of less than 10 cSt after conversion. Irrespective of this, it is not apparent how the skilled person, even if he were encouraged to simultaneously use a low-viscosity and a higher-viscosity linear polysiloxane with the viscosities according to the patent, should arrive at the weight proportions mentioned in patent claim 1. For this, it is not sufficient that the characteristic weight fractions fall within a larger range previously known from D1. Rather, there would have to be a reason to select precisely the characteristic ranges from the broader ranges in the sense of a teaching, namely for the low-viscosity and the higher-viscosity linear polysiloxane respectively. The defendants do not claim that the characteristic weight fractions are arbitrarily selected, contrary to the patent specification (para. [0008], [0009], [0017]). It is true that in D1 (p. 5 para. 24 to para. 30) the skilled person is provided with a test method for obtaining a sufficiently effective amount of the substance mixture which has the killing effect. However, the defendants do not claim that the skilled person would easily arrive at the characteristic weight proportions according to features 1.1 and 1.2 when applying this procedure. Furthermore, it is not apparent how the method can be used to find the required mass fraction in relation to the total composition for both the low-viscosity and the higher-viscosity linear polysiloxane. Furthermore, the defendants have not sufficiently demonstrated that the surfactant disclosed in D2 (patent claim 1, p. 6 et seq.) is a spreading agent within the meaning of the patent in suit. The patent in suit may not exclude the possibility that a spreading agent is surface-active. The applicant's objection that interfacially active substances generally reduce the surface tension or the interfacial tension between two phases and thereby promote the mixing of two substances, but are not necessarily spreading agents,

therefore serve to spread a substance (Reply to the opposition of respondent 1, p. 13), the respondents have not, however, sufficiently dispelled this. In particular, the defendants have not shown that any of the surface-active substances named as examples in D2 has such an effect of a spreading agent. Insofar as respondent 1 refers to the fact that coconut oil alcohol (D2, p. 7 para. 15) and coconut oil (para. [0011]) are mentioned as examples of spreading agents in D2 as a surfactant, they have not dispelled the applicant's objection that coconut oil alcohols are derivatives of coconut oil and do not correspond to coconut oil.

35. From the D3 results in no further revelatory content and no further suggestions.

IX. Weighing of interests

36. The applicant has not waited with the application for interim measures in a manner prejudicial to urgency. Moreover, the balancing of interests to be carried out pursuant to Art. 62(2) UPCA, R. 211.3 RoP is also in favour of the applicant.

Temporal urgency

37. The applicant has not refuted the urgency of the enforcement of rights by waiting too long (R. 211.4 RoP).

38. It is irrelevant whether a lack of urgency may be assumed after the expiry of a standard period of one month between becoming aware and the filing of an application for interim measures, as the defendants believe. Even if one were to share the defendants' starting point, the lapse of time between 13 August 2024, the date on which the applicant first became aware of the existence of the attacked embodiment according to its own submission, and 20 September 2024, the date on which the application for interim measures was filed, would not be harmful, at least in view of the circumstances of the dispute. An applicant may, in principle, carry out the necessary factual investigations in order to put itself in a position to submit evidence pursuant to R. 206.2(d) RoP and, in particular, to be able to react quickly to any orders of the court pursuant to R. 211.2 RoP (see Düsseldorf local division, Order of 9 April 2024, UPC_CFI_452/2023, GRUR-RS 2024,

7207 para. 127; confirmed by the Court of Appeal, Order of 25 September 2024, UPC_CoA_182/2024, GRUR-RS 2024, 25707 para. 227 f.). In order to confirm a previously assumed patent-compliant composition of the attacked embodiments, the applicant was therefore allowed to spend time on a laboratory analysis in the case in dispute. It is not apparent that she would have spent an unreasonable amount of time on the analysis. Contrary to what the defendants believe, it is irrelevant that around two weeks passed between 13 August 2024 and the alleged start of the laboratory analysis. The applicant must be given a reasonable period of time to consider the circumstances of the individual case before taking on the expense of laboratory analyses. It is not necessary to decide how long this period is in the case in dispute. If the reasonable period for consideration is exceeded, this is harmless if the applicant has still acted expeditiously overall, i.e. the overall period to be granted based on the circumstances of the individual case between obtaining knowledge and submitting the application has not been exceeded. In view of the fact that laboratory tests were at least indicated, a period of less than 6 weeks elapsed between obtaining knowledge and filing the application in the case in dispute is not objectionable.

39. There are no indications that the applicant had knowledge of this earlier. It is irrelevant that the first purchase by an employee on 13 August 2024, on which the knowledge was based according to the applicant's submission, is not proven by a proof of purchase or an affidavit by the employee. The defendants do not claim that the contested designs available on the market significantly earlier. In particular, they do not deny the applicant's submission that the challenged embodiment was only advertised with the prospectus for the week of 12 August 2024.

Weighing of interests

40. When weighing up the interests, the interests of the parties must be weighed against each other, taking into account the circumstances of the individual case. In particular, the damage that one of the parties could suffer from the issuance of the order or the rejection of the application must be taken into account (see Court of Appeal, Order of 25 September 2024, UPC_CoA_182/2024, GRUR-RS 2024, 25707 para. 225). These
Against the background of the circumstances already discussed and the other circumstances of the case in dispute, the balance of interests is in favour of the applicant.

41. As discussed, the infringement is undisputed. On the basis of the objections raised by the defendants, the legal status is sufficiently secured to an extent that clearly exceeds the minimum. By marketing the challenged embodiments, which are a competing product to the applicant's product, the applicant is deprived of the market opportunities associated with the patent protection at least for the period of time that elapses until a title is obtained in the main action. This applies irrespective of the fact that lice remedies may not traditionally be bought in stock. In addition, the patent protection will expire in 2026 due to the maximum term of protection being reached, so that a considerable part of the remaining term of protection of the patent in suit would have expired by the time the main proceedings are concluded. The weight of the applicant's interest is further strengthened by the fact that the challenged embodiments cost only around one fifth of the applicant's competing product NYDA in the retail price. The fact that the product NYDA with a pack size of 50 ml is sold for a retail price of EUR 14.95 and in a double pack of EUR 26.50, as the applicant claims, is not clear to the court on the basis of the information provided in the application for
- p. 10 and p. 46 of the product page at www.nyda.de. The defendants do not argue that a lower price results from the internet presence. In relation to the 100 ml pack size of the contested designs, this results in the aforementioned price difference.
42. The fact that the defendants have discontinued distribution and may destroy stocks does not weigh decisively in their favour because the defendants have not undertaken to do so vis-à-vis the applicant and therefore the applicant has no certainty that the defendants will not resume distribution or otherwise refrain from destroying the stocks. Even the fact that the challenged designs may be promotional goods does not change this. Rather, the circumstances alleged by the defendants reduce the weight of the defendants' interest in the defence against the interim measures at least to the same extent as they may reduce the applicant's interest in the Order of interim measures. If the defendants have discontinued distribution anyway and want to destroy the stocks, this will

The defendant is not unduly burdened by a temporary injunction and sequestration in view of the applicant's interest in protection. Since the declaration to cease and desist (Annex D4) submitted by respondent 1 does not prevent distribution under a different name and in different outer packaging and, moreover, does not bind respondents 2 to 5, it also does not alter the preponderance of the applicant's interests. Insofar as the defendants accuse the applicant of abusive conduct by not mentioning the declaration of discontinuance of defendant 1 (Annex D4), this is not decisive in its favour because, as discussed, the declaration of discontinuance does not relate to the patent-compliant features and is therefore irrelevant to the subject matter of the present dispute.

X. Legal consequences

43. The circumstances justify the interim measures to the extent ordered.

Omission

44. The Order for interim injunctive relief is justified to the extent requested.

45. With the exception of the importation into Germany, Defendant 1 has itself committed all acts of infringement for which a preliminary injunction is sought. In the absence of any evidence to the contrary, it can be assumed that, as the manufacturer, it has used specimens of the attacked embodiments I and II within the meaning of Art. 25(a) UPCA in Germany and Austria, for example as samples or testers. Thus, the defendant also possessed attacked embodiments for the purposes of Art. 25(a) UPCA. Insofar as copies of the attacked embodiments II intended for defendant 5 were not imported into Austria by defendant 1 itself, there is in any case a sufficient risk of first infringement because there are tangible indications of an imminent import into Austria, since defendant 5, which is domiciled in Austria, is already one of defendant 1's customers from Austria in the distribution chain.

46. As discussed, defendants 2 and 3 have themselves advertised and thus offered the contested designs. As also discussed, the

Defendants 4 and 5 at least offered the attacked designs themselves by selling them in their shops (defendant 5 additionally by advertising them on its website) and placed them on the market and possessed them for these purposes. In this context, there is at least a risk of first infringement for the use, because there are tangible indications that specimens of the attacked embodiments are made available to potential end customers as samples or testers, as is not uncommon.

47. Insofar as the defendants 2 to 5 have not already carried out the prohibited acts themselves, there is in any case a sufficient risk of first infringement. At least defendants 2 and 5 as well as defendants 3 and 4 are affiliated with the group. Due to the division of labour in the group of companies in the distribution of the attacked embodiments, there are already tangible indications that the other acts of infringement are imminent, insofar as they have not already been committed by themselves but only by another affiliated defendant. In any case, the need for protection requires that the Order of Provisional Injunction be extended accordingly to the extent requested. Any other view would lead to the defendants being able to circumvent a prohibition issued only against the acting defendant by the other affiliated defendant taking over the prohibited act of use in future. Moreover, respondents 2 to 4 have not disputed the applicant's submission that respondent 2 is responsible for the joint purchasing and distribution of the goods to the individual Aldi South shops and thus determines and controls which goods are delivered where and which goods are sold, and that respondent 3, as the parent company of all Aldi North shops, controls their business activities and is thus in any case jointly responsible for distribution there. Even no own acts of placing on the market and patent infringing possession by the defendants 2 and 3 are to be seen here, these circumstances also justify a risk of first infringement.

48. Based on the circumstances of the case in dispute, the acts of infringement committed also constitute a risk of first occurrence of importation by the defendants 1 to 4 under

Germany. It is true that the defendant 1 as manufacturer and the defendants 2 to 4 as customers in Germany have their registered office in . However, since the challenged embodiment I is an inexpensive mass-produced article, there is a sufficient risk that patent-infringing products could be imported into Germany from abroad due to the infringing acts committed. The same applies to an import into Austria by defendant 5, provided that it has not yet imported the attacked embodiments II into Austria itself.

49. Insofar as the defendants defend themselves by arguing that they have definitively discontinued the distribution of the challenged embodiments and are continuously destroying stocks, this eliminates - in addition to a risk of repetition
- The risk of the first claim also does not exist insofar as the defendants have not yet carried out individual acts of infringement themselves. Since the defendants have not submitted a declaration of discontinuance or, in the case of defendant no. 1, have not submitted a sufficient declaration of discontinuance with regard to those acts of infringement that they have committed themselves to date, there are doubts as to the sufficient resilience and seriousness of the submissions. Therefore, the submissions do not eliminate the risk of first infringement established by the respective infringing act for the other infringing acts. The fact that the respondent 1 may make the submission of a (punishable) cease-and-desist declaration and the provision of information on (further) distribution channels dependent on the applicant no longer demanding the submission of a (punishable) cease-and-desist declaration by the respondents 2 to 5 does not change the assessment, as the applicant did not have to agree to this.

Threat of penalty payment

50. The threat of penalty payments has its basis in R. 354.3 RoP. In order to determine the upper limit of the amount of the penalty payment, the adjudicating body has set around four times the retail price of the applicant's competitor's product (100ml for EUR 25.60) per infringement based on the pack size of the contested designs. This amount appears appropriate and sufficient for deterrence. In response to the non-binding statement by the defendants that they would

The applicant does not have to allow itself to be referred to the fact that it has to destroy stocks and has already done so.

Confiscation/issue

51. In order to prevent further distribution of the challenged embodiments, it is necessary to withdraw custody from the defendants. For this purpose, custody by the competent enforcement bodies under the applicable national German or Austrian law can be considered (Art. 62(3) UPCA, R. 211.1(b) RoP). In order to prevent onward transfer within the group, the Order against all Defendants 2 to 5 is appropriate irrespective of whether they had custody of attacked embodiments in Germany or Austria in the past.

Provision of information

52. The requested interim Order for the provision of information cannot be considered in the case in dispute.

53. The question of whether admissible provisional measures are conclusively regulated in Art. 62 UPCA or whether the non-exhaustive wording in R. 211.1 RoP also permits other measures or whether Art. 67 UPCA is applicable in the proceedings on the application for provisional measures does not require conclusive consideration. It can also be left open whether the provision of information can be ruled out as a provisional measure from the outset because information that has been provided can no longer be cancelled and the main proceedings would therefore be fully anticipated with regard to the provision of information. In any case, ordering the provision of information as an interim measure can only be considered if special circumstances exist, because otherwise, with regard to the provision of information that can no longer be undone, the main proceedings - which are subject to successful urgent legal protection on the basis of Art. 62(5) in conjunction with Art. 60(8) UPCA - would be fully anticipated. Art. 60(8) UPCA, R. 213.1 RoP - would be fully anticipated. Such special circumstances could be conceivable in piracy cases or similar cases in which the applicant is confronted with a large number of obviously infringing products and in which waiting to provide information is tantamount to a definitive frustration of rights to a considerable extent, because without the information the applicant would not be able to identify the source of the infringement.

infringing products and cannot prevent their further activity, as would be necessary for effective law enforcement. In such circumstances, the high level of protection sought by the Enforcement Directive (Directive 2004/48/EC) may also require that at least information on the distribution and supply channels of infringing products can be obtained by means of urgent legal protection.

54. However, the applicant has not demonstrated such special circumstances in the case in dispute. Defendant 1 is the known manufacturer of the contested designs. There are no indications of significant other external distribution channels in addition to the distribution via defendants 2 and 5.

Provisional reimbursement of costs

55. The Order for provisional reimbursement of costs has its basis in Art. 69 UPCA in conjunction with Art. 69 UPCA.

R. 211.1(d) RoP. Due to the fact that the patent infringement is not substantially disputed and the legal situation is clearly sufficiently secure, it is appropriate to order provisional reimbursement of costs. Against this background, an insolvency risk on the part of the defendant is not necessary.

56. It is not appropriate to reduce the amount of the provisional reimbursement of costs compared to the applicant's application in order to take account of her partial failure. The applicant was clearly predominantly successful with her application for interim measures. The amount requested and awarded merely corresponds to the court fees incurred.

Security deposit

57. The Order to provide security, which is generally at the discretion of the court, is waived.
58. Pursuant to Art. 62(5) in conjunction with Art. Art. 60(7) UPCA, R. 211.5 RoP, the court may order the applicant to provide adequate security for any appropriate compensation to be paid by the defendant for the damage likely to be suffered by the defendant in the event of the revocation of provisional measures by the court. The effectiveness of the Order for interim measures depends on the proper provision of security (R. 211.5 sentence 4 RoP). The provision of security takes into account the fact that the Order of

provisional measures only involve a preliminary assessment, in particular of the patent infringement, and is a compensation for the fact that the legal sphere of the defendant is already interfered with on the basis of a preliminary assessment, which is therefore regularly reduced in terms of the substantive guarantee of correctness (see Düsseldorf local division, Order of 31 October 2024, UPC_CFI_368/2024, V.4 (p. 38)).

59. The special circumstances of the case in dispute mean that it would not be appropriate to order a security in this case. According to their own submission, the defendants had already discontinued the distribution of the contested designs before the application for interim measures was served and planned to destroy existing stocks or had already done so. In this respect, they cannot suffer any significant damage as a result of the Order for interim measures. Consequently, they do not claim any imminent damage. The burden of legal defence costs and the ordered provisional reimbursement of the applicant's costs, should they even be covered by the protective purpose of a security deposit pursuant to Art. 62(5) in conjunction with Art. 60(7) of the UPC, is not a significant damage. Art. 60(7) UPCA, R. 211.5 RoP, do not require the provision of security in the case in dispute either. As discussed, the defendants have not substantially disputed the infringement. On the basis of the respondents' objections, the legal situation is secured to an extent that clearly exceeds the minimum required for the Order of interim measures.

XI. Basic cost decision

60. A basic decision on the costs of the proceedings will not be made if the application for interim measures is successful. In this respect, the PANEL agrees with the opinion of the Düsseldorf local division (order of 31 October 2024, UPC_CFI_368/2024, V.5 (p. 39)).

ORDER:

- I. The defendants are ordered to cease and desist as indicated below,
a composition for killing ectoparasites and/or their eggs, which comprises:


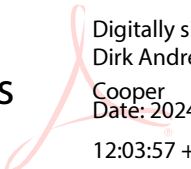
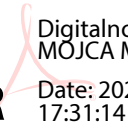

30-49% by weight, based on the composition, of a low-viscosity linear polysiloxane with a viscosity < 10 cSt, 35-65% by weight, based on the composition, of a higher-viscosity linear polysiloxane with a viscosity > 90 cSt and at least one spreading agent,

(direct infringement of claim 1 of EP 1 993 363 B1).

1. - only in the case of respondent 1 - in the territory of the Federal Republic of Germany
 2. - in the case of defendants 1 to 4 - to offer, place on the market, use or import or possess for the aforementioned purposes in the territory of the Federal Republic of Germany
 3. - in the case of defendants 1 and 5 - to offer, place on the market, use or import or possess for the aforementioned purposes in the territory of the Republic of Austria.
- II. For each case of non-compliance with the Order pursuant to Clause I, the infringing defendants must pay a penalty payment of EUR 100 per item.
- III. The defendants are further ordered, as indicated below, to deliver the products referred to in point I. which are in their direct or indirect possession to a person responsible for enforcement, namely
1. - in the case of respondent 1 - in accordance with the provisions of the Republic of Austria and/or the Federal Republic of Germany,
 2. - in the case of respondents 2 to 4 - in accordance with the provisions of the Federal Republic of Germany, and
 3. - in the case of respondent no. 5 - in accordance with the provisions of the Republic of Austria,
- to hand them over safekeeping.
- IV. The defendants are jointly and severally liable to pay the applicant a provisional reimbursement of costs in the amount of EUR 11,000.00.
- V. In all other respects, the applications are rejected.
- VI. The temporary Order is effective and enforceable immediately.
- VII. The interim measures ordered will be revoked or otherwise suspended at the application of the defendants, without prejudice to any claims for damages, if the applicant does not initiate proceedings on the merits before the Unified Patent Court within a period of 31 calendar days or 20 working days - whichever is longer - from 20 December 2024.

Issued in Mannheim on 20 December 2024 NAMES

AND SIGNATURES

| | |
|---|---|
| <p>Presiding judge Prof Dr Tochtermann</p> | <p>Peter Michael Dr Tochtermann  Digital signed by Peter Michael Dr Tochtermann Date: 2024.12.19 15:41:02 +01'00'</p> |
| <p>Legally qualified judge Böttcher</p> | <p>Dirk Andreas Cooper  Digitally signed by Dirk Andreas Cooper Date: 2024.12.20 12:03:57 +01'00'</p> |
| <p>Legally qualified judge Mlakar</p> | <p>MOJCA MLAKAR  Digitalno podpisal MOJCA MLAKAR Date: 2024.12.19 17:31:14 +01'00'</p> |
| <p>For the Deputy Registrar: Kranz, Clerk LK Mannheim</p> | <p>ANDREAS wreath  Digital signed by (ANDREAS MICHAEL) Wreath Date: 2024.12.20 12:35:46 +01'00'</p> |

Note on the right of appeal:

The parties 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).

Information on enforcement (Art. 82 UPCA, Art. Art. 37(2) UPC Agreement, R. 118.8, 158.2, 354, 355.4 RoP):

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