Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Mannheim Local Division
UPC_CFI_359/2023

Decision

of the Court of First Instance of the Unified Patent Court

Local Division Mannheim

delivered on 2 April 2025

concerning EP 3 476 616

HEADNOTES:

1. Art. 76 (1) UPCA contains a strict application principle. Accordingly, a patent proprietor, who wishes to defend its patent in a limited version, has to submit a clear and comprehensive Application to amend the patent.

2. R. 30 RoP also calls for an Application to amend the patent, if the patent proprietor wishes to rely on a dependent claim as granted as a new independent claim.

KEYNOTES:

Art. 65 (3) UPCA; requirement for a request in accordance with R. 30 RoP in the case of a limited defence of the patent-in-dispute

CLAIMANT:

FUJIFILM Corporation, 26-30, Nishiazabu 2-chome, Minato-ku,Tokyo 106-8620, Japan,

represented by: Tobias Hahn, HOYNG ROKH MONEGIER, Steinstraße 20, 40212 Düsseldorf, Germany

electronic address for service: tobias.hahn@hoyngrokh.com

DEFENDANTS:

1. Kodak GmbH, Kesselstraße 19, 70327 Stuttgart, represented by its CEOs, at the same place,

represented by: Elena Hennecke, Freshfields Bruckhaus Deringer Rechtsanwälte Steuerberater PartG mbB, Feldmühleplatz 1, 40545 Düsseldorf, Germany

electronic address for service: elena.hennecke@freshfields.com

2. **Kodak Graphic Communications GmbH,** Kesselstraße 19, 70327 Stuttgart, represented by its CEOs, at the same place,

represented by: Elena Hennecke, Freshfields Bruckhaus Deringer Rechtsanwälte Steuerberater PartG mbB, Maximiliansplatz 13, 80333 Munich, Germany

electronic address for service: elena.hennecke@freshfields.com

3. **Kodak Holding GmbH,** Kesselstraße 19, 70327 Stuttgart, represented by its CEOs, at the same place,

represented by: Elena Hennecke, Freshfields Bruckhaus Deringer Rechtsanwälte Steuerberater PartG mbB, Maximiliansplatz 13, 80333 Munich, Germany

electronic address for service: elena.hennecke@freshfields.com

PATENT AT ISSUE:

European patent EP 3 476 616

PANEL/DIVISION:

Panel of the Local Division in Mannheim

DECIDING JUDGES:

This decision is delivered by the presiding judge Tochtermann, the legally qualified judge Böttcher as judge-rapporteur, the legally qualified judge Agergaard and the technically qualified judge Wismeth.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT OF THE PROCEEDINGS: Patent infringement

DATE OF THE ORAL HEARING: 11 and 12 February 2025

SUMMARY OF THE FACTS:

1. Claimant is suing Defendants for the alleged infringement of EP 3 476 616 B1 which relates to a lithographic printing plate precursor, a lithographic printing plate manufacturing method and a printing method. Claimant, a manufacturer of inter alia lithographic plates, is the registered proprietor of the patent-in-suit which is still in force in Germany and the United Kingdom (cf. SoC, mn. 206; Reply, mn. 496) but elapsed in all other designated EPC contracting member states before the entry into force of the UPCA on 1 June 2023. The

mention of the grant of the patent-in-suit was published on 14 July 2021. It was filed on 31 May 2018, claiming the priority of two Japanese patent application of 31 August 2017 and 19 March 2018.

2. Claim 1, 13 and 14 of the patent-in-suit as granted read as follows in the language of the patent:

> "1. A lithographic printing plate precursor comprising
>
> (i) an aluminum support including an aluminum plate and, formed thereon, an anodized film of aluminum, and
>
> (ii) an image recording layer,
>
> wherein the anodized film
>
> - is positioned closer to the image recording layer than the aluminum plate,
> - has micropores extending in a depth direction of the anodized film from a surface of the anodized film on the image recording layer side,
> the micropores have an average diameter of 15-100 nm at the surface of the anodized film,
> each of the micropores has a large-diameter portion which extends from the surface of the anodized film to a depth of 10-1000 nm and a small-diameter portion which communicates with a bottom of the large-diameter portion and extends to a depth of 20-2,000 nm from a communication position between the small-diameter portion and the large-diameter portion,
> the aperture average diameter of the large-diameter portion at the surface of the anodized film is 15-100 nm, and that of the small-diameter portion at the communication position is ≤ 13 nm; and
> - has a surface on the image recording layer side having a lightness L* of 70-100 in a L*a*b* color system.
>
> 13. A method of manufacturing a lithographic printing plate, comprising the steps of:
>
> - imagewise exposing the lithographic printing plate precursor of any of claims 1-12 to form exposed portions and unexposed portions; and
> - removing the unexposed portions of the lithographic printing plate precursor having been imagewise exposed.
>
> 14. A printing method, comprising the steps of:
>
> - imagewise exposing the lithographic printing plate precursor of any of claims 1-12 to form exposed portions and unexposed portions; and
> - performing printing by supplying at least one of printing ink and fountain solution to remove the unexposedportions of the lithographic printing plate precursor having been imagewise exposed, on a printing press."

3. The Defendants, companies incorporated under German law, belong to a multinational group of companies producing and distributing inter alia printing plates. Defendant 1 acts as the German sales company purchasing the products from a UK based company of the group. Defendant 2 and its legal predecessor respectively own and operate a manufacturing facility in Germany as contract manufacturer of printing plates for said UK entity. Defendant 1 is a wholly owned subsidiary of Defendant 2 which itself is a wholly owned subsidiary of Defendant 3 and subject to a control and profit and loss transfer agreement with

Defendant 3.

4. In Claimant's opinion, printing plates marketed by Defendants under the product names "SONORA X", "SONORA XTRA-2" and "SONORA XTRA-3" ("contested embodiments") are falling within the scope of claim 1 of the patent-in-suit and are means relating to an essential element of the subject-matter of claims 13 and 14 of the patent-in-suit. With regard to the technical design of the contested embodiments, reference is made to exhibit K11, K14 to K20 submitted by Claimant.

5. Defendants challenge the validity of the patent-in-suit on lack of novelty and inventive step. Additionally, they put forward that the patent-in-suit suffers from added matter.

REQUESTS OF THE PARTIES

6. The Claimant requests (cf. amended requests from the brief of 5 February 2025, main workflow, and from the oral hearing with regard to the date for Germany in request B.I.):

A. As main request,

I. To hold that claimant has demonstrated that the contested printing plate precursors SONORA X, SONORA XTRA-2 and SONORA XTRA-3 reproduce OR implement claims No. 1, 2, 3, 4, 5, 6, 7, 9, 10, 13 and 14 of European patent No. 3 476 616;

II consequently, to grant the claims made by claimants;

III. subject to a penalty to be determined by the Court for each case of infringement to refrain from:

1. making, offering, placing on the market or using within the territory of Germany and the United Kingdom, or storing it for this purpose

a. a lithographic printing plate precursor comprising an aluminum support including an aluminum plate and,

formed thereon, an anodized film of aluminum, and

an image recording layer,

wherein the anodized film

is positioned closer to the image recording layer than the aluminum plate,

has micropores extending in a depth direction of the anodized film from a surface of the anodized film on the image recording layer side,

the micropores have an average diameter of 15-100 nm at the surface of the anodized film,

each of the micropores has a large-diameter portion which extends from the surface of the anodized film to a depth of 10-1000 nm and a small-diameter portion which communicates with a bottom of the large-diameter portion and extends to a depth of 20-2,000 nm from a communication position between the small-diameter portion and the large-diameter portion,

the aperture average diameter of the large-diameter portion at the surface of the anodized film is 15-100 nm, and that of the small-diameter portion at the communication position is ≤ 13 nm; and

has a surface on the image recording layer side having a lightness L* of 70-100 in a L*a*b* color system,

- direct infringement of claim 1 EP 3 476 616 B1 -

b. in particular, the lithographic printing plate precursor according to claim 1, wherein a steepness a45 representing an area ratio of portions having an inclination of at least 45° at the surface of the anodized film on the image recording layer side as determined by extracting components with a wavelength of 0.2 to 2 μm is not more than 30%,

- direct infringement of subclaim 2 EP 3 476 616 B1 -

and/or

c. the lithographic printing plate precursor of claim 2, wherein the steepness a45 is ≤ 20%.

- direct infringement of subclaim 4 EP 3 476 616 B1 -

and/or

d. the lithographic printing plate precursor according to any one of claims 1 to 3, wherein the average diameter is from 15 to 60 nm,

- direct infringement of subclaim 4 EP 3 476 616 B1 -

and/or

e. the lithographic printing plate precursor according to any one of claims 1 to 4, wherein the lightness L* is from 75 to 100,

- direct infringement of subclaim 5 EP 3 476 616 B1 -

and/or

f. the lithographic printing plate precursor according to any one of claims 1 to 5, wherein a specific surface area ΔS is not less than 20%, the specific surface area ΔS being a value determined by Formula (i): $\Delta S = (S_x - S_o) / S_o \times 100$ (%) using an actual area S_x obtained, through three-point approximation, from

three-dimensional data acquired by measurement at 512 x 512 points in 25 µm square of the surface of the anodized film on the image recording layer side by means of an atomic force microscope and a geometrically measured area S_o,

- direct infringement of subclaim 6 EP 3 476 616 B1 -

and/or

g. the lithographic printing plate precursor according to claim 6, wherein the specific surface area ΔS is from 20% to 40%

- direct infringement of subclaim 7 EP 3 476 616 B1 -

and/or

h. the lithographic printing plate precursor of any of claims 1-8, wherein the image recording layer further contains a borate compound

- direct infringement of subclaim 9 EP 3 476 616 B1 -

and/or

i. the lithographic printing plate precursor of any of claims 1-9, wherein the image recording layer further contains an acid color former

- direct infringement of subclaim 10 EP 3 476 616 B1 -

2. supplying and/or offering to any person other than a party entitled within the territory of Germany and the United Kingdom with

lithographic printing plate precursors

which are suitable and intended to use with

a. method of manufacturing a lithographic printing plate, comprising the steps of

imagewise exposing the lithographic printing plate precursor of any of claims 1 - 7 and 9 - 10 to form exposed portions and unexposed portions; and

removing the unexposed portions of the lithographic printing plate precursor having been imagewise exposed

- indirect infringement of claim 13 EP 3 476 616 B1 -

b. a printing method, comprising the steps of:

imagewise exposing the lithographic printing plate precursor of any of claims 1 - 7 and 9 - 10 to form exposed portions and unexposed portions; and

performing printing by supplying at least one of printing ink and fountain solution to remove the unexposed portions of the lithographic printing plate precursor having been imagewise exposed, on a printing press.

B. As further requests,

I. to hold that the defendants shall pay damages to the claimant compensating all losses caused by infringing acts referred to in A.III. above in

- Albania, Austria, Cyprus, Czechia, Denmark, Estonia, Spain, Finland, Croatia, Italy, Lithuania, Latvia, Monaco, North Macedonia, Malta, The Netherlands, Poland, Romania, Serbia, Sweden, Slovenia, Slovakia, San Marino, since May 1st, 2019 and until 14th July 2021;
- Bulgaria, Norway since May 1st 2019 until 14th October 2021;
- Greece since May 1st 2019 until 15th October 2021;
- Iceland since May 1st 2019 until 14th November 2021;
- Portugal since May 1st 2019 until 15th November 2021;
- Belgium, France, Luxembourg since May 1st 2019 until 31 May 2022;
- Liechtenstein, Switzerland since May 1st 2019 until 23rd December 2022;
- Ireland since 1st May 2019 until 27th February 2023;
- the UK since May 1st 2019;
- and in Germany since 14th July, 2021;

II. to order the defendants to pay to the claimant EUR 200.000 (two hundred thousand euros) in compensation for the moral prejudice suffered;

III. to inform the claimant to the extent of which the defendants have committed the infringing acts of EP 3 476 616 referred to in C.I – stating

1. the origin and distribution channels;
2. the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained;

   in particular

   - manufacturing quantities and times;
   - the individual deliveries, broken down by delivery quantities, times and prices and the respective product designations as well as the names and addresses of the customers;
   - the turnover, the gross margin and the contribution margin generated by the defendants with the sale of these products;

- the individual offers, broken down by quantities, times and prices and product designations as well as the names and addresses of the commercial offer recipients;

- the advertising carried out, broken down by advertising media, their circulation, distribution period and distribution area, and in the case of Internet advertising, the domain, access figures and placement periods of each campaign;

- the identity of all third parties involved in the distribution, in particular the names and addresses of the commercial buyers and the sales outlets for which the products were intended;

whereby details requiring confidentiality may, at the discretion of the court, be redacted or made available only to certain persons;

within twenty-one days of the date of service of the decision, supported by evidence verified by an independent accountant, under a penalty of EUR 10.000 per delay day from the month following the date of service of the judgment to be handed down;

IV. to order the defendants to pay the claimant interim awards on damages in the amount of EUR 10.000.000 (ten million euros) as provided under Rule 119 of the Rules of Procedure pending the communication of the requested accounting information, the claimant retaining the right to bring an action at a later date for the determination of the damages;

V. to order the defendants to destroy at their own expense the products, material and/or implements referred to under A. III. which are in their possession and/or ownership within Germany and the United Kingdom, and to provide the claimant with proper evidence certified by an independent bailiff as to how and when the destruction was carried out;

VI. to order the defendants to recall the products referred to under A. III. which have been placed on the market from the channels of commerce, with reference to the infringement determined by a court of law (judgement of […] on […]) and with the binding promise to reimburse any fees and to assume any necessary packaging and transport costs as well as customs and storage costs associated with the return and to take back the products,

whereby an exhaustive list of all recipients is to be provided to the claimants;

VII. to order the defendants to definitively remove the products referred to under A. III. from the channels of commerce, specifically taking the following measures at their own expense:

1. the defendants shall take all possible and reasonable measures to identify the locations and owners of the products referred to under A. III;

2. to the extent that the defendants themselves have legal or actual control over the products referred to under A. III., such measures as are legally permissible

and reasonable shall be taken to ensure that such products come into and remain in the defendants' immediate possession;

3. to the extent that the defendants do not have legal or actual control over the products referred to under A. III., they shall take all legally permissible and reasonable steps to induce the persons holding claims for restitution against the holders of the control of the products to assert such claims and/or to assist such persons in asserting such claims;

VIII. to order for each defendant

1. to place on its website, within seven days from the date of the decision and for a continuous period of at least two weeks, the following statement (or a statement as the Court deems appropriate), to be displayed in a manner visible directly on the website's home- or landing page, in a text box separate from the website's other content having a white background and black letters, set in typeface Arial and having at least 12pt size, and to provide the claimant with evidence when and how the statement was placed:

   "On [date of decision], the Unified Patent Court has ruled that Kodak GmbH, Kodak Graphic Communications GmbH and Kodak Holding GmbH infringed European Patent No. 3 476 616 held by Fujifilm Corporation by manufacturing, selling, and offering for sale SONORA X, SONORA XTRA-2 and SONORA XTRA-3 printing plate precursors. As a consequence, Kodak GmbH, Kodak Graphic Communications GmbH and Kodak Holding GmbH were ordered to terminate all commercial activities related to these products in Germany and the United Kingdom immediately. We apologize for any inconvenience this may cause and will be reaching out directly to clients to offer an appropriate solution."

2. to send to its clients, within seven days from the date of the decision, in the national language of the client, a letter with the following contents only (or such contents as the Court deems appropriate) and without caption, and to provide the claimant with copies of all letters sent:

   "Kodak GmbH, Kodak Graphic Communications GmbH and Kodak Holding GmbH have infringed Fujifilm's European Patent No. 3 476 616 with its products SONORA X, SONORA XTRA-2 and SONORA XTRA-3. Those products may no longer be offered for sale or sold in Germany and the United Kingdom, either on- or offline. We hereby request you to remove (images of) these products from your websites, from your shops and from other promotional and sales channels, to cease all sales and offers for sale of these products, and to return to us these products within seven days from the date of this letter. We will refund the purchase price and all costs associated with the return of the products to you."

IX. In any case, to order the defendants to pay the claimant the sum of EUR 300.000 as an interim award on the legal costs and other expenses as provided under Article 69 of the Unified Patent Court Agreement and Rule 118(5), 119 and 150(2) of the Rules of Procedure.

[For requests C. to F., see infra under “Counterclaim for revocation”]

G. As **a further subsidiary request**, insofar as the Court considers the evidence submitted by the defendants insufficient to hold Defendant 2) liable for infringement of the patent in suit in the UK, to **order** Defendant 2) to produce,

   I. the Manufacturing Toll Agreement of 1 January 2017 between Defendant 2) and Kodak Ltd. referred to on page 10 of Exhibit K 3;

   II. only if this does not become clear from the Toll Manufacturing Agreement, other documents, including purchase orders, invoices, agreements, or terms and conditions, that clarify when title to the SONORA plates manufactured by Defendant 2) intended for the UK market passes, in the case of (a) supplies to Kodak’s UK entity **and** in the case of (b) direct shipments to distributors such as Intuprint.

H. As a further request,

   I. to dismiss the defendants’ request for an enforcement security,

   II. if the Court were to consider an enforcement security at all, to limit it to much lower proportions at the discretion of the Court.

7. In the event the Court should find any reason to stay the proceedings as they relate to infringing acts carried out in the UK, or not to grant a permanent injunction for the United Kingdom (UK) until further conditions are fulfilled, the Claimant further requests that the Court grant a provisional injunction for the UK, pending the stay and/or so long as no permanent injunction is granted (cf. SoC, mn. 207).

8. The Defendants filed a preliminary objection rejecting the international jurisdiction and competence with regard to UK. The judge-rapporteur informed the parties that the Court will deal with the preliminary objection in the main proceedings in the light of the forthcoming opinion of the Advocate General in re ECJ C-339/22 (BSH Hausgeräte GmbH v. Aktiebolaget Electrolux*).* That part of the dispute is now subject to separate proceedings.

9. The Defendants request (with regard to the updated amount for the enforcement security, cf. brief of 12 February 2025, workflow App_6897/2025):

   1. dismissal of the action (Rules 23, 24 lit. (g) RoP UPC);

   2. reimbursement of the Defendants' costs of the infringement action provisionally (Rule 150.2 RoP UPC);

      in the alternative,

3. to make the enforcement of the decision subject to the prior provision of security by the Plaintiff of at least […] (Rules 352.1, 354.2 RoP UPC), which can be provided by a written, irrevocable, unconditional and unlimited guarantee from a credit institution authorized to do business in the territory of a member state of the UPC;

4. to permit the Defendants to avert enforcement of the decision by providing security, which can be made by way of a written, irrevocable, unconditional, and indefinite guarantee of a financial institution in the territory of a member state of the UPC authorized to conduct business in the Federal Republic of Germany, irrespective of a provision of security by Plaintiff (Rule 9.1 RoP UPC).

COUNTERCLAIM FOR REVOCATION

10. With regard to their counterclaim for revocation (CC_3100/2024, CC_3096/2024, CC_3094/2024), the Defendants request:

5. revocation of the European patent EP 3 476 616 B1 in its entirety with effect in the territory of all Contracting Member States in which the patent has effect (Rule 25 RoP UPC);

6. without prejudice to our primary position that the court either cannot or should not determine the claim so far as it concerns the United Kingdom for the reasons set out in our Preliminary Objections,

   and on the basis that if the court were to assume jurisdiction for the EP 3 476 616 B1 (UK) it should only do so if the Plaintiff first undertakes to consent before the UK Court and Intellectual Property Office to revocation or restriction of the EP 3 476 616 B1 (UK) in line with decision handed down by this court,

   a decision that the EP 3 476 616 B1 (UK) is also invalid in its entirety; and

7. reimbursement of the Defendants' costs of the counterclaim provisionally (Rule 150.2 RoP UPC).

11. The Claimant having filed an Application to amend the patent (App_35674/2024) requests:

C. As a further main request,

   to **dismiss** the Counterclaim for Revocation of EP 3 476 616 B1 in its entirety;

D. As **a subsidiary request,** insofar as the Court considers the claims of EP 3 476 616 B1 to be anticipated by any of the prior art documents invoked in the Counterclaim for Revocation under Articles 54(2) or 54(3) EPC,

   I. to **hold** that the Application to Amend EP 3 476 616 B1 submitted as Auxiliary Request 1 is admissible;

   II. to **hold** that the claimant has demonstrated that the contested printing plate precursors SONORA X, SONORA XTRA-2 and SONORA XTRA-3 reproduce or implement claims No. 1, 2, 3, 4, 5, 6, 7, 9, 10, 13, and14 of Auxiliary Request 1;

III. to consequently **order** the injunctive measures requested under request A.;

IV. to consequently **order** the corrective measures requested under request B.;

E. As **a further subsidiary request**, if the Court considers the claims of EP 3 476 616 B1 to be anticipated by any of the prior art documents invoked in the Counterclaim for Revocation under Articles 54(2) or 54(3) EPC,

I. to **hold** that the Application to Amend EP 3 476 616 B1 submitted as Auxiliary Request 2 is admissible;

II. to **hold** that the Claimant has demonstrated that the contested printing plate precursors SONORA X, SONORA XTRA-2 and SONORA XTRA-3 reproduce or implement claims 1, 2 ,3, 4, 5, 6, 7, 9, 10, 13 and 14 of Auxiliary Request 2;

III. to consequently **order** the injunctive measures requested under request A.;

IV. to consequently **order** the corrective measures requested under request B.;

F. As **a further subsidiary request**, if the Court considers claim 6 of EP 3 476 616 B1 to be violating Article 123(2) EPC,

I. to **hold** that the Application to Amend EP 3 476 6169 B1 submitted as Auxiliary Request 3 is admissible;

II. to **hold** that the Claimant has demonstrated that the contested printing plate precursors SONORA X, SONORA XTRA-2 and SONORA XTRA-3 reproduce or implement claims No. 1, 2, 3, 4, 5, 6, 7, 9, 10, 13, and 14 of Auxiliary Request 3;

III. to consequently **order** the injunctive measures requested under request A.;

IV. to consequently **order** the corrective measures requested under request B.

12. With its brief of 30 October 2024 (containing the Rejoinder to the counterclaim for revocation and the Reply to the defence to the application to amend the patent), the Claimant, though being of the opinion that the term “ink” in its auxiliary request 1 has to be read as “printing ink”, filed an alternative auxiliary request 1 (exhibit K 53) containing explicitly the term “printing ink”.

13. The Defendants request to dismiss the Claimant’s requests to amend the patent.

14. The panel separated the proceedings with regard to the United Kingdom by order of 2 April 2025 because the decision of the ECJ in re C-339/22 (BSH Hausgeräte) had not been delivered until the end of the oral hearing but only thereafter on 25 February 2025. With regard to Albania, Cyprus, Czechia, Spain, Croatia, Monaco, North Macedonia, Poland, Serbia, Slovakia, San Marino, Norway, Greece, Iceland, Liechtenstein, Switzerland and Ireland, being

UPCA non-member states and UPCA member state without the UPCA being in force respectively, a separation was not necessary because the territorial national parts of the patent-in-suit have already lapsed before 1 June 2023 so that the UPC has no jurisdiction insofar regardless of the outcome of ECJ in re C-339/22 as further discussed infra.

POINTS AT ISSUE

15. The parties are in dispute about different aspects of the case at hand.

INFRINGEMENT

16. According to Defendants, Sonora XTRA-3 has no micropores in the meaning of the patent-in-suit. In their view its anodized film has a three-layer structure due to corresponding anodization steps instead of a two-layer-structure as required by the patent-in-suit. Moreover, Defendants consider Sonora XTRA-3 not to have continuous boundaries on the topmost layer of the anodized film, but spikes, thus not allowing to find pores having a certain diameter at the film's surface in accordance with the patent-in-suit. Furthermore, they regard Claimant's infringement allegation relating to subclaims 2 and 3 to be inconclusive insofar as Claimant relies on Atomic Force Microscope (AFM) measurements.

17. Moreover, the Defendants allege a private prior use right pursuant to Sec. 12 German Patent Act (PatG) in conjunction with Art. 28 UPCA allowing them to manufacture and distribute the contested embodiments in Germany.

18. Claimant seeks a permanent injunction, a right to prevent the indirect use of the invention, corrective measures, an order to communicate information and to pay damages as well as an interim award of damages and costs.

19. For further details on the points at issue, reference is made to the briefs and the accompanying exhibits.

COUNTERCLAIM FOR REVOCATION

20. The Defendants base their identical counterclaims for revocation on the following grounds of Art. 138 EPC in conjunction with Art. 65 (2) UPCA:

    - lack of novelty (Art. 138(1)a) in conjunction with Art. 54(1), (2) and (3) EPC), and

- lack of inventive step (Art. 138(1)a) in conjunction with Art. 56 EPC),

- added matter with regard to claim 6 (Art. 138(1)c EPC).

21. Defendants challenge the validity of the patent-in-suit by relying on lack of novelty in relation to public prior use, WO 2018-160379 A1 (WO'379; T9) and US 4 566 952 A (US'952; T22). The alleged public prior use is based on products being also relevant for the alleged private prior use right. With regard to WO'379 and US'952, in each case, Defendants rely on an alleged reworking of one of the examples described therein.

22. Inventive step is challenged by EP 2 878 452 A1 (EP'452; T41) in combination with general common knowledge or with EP 1 614 541 A2 (EP'541; T37), JP H08-144090 A (JP'090; T38) or EP 2 839 968 A1 (EP'968; T39), in the alternative starting with JP 2015-189021 A (JP'021; T42) or EP 2 594 408 A1 (EP'408; T2).

23. Additionally, Defendants put forward, that the patent-in-suit suffers from added matter in claim 6.

24. For further details on the points at issue, reference is made to the briefs and the accompanying exhibits.

GROUNDS FOR THE DECISION

25. The counterclaim for revocation is admissible and founded. In contrast, the infringement action is partly inadmissible and otherwise, due to the revocation, unfounded.

A. ADMISSIBILITY OF THE INFRINGEMENT ACTION AND THE COUNTERCLAIM FOR REVOCATION

26. The infringement action is inadmissible with regard to the national parts of the patent-in-suit validated for member states of the European Patent Convention other than Germany. The UK-part of the bundle patent is now subject to a separated proceeding and will have to be decided upon in that separate proceeding. With regard to the national part validated for Germany, the infringement action is admissible. The counterclaim for revocation which – after said separation of proceedings – relates to the national part validated for Germany only is admissible.

I. RELEVANT REQUESTS CONCERNING THE INFRINGEMENT ACTION

27. The Claimant's amendments to the infringement action are admissible.

Amendments by Claimant's reply

28. By its brief containing its reply to the statement of defence and to the counterclaim for revocation and its application to amend the patent, Claimant submitted auxiliary requests with regard to the infringement proceedings taking into account a potential partly revocation of the patent-in-suit. Such consequential adjustments to the infringement action are covered by R. 30 RoP without the necessity to formally apply for leave to change the claim or amend the case in accordance with R. 263 RoP. Such adjustments do not constitute a change or amendment in the meaning of R. 263 RoP, but only clarify that the claimant also seeks relief to a corresponding lesser extent if the patent-in-suit is partly revoked in accordance with the application to amend the patent. Apart from that, R. 30 RoP is the lex specialis which would override R. 263 RoP in this regard. Anyway, the panel believes that such adjustments would have to be regarded as implicit application under R. 263 RoP and that leave would have to be granted accordingly in order not to frustrate the possibility to amend the patent-in-suit in accordance with R. 30 RoP so as to obtain a judgment against the defendant for infringement of the patent-in-suit in a version partially maintained according to the amendments applied for.

Amendments by Claimant's brief of 5 February 2025

29. As far as Claimant has amended its requests for the infringement action by its brief of 5 February 2025, the panel has no concerns under R. 263 RoP either.

30. With regard to the injunctive relief sought, the Claimant dropped its original main request under A., designating the contested embodiments in general terms, and now solely relies on the original auxiliary request under B. as the new main request designating the contested embodiments by their product names. In the absence of any indication to the contrary, on a regular basis, both such requests have to be interpreted so as to encompass any embodiment implementing the same features, which a claimant relies on for the alleged infringement regardless of the product name. Therefore, said transition from the original main request to the original auxiliary request as the new main request relates to the mere wording only, not to the substantive content of the request. In the opinion of the panel,

R. 263 RoP does not address such amendments concerning a request's wording only.

31. The fact that, in the proceedings at hand, the designation of the contested embodiments by their product names may also serve the purpose to indicate that Claimant wishes the court to adjudicate on all designated contested embodiments explicitly does not lead to another result. Such clarification again does fall into the ambit of R. 263 RoP.

32. If one were of a different opinion, the transition from the main request to the auxiliary request as the new main request would also be admissible. Since the new main request already was part of the original requests, the transition does not unreasonably hinder Defendants in the conduct of their action (R. 263.2 (b) RoP). Even if one considered the transition to be a partial withdrawal of the statement of claim in the meaning of R. 265 RoP, such partial withdrawal would have to be granted under R. 265 RoP. Defendants did not bring forward any facts and interests necessitating the dismissal of such partial withdrawal. In particular, no further embodiment is apparent, which would fall into the scope of the original, but not the scope of the current main request.

33. The amendments under requests D. to F. as amended by brief of 5 February 2025 concern mere consequential linguistic adjustments after dropping the original main request A. and, thus, have to be assessed accordingly.

34. In its statement of claim, under the original request C., Claimant sought remedies pertaining to "infringing acts of EP 3 476 616 in any country where and while it has been and/or is still in force, since May 1st, 2019 – for Germany since July 7th, 2021". By its brief of 5 February 2025, Claimant responded to judge-rapporteur's order of 30 January 2025 by designating the national states concerned explicitly. Contrary to Defendants' view in the oral hearing, such amendment is admissible. An amendment in response to concerns raised by the Court does not constitute a change or amendment in the meaning of R. 263 RoP if the lack of specificity and the amendment responding to it concern the wording only but not the content of the request. Even if the lack of specificity and the amendment concerned the substance of the requests, it would serve the purpose of removing a potential lack of substantive specificity only after having been addressed by the court. Such amendment would have to be admissible under R. 263 RoP on a regular basis if it does not unduly hinder the defence of defendant. Otherwise, an originally unspecified request would be inadmissible without any remedy, resulting in limiting a claimant's legal protection. In the proceedings

at hand, the amendment does not hinder Defendants' defence because the court lacks jurisdiction for the requests as amended as discussed infra. For Defendants' legal position, it does not make a difference whether a request is dismissed on the grounds of lack of jurisdiction or lack of substantive specificity.

35. As far as the requests B.III., B.V., B.VI., B.VI. as amended refer to requests "C.I." and "A.III.", such reference is to be understood as a reference to request B.I. In the light of the context to be taking into account when interpreting requests, it is sufficiently clear what is meant and that the references therein to "C.I." and "A.III." respectively are mere oversights.

II. NO JURISDICTION OVER NATIONAL PARTS LAPSED BEFORE 1 JUNE 2023

36. The UPC has no jurisdiction over the patent-in-suit with regard to those national parts of UPCA member states which have already lapsed before 1 June 2023. The same applies to national parts of non-UPCA-member states. All national parts of the patent-in-suit except the German part and the UK part, which is now subject to separate proceedings, had elapsed before the entry into force of the UPCA.

37. Without prejudice to Art. 83 UPCA, Art. 3 (c) UPCA vests upon the UPC jurisdiction over any pre-existing European patent which has not yet lapsed at the date of the UPCA's entry into force, i.e., 1 June 2023. The provision has to be interpreted autonomously in accordance with the Vienna Convention on the Law of Treaties (VCLT) (cf. Court of Appeal, Order of 16 January 2025, UPC_CoA_30/2024, GRUR-RS 2025, 213 mn. 41; W. Tilmann, GRUR Patent 2025, 51 mn. 107) and the Union law in its entirety (cf. Art. 20 UPCA, Art. 326 Treaty on the Functioning of the European Union (TFEU), cf. further Local Division Mannheim, decision of 11 March 2025, UPC_CFI_159/2024 mn. 99, UPC_CFI_162/2024 mn. 103). Therefore, in particular, a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (cf. Art. 31 (1) VCLT). For the purpose, aspects as laid down in Art. 31 (2), (3) VCLT have to be taken into account. Further relevant aspects are laid down in Art. 31 (4) VCLT, Art. 32 et seq. VCLT.

38. In this context, the term "any European patent" in Art. 3 (c) UPCA has to be construed as meaning "any national part thereof". Like the national laws of the member states to the European Patent Convention (EPC), the substantive law as laid down in the UPCA deals with the phase following the grant of a traditional European bundle patent only. After its grant,

apart from opposition and limitation proceedings before the European Patent Office (EPO), the effect and existence of the national parts of a European bundle patent are independent from each other and follow national laws. Accordingly, recital 3 to the UPCA sees the purpose of the EPC as providing for a single procedure for granting European patents. The UPCA further acknowledges said legal structure by harmonizing in part the substantive law of its member states applicable to then existing national parts for infringing acts committed after its entry into force (cf. Local Division Mannheim, decision of 11 March 2025, UPC_CFI_159 mn. 91 et seqq., UPC_CFI_162/2024 mn. 95 et seqq.). Said acknowledgement also follows from the fact that the UPCA leaves some legal aspects of infringing acts committed after its entry into force to the substantive national laws of its member states without further harmonization (cf. Art. 29 UPCA (exhaustion), Art. 28 UPCA (private prior use right)). Therefore, Art. 3 (c) UPCA cannot be read as a basis to transfer the national parts of a traditional European bundle patent into a single uniform international patent. Art. 3 (c) UPCA cannot be interpreted so as to establish the UPC's jurisdiction over national parts having lapsed before the UPCA's entry into force provided that one single national part is still in force at that date. Otherwise, in extreme cases, such single national part would suffice to establish the UPC's jurisdiction over infringing acts with regard to lapsed national parts, even if said single national part is not part of the infringement action and all infringing acts reside in periods before the UPCA's entry into force. This would also be true if said single national part was the national part of a UPCA non-member state because Art. 3 (c) UPCA in general speaks of a European patent without differentiating between UPCA member and non-member states so that the UPC would have jurisdiction over national parts of UPCA non-member states to the same extent as a national court of the UPCA member states would have under the Brussels Ia Reg. In the absence of any indication to the contrary, it cannot be assumed that the member states to the UPCA intended to transfer the jurisdiction to the UPC for their national parts that had already lapsed before its entry into force.

39. The finding that the UPC has no jurisdiction over national parts lapsed before its entry into force is also confirmed by the purpose of the UPCA facilitating the enforcement of founded and the defence against unfounded claims for infringement. According to its recital 2, the member states to the UPCA consider the "*fragmented market for patents and the significant variations between national court systems … detrimental for innovation, in particular for small and medium-sized enterprises which have difficulties to enforce their patents and*

to defend themselves against unfounded claims and claims relating to patents which should be revoked." This purpose clearly aims at the future. Again, there is no indication that this purpose is also directed to national parts lapsed before the UPCA's entry into force and that the member states intended to establish a new court with jurisdiction over infringement cases which, due to the lapsed national part, exclusively reside in the past before the UPCA's entry into force without having any effect for the period thereafter. On the contrary, the member states intended to mitigate the fragmentation considered by them to be negative for the future only by establishing the UPC's jurisdiction over patents still in force on 1 June 2023 and accepted the fragmentation for the past. Against this backdrop, it cannot be assumed that the contracting member states wished to give up the jurisdiction of their national courts over national parts lapsed before the UPCA's entry into force.

40. Therefore, the UPC has no jurisdiction under Art. 3 (c) UPCA over national parts of a European bundle patent which elapsed before the UPCA's entry into force regardless of being a national part in relation to a UPC member state or not.

41. The Defendants' objection against the UPC's jurisdiction with regard to the lapsed national parts of the patent-in-suit is not precluded by R. 19.7 UPCA or Art. 26 (1) Brussels Ia Reg., although Defendants did not base their preliminary objection on the lack of jurisdiction under Art. 3 (c) UPCA, but raised an objection insofar in the oral hearing only.

42. It can be left open whether a lack of jurisdiction under Art. 3 (c) UPCA falls within the scope of R. 19 RoP. Since the Claimant has designated the countries explicitly for which it seeks damages, provision of information and corrective measures in its brief of 5 February 2025 only, Defendants were not obliged to raise their objection up-front but could rely on criticizing the lack of specificity as done in their statement of defence. Neither the court nor the defendant were obliged to investigate with regard to unnamed member states to the EPC whether the patent-in-suit might have been in force for a period residing before the UPCA's entry into force only. Since the Defendants raised their objection within less than a month after Claimant having designated the relevant EPC member states, it can be left open whether R. 19 RoP applies accordingly from the date when the original deficiency in the statement of claim was corrected.

43. Art. 26 (1) Brussels Ia Reg. does not bar the objection either. First, Art. 26 (1) Brussels Ia Reg. relates to the international and – according to a predominant view – local jurisdiction.

However, it does not address the subject-matter jurisdiction between different courts within a single EU member state. Accordingly, it is not applicable to the demarcation of the subject-matter jurisdiction of a court common to EU member states such as the UPC and the national courts of these member states either. When applied pursuant to Art. 71a, 71b Brussels Ia Reg., the scope of Art. 26 (1) does not change insofar. On the contrary, Art. 71a (1) Brussels Ia Reg. explicitly stipulates that, for the purposes of the Brussels Ia Regulation, a court common to several member states as specified in Art. 71a (2) Brussels Ia Reg. including the UPC shall be deemed to be a court of a EU member state when, pursuant to the instrument establishing it, such a common court exercises jurisdiction in matters falling within the scope of the Brussels Ia Regulation, thereby confirming that Art. 26 (1) Brussels Ia Reg. applies in the same way between national courts and a common court as between national courts, i.e., dealing with the international and at most local jurisdiction, but not with the subject-matter jurisdiction.

III. FURTHER ASPECTS OF ADMISSIBILITY

44. In all other respects, both the infringement action and the counterclaim for revocation are admissible. In particular, Claimant did not raise any objection against the jurisdiction and local competence of the Local Division Mannheim with regard to the counterclaim.

B. SCOPE OF THE PATENT-IN-SUIT

45. The patent-in-suit relates to a lithographic printing plate precursor, a lithographic printing plate manufacturing method, and a printing method.

46. According to the description of the patent-in-suit, lithographic printing plates can be obtained through the CTP (computer-to-plate) technology (para. [0002]). State of the art lithographic printing plate precursors use a lithographic printing plate support including an anodized film having predetermined micropores. Well-known micropores have a large-diameter portion and a small-diameter portion, both of which have a predetermined shape, which includes a specific depth and/or a specific average diameter (para. [0003]). The lithographic printing plates formed from such printing plate precursors are required to have further improved image visibility and a long press life (para. [0005] to [0007]).

47. Against this background, the patent-in-suit is based on the technical problem to provide a lithographic printing plate precursor that enables a lithographic printing plate formed

therefrom to have excellent image visibility and a long press life (paras. [0008], [0017]) as well as providing excellent scumming resistance ad deinking ability (para. [0018]).

48. As a solution, the patent-in-suit proposes in claim 1 a lithographic printing plate precursor, the features of which can be structured as follows:

1 A lithographic printing plate precursor comprising

1.1 an aluminum support including an aluminum plate and,

1.1.1 formed thereon, an anodized film of aluminum, and

1.2 an image recording layer.

1.3 The anodized film

1.3.1 is positioned closer to the image recording layer than the aluminum plate;

1.3.2 has micropores extending in a depth direction of the anodized film from a surface of the anodized film on the image recording layer side,

1.3.3 the micropores have an average diameter of 15-100 nm at the surface of the anodized film,

1.3.4 each of the micropores has a large-diameter portion which extends from the surface of the anodized film to a depth (D) of 10-1000 nm and a small-diameter portion which communicates with a bottom of the large-diameter portion and extends to a depth of 20-2000 nm from a communication position between the small-diameter portion and the large-diameter portion,

1.3.5 the aperture average diameter of the large-diameter portion at the surface of the anodized film is 15-100 nm, and that of the small-diameter portion at the communication position is ≤ 13 nm; and

1.3.6 has a surface on the image recording layer side having a lightness L* of 70-100 in a L*a*b* color system.

49. The independent procedural claims protect corresponding methods of manufacturing a lithographic printing plate (claim 13) and for printing with that plate (claim 14), with a specification indicating the printing plate being of an on-press development type, which feature is not subject of claim 1.

50. Some features require explanation. The person skilled in the art, a chemist or physicist with a master's degree or diploma from a university and usually a doctorate, specialised in the field of physical chemistry and several years of experience in the production of lithography plate precursors and the relevant substrates, will understand the features as follows.

FEATURE 1

51. According to feature **1**, claim 1 relates to a precursor of a printing plate. The printing plate as such is mentioned in claim 13 relating to a manufacturing method thereof.

52. Precursors known in the state of the art have an image recording layer, on which the print-out image is exposed either as a positive or a negative image. Afterwards, either the unexposed or exposed portions of the image recording layer are removed to obtain a profile for the printing process. Such process is called development and can be carried out by conventional development techniques before mounting the printing plate on a printing press or by more recent on-press-development techniques.

53. The precursor is not directed towards the use of a specific photoresist or printing method. Insofar as the patent refers to the removal of the image recording layer in a non-image area on a printing press by claim 13, and on the removal of a non-image area by printing ink or dampening water by claim 14, both features being characteristic for a printing plate of a development on press (hereinafter referred as "DOP") type, this is not reflected in patent claim 1. Apart from that, the description addresses this technique as a preferable option only (cf. para. [0108] and, in the section regarding the plate's manufacturing, paras. [0236], [0241], [0242] with statements both for (conventional) developer treatment technique (paras. [0243] et seqq.) and on-press development technique (paras. [0256] et seqq.)). Neither is claim 1 restricted to a special type of image recording layer. It may be of the positive or negative type.

54. Even if one – despite these facts – assumed an implicit requirement as to on-press developability, there would be no requirement as to a certain degree of suitability, as further discussed infra.

FEATURE 1.1 AND 1.2

55. The printing plate precursor comprises an aluminium support including an aluminium plate

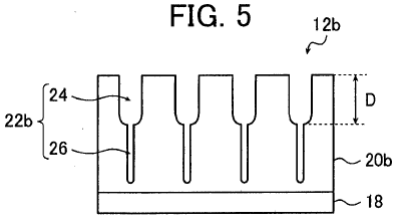
according to feature **1.1** and an image recording layer according to feature **1.2**. Further layers like an undercoat layer (paras. [0051], [0052], claims 11 and 12) or a protective layer (para. [0158]) are optional and not reflected in claim 1. However, such or other additional layers are not excluded (cf. claim 1 "comprising"). Both the aluminium plate and the anodized film are part of the aluminium support (paras. [0022], [0212]).

FEATURE 1.3

56. Of special importance are the features of **1.3**, which refer to the anodized film, being part of the aluminium support. The anodized film is characterized by the geometrical dimensions of the micropores, that is the spatial design of the anodized film, particularly according to feature **1.3.3**, and the lightness of the surface according to feature **1.3.6**.

57. Figure 5 of the patent specification depicted below shows a schematic embodiment of micropores within the anodized film according to the features **1.3.3**, **1.3.4** and **1.3.5** (paras. [0212] et seqq.).

FIG. 5



58. The anodized film (20b) has micropores (22b) having a large-diameter portion (24) which extends to a depth from the anodized film surface of 10 nm to 1000 nm (D) and a small-diameter portion (26) which communicates with the bottom of the large-diameter portion (24) and further extends to a depth from the communication position of 20 nm to 2000 nm (feature **1.3.4**, para. [0213]).

59. The shape of the large-diameter and the small-diameter portions is not particularly limited. Exemplary shapes include a substantially straight tubular shape (substantially cylindrical shape) and a conical shape in which the diameter decreases in the depth direction, and a substantially straight tubular shape is preferred (paras. [0219], [0226]).

60. The aperture average diameter of the large-diameter portion at the surface of the anodized film according to feature **1.3.5** coincidences with the average diameter of the micropores at the surface of the anodized film according to feature **1.3.3**.

FEATURE 1.3.6

61. According to feature **1.3.6**, the surface of the anodized film on the image recording layer has a specific lightness L* in a L*a*b color system.

62. The lightness L* refers to the L*a*b* color system, also known as the CIELAB color space defined by the International Commission on Illumination (CIE). It expresses color as three values: L* for perceptual lightness and a* and b* for the four unique colors of human vision: red, green, blue and yellow. The lightness value L* defines black at 0 and white at 100. According to feature **1.3.6**, L* shall be within the range of 70-100, i.e., at the lighter end between black and white. The lightness L* is measured with SpectroEye colorimeter manufactured by X-rite Inc. (para. [0039]).

63. According to the description, the lightness L* within the predetermined range leads to improved image visibility (para. [0017]). Image visibility refers to the visibility of an image portion of a lithographic printing plate (para. [0005]) after exposure (cf. claim 13) and allows for inspection of the plate before development. In the patent description, it is evaluated as the lightness difference ΔL between the lightness L^{*2} of exposed image portions and the lightness L^{*1} of unexposed non-image portions in a L*a*b* color system (para. [0373]). A larger ΔL value means higher visibility of exposed image portions and more excellent color development of the image portions (para. [0373]).

64. As the wording of claim 1 suggests and the description confirms (paras. [0017], [0038], [0376]), lightness L* according to feature **1.3.6** refers to the anodized film itself. Therefore, the lightness as claimed has to be achieved by the surface itself. This follows from the fact that the surface mentioned in feature **1.3.6** is identical to the surface where the micropores and their large-diameter portion respectively have an (aperture) average diameter as claimed by features **1.3.3**/**1.3.5**. Moreover, claim 11 underpins that an optional undercoat layer is part of the printing plate precursor, but not of the aluminium support because it is positioned between the aluminium support (including the anodized film) and the image recording layer. This excludes an understanding that the lightness according to feature **1.3.6** may also be provided by an additional layer on top of the anodized film. This finding is further confirmed by the description. The anodized film is formed by an anodization treatment and its thickness is measured from its surface (para. [0030]), excluding any additional layer not stemming from the anodization process to be regarded as belonging to

the surface. Furthermore, when describing the manufacturing process of the examples, which have an additional undercoat layer on top of the aluminium support, the lightness of the surface of the anodized film is mentioned just *after* the description of the surface treatment of the aluminium plate and the following anodization treatment, but *before* the description of the optional undercoat layer-forming (cf. paras. [0341] to [0344], [0346] et seq.). As far as the lightness is measured for printing plates having such optional undercoat layer, the description gives no indication that such layer may contribute decisively to achieving the lightness as claimed for the first time. On the contrary, in the relevant examples, according to the description, the undercoat layer improves scumming resistance and deinking ability but is not mentioned for establishing the lightness as claimed for the first time (para. [0384]).

65. The description mentions the average diameter of the micropores at the surface of the anodized film (paras. [0017], [0031]) and the surface parameter ΔS to improve image visibility. However, such aspects are not reflected in claim 1 as being mandatory means to achieve lightness according to feature **1.3.6**. Manufacturing parameters which lead to a desired lightness are not exhaustively disclosed by the patent-in-suit but are left to the knowledge of the skilled person.

NO IMPLICIT REQUIREMENTS AS TO PRESS LIFE, SCUMMING RESISTANCE, DEINKING ABILITY AND IMAGE VISIBILITY

66. According to the patent description, characteristics within the scope of the features **1.3.3**/**1.3.5** and **1.3.6** lead to a balance among press life, scumming resistance and image visibility (paras. [0031], [0038]) and deinking ability (paras. [0017], [0018]).

67. In this context, press life relates to the duration of use without critical loss of quality and is evaluated by the number of impressions at the time when, after continuous printing, the decrease in density of a solid image became visually recognizable (para. [0369]). Scumming resistance means the resistance to stains and is evaluated by the degree of staining after 10.000 impressions (para. [0370]). According to Claimant and undisputed by Defendants, scumming is a defect in offset lithography that occurs when the image recording layer is not fully removed from non-image areas during development. Image visibility refers to the visibility of an image portion of a lithographic printing plate as discussed for feature **1.3.6** supra. Deinking ability relates to the number of sheets wasted when printing, after having

been suspended, is resumed (para. [0018]) and is rated by the number of sheets required to obtain a good unstained impressions (para. [0372]).

68. According to the patent description, the average diameter of the micropores at the surface of the anodized layer according to feature **1.3.3/1.3.5** leads to a longer press life and improved image visibility, and the lightness according to feature **1.3.6** leads to improved image visibility (para. [0017]). An average diameter of 10 nm or less, however, would lead to a short press life and a poor image visibility, an average diameter of more than 100 nm to a short press life (para. [0032]). The patent description underpins such findings by the evaluation of examples with regard to the balance among the properties discussed supra (paras. [0380] et seqq.), thereby concluding that when the average diameter fell within the range of 15 to 60 nm (cf. claim 4), the balance among a press life, scumming resistance and image visibility was excellent (cf. para. [0381]). Albeit, according to the invention as laid down in claim 1, the range of steepness a45 – being a surface parameter for the roughness of the surface of the anodized film as defined in para. [0040] and claim 2 – is not particularly limited (para. [0040]), preferred ranges (cf. claim 2, claim 3, paras. [0040], [0382]) would lead to scumming resistance and deinking ability being more excellent (paras. [0040], [0382]). According to the invention as laid down in claim 1, the range of the specific surface area ΔS – being a further surface parameter for the roughness of the surface of the anodized film as defined in para. [0048] and claim 6 – is not particularly limited either (para. [0048]), but preferred ranges (cf. claim 6, claim 7, paras. [0048], [0383]) result in press life being longer (para. [0383]) and in more excellent scumming resistance, deinking ability and image visibility (para. [0048]). Pursuant to the evaluation as laid down in para. [0385], in case the anodized film has micropores each composed of the predetermined large-diameter portion and the predetermined small-diameter portion – falling into the ranges as addressed in features **1.3.3** to **1.3.5** –, the effects would be more excellent.

69. However, claim 1 does not call for an optimum balance or a certain degree of balance among the properties discussed supra. Moreover, it does not contain any specific requirement for a precursor as to scumming resistance, deinking ability, press life and image visibility. In contrast to lightness, for which features **1.3.6** requires a lower boundary, claim 1 does not reflect any lower boundary to be achieved for press life, let alone for scumming resistance and deinking ability which are even not mentioned in paras. [0007], [0011] describing the (subjective) problem to be solved, but seem to be rather positive side effects,

which come alongside the invention as claimed (cf. para. [0018]). Besides, feature **1.3.6** requires a lower boundary for lightness of the surface of the anodized film only, but sets no requirement as to the degree of image visibility itself.

70. Therefore, a precursor, which has the explicit features according to claim 1, in particular the micropores and lightness as claimed, but fails to achieve a good balancing of the aforementioned properties, would fall into the scope of claim 1. The invention as laid down in claim 1 provides the fundamentals only, which enable the skilled person to achieve a good balance, without restricting the scope of protection to embodiments where the desired properties are actually achieved by wisely elaborating on the fundamentals as claimed. This broad scope of claim 1, which already protects the fundamentals themselves, is further reflected in para. [0011], [0012] elaborating on the advantageous effects of the invention, thereby pointing out that the invention can (not: does) provide a lithographic printing plate precursor that enables a lithographic printing plate formed therefrom to have excellent image visibility and a long press life. This is in accordance with the patent description emphasizing the general principle that the invention is described in detail by way of the Examples only, but should not be construed as being limited to the examples (para. [0260]).

71. If one wished to read a lower boundary for press life implicitly into claim 1 despite not being reflected in claim 1, such lower boundary would be at most 25.000 impressions by taking into account para. [0032] in conjunction with the comparative examples CE1 and CE1 of table 2 on p. 41 of the description, which shows that the evaluation considers such number to represent a short press life.

INDEPENDENT CLAIM 13 AND 14

72. The features of the independent claims 13 and 14 referring to claim 1 correspond largely to those of claim 1. The subject-matter of the independent claims 13 and 14 is therefore subject to the same assessment as that of claim 1 without need for further interpretation.

C. COUNTERCLAIM FOR REVOCATION

73. The counterclaim for revocation, being directed against the remaining German part of the patent-in-suit (see supra admissibility), is founded. The subject-matter of the independent claims 1, 13 and 14 as granted (main request) is novel but lacks an inventive step. The same is true for the subject-matter of the respective auxiliary request 1 and 2. The panel has not

to adjudicate on auxiliary request 3 because the relevant condition is not fulfilled. Contrary to Claimant, its separate defence of dependent claims as granted or as amended by auxiliary request 1 and 2 is not admissible. The same applies as far as Claimant wishes to defend the patent-in-suit in the version of all combinations of auxiliary requests 1 to 3.

I. INDEPENDENT CLAIMS AS GRANTED (MAIN REQUEST)

74. The subject-matter of the claim 1 and thus of claim 13 and 14 lack inventive step, Art. 65 (2) UPCA in conjunction with Art. 138 (1) a), Art. 56 EPC, whereas it is novel over the prior art submitted to the proceedings, Art. 65 (2) UPCA in conjunction with Art. 138 (1) a), Art. 54 (2) and (3) EPC.

NO PUBLIC PRIOR USE

75. The Defendants cannot successfully rely on public prior use. The Defendants were not able to submit sufficient facts to establish that the subject-matter of the patent-in-suit is anticipated by printing plate precursors available before the relevant priority date of 31 August 2017 as the first priority claimed.

76. In this context, the further analysis is to be limited to the facts which had been presented in the Statement of Defence and the Counterclaim for Revocation. It is in those briefs that the defendant has to submit reasons why the action shall fail, R. 24(g) RoP and the grounds for revocation have to be presented comprehensively, R. 25(1)(b) and (c) RoP whereas the following briefs have to limit themselves to a response to matters raised in the Reply, R. 29(c) and (d) RoP. In the proceedings lying before the panel, however, the Defendants submitted abundant new facts in their rejoinder and reply to the counterclaim alone. If that were allowed, this would call for additional briefs by the claimant so as to be able to respond to such fresh arguments and allegations leading to a new round of briefs not foreseen in the front-loaded procedure enshrined in the RoP. In case a defendant needs more time to clarify facts it will have to submit a request to extend the time limits for the respective brief, which hasn't been the case here. Otherwise submitting fresh facts and arguments in the rejoinder alone would amount to a welcome opportunity to hold back points and avoid the claimant having an opportunity to respond in the written procedure.

77. The facts which had been submitted in the Statement of Defence and counterclaim are

insufficient to substantiate that printing plate precursors Defendants' prior public use argument is based on were publicly available. Rather the allegations and documents show that before the relevant priority date such plates had been protected by an at least implicit confidentiality regime. Therefore, the highly contested question, if the plates delivered possessed the properties according to the invention and had been reproducible can be left open.

78. Defendants submit as facts to support their argument that the development of the so-called […] substrate had started under the project name […] in early […] at the German premises in Osterrode, Germany. Commercial scale production had started in […] with plates being sold to customers in […], i.e., after the relevant priority date of 31 August 2017. Since […] such plates had been manufactured "on the production line", using the "same substrate and same settings of the manufacturing line" as employed later. Defendants, however, did not set out any details of said manufacturing settings. One sample of the batch of printing plate precursors manufactured on […] (batch #[…]) had been retained. Plates from that batch had been delivered to […] in […].

79. Furthermore, according to Defendants' allegations, more plates had been produced "for sale" on […] under batch number #[…]. 360 plates (12 packs of 30 plates) from that batch had been delivered to […] on […], i.e., again after the relevant priority date of 31 August 2017.

80. In support of these allegations a witness declaration exhibit T-07 had been presented. Defendants further relied on a witness declaration exhibit T-06 and referred to the document presented in exhibit T-14 ("the mid-year review […]") as well as an internal test report, analysing the results of the test carried out at […] (exhibit T-13). Further, internal email correspondence has been submitted as exhibit T-15.

81. The witness declaration T-06 submits that an employee of defendants group was present only during the first day of the testing in order to assist […] in adjusting the machines and to collect data for internal analysis. During this time, 70 of the 300 […] printing plate precursors were consumed. Thereafter, the remaining 230 printing plate precursors remained in the possession of […], which could allegedly "freely dispose of them and planned to use them for a job at the end of June". There allegedly were "no instructions as to how […] should proceed with the test plates or dispose of them after use or how to discuss the

results with other partners within the trade".

82. These facts are not sufficiently substantiated to show that there were no confidentiality agreements in place. Rather the fact that the tests carried out at […] and its results were dealt with in a report (exhibit T-13) marked as "confidential/for internal use only" is counter to the absence of any confidentiality obligations. In that report is being stated that the remaining plates will be used for printing jobs of […] with a certain run length and that the remaining 230 out of 300 plates – 70 of which had been used in the tests – will be consumed in print job for […] in […]. This indicates that the plates were not intended for any external use or distribution. The documents affirm that the test plates remained at […]. There is no indication whatsoever that an interested member of the public would have been granted access to the test plates, which had been sent to […] in the course of the cooperation which aimed at carrying out test runs and test prints so as to assess the quality of the plates. Under these circumstances it would have been decisive in the eyes of the panel to submit facts and present evidence that the partner involved in these test runs, […], understood the delivery not to be subject to any confidentiality restrictions but that the test plates could be shared with anyone, even Claimant, in case there were an interest. Defendants especially did not offer any evidence in the form of witnesses from […] so as to affirm their allegations. However, it would have been critical to see, how the circumstances of the test job had been understood at their end. Confronted with this point in the oral hearing, representatives of Defendants only put forward that such witnesses were not available as […] had fallen into insolvency and therefore no witnesses could be reached. Furthermore, Exhibit T-14, which is in part redacted for the court as well as for the Claimant, does not establish any facts which lead into another direction as it only deals with the future business plans and apparently aims at swearing in sales people of Defendants' group to support the future commercialization of the new product line and highlight the business potential of the project […]. Still, as the burden of proof to establish that the plates were publicly available rests on Defendants' side, that is insufficient.

83. Thus, it can be left open, if the plates that had been delivered to […] and/or […] had the same properties as foreseen by claim 1 and found in the attacked embodiment, which had been heavily contested by Claimant. In that context it is sufficient to remark that alleging that the production conditions had been identical without describing them in detail, could

not be considered to be sufficient to believe that the products are available since it is apparent from the whole technical discussion in these proceedings that the properties of the product depend largely on the exact process conditions. Also the witness declaration according to exhibit T-07 does not add any details which go beyond what had been presented in the Statement of Defence.

NOVELTY OVER **WO 2018-160379 A1** (**WO'379**; T9)

84. Contrary to Defendants, the subject-matter of claim 1 is new with respect to WO'379, which is only relevant with respect to novelty as it has a priority date before the earliest priority date of the patent-in-suit but was published after that date (Art. 54 (3) EPC).

Disclosure of all features but 1.3.6

85. WO'379 relates to lithographic printing plate precursors comprising an aluminium-containing substrate that has been prepared using two separate anodizing processes to provide different aluminium oxide layers with different structural properties (p. 1, l. 5-11). According to the description, for simplification of the lithographic printing plate making process, omission of the pre-development heating step (preheat) and carrying out development on-press (DOP) using a lithographic printing ink or fountain solution to remove unwanted (non-exposed) imageable layer materials on the lithographic printing plate precursors, are used. Such negative-working lithographic printing plate precursors should be designed by balancing many features within the element structure in order to achieve optimal press life, on-press developability, and scratch resistance (p. 2, l. 17-25). Metal-containing substrate comprising aluminium or an aluminium-alloy are commonly anodized one or more times to provide an outermost hydrophilic aluminium oxide coating for abrasion resistance and other properties of the resulting lithographic printing plate precursor once one or more imageable layers have been formed thereon (p. 3, l. 10-14). However, lithographic printing plate precursors prepared according to known methods are still unsatisfactory in one or more precursor properties (p. 3, l. 21-28). Based on this, the technical problem of WO'379 is to balance the manufacturing conditions, especially during anodization, for negative-working lithographic printing plate precursors so that improved scratch resistance is achieved without sacrificing press life and on-press developability (p. 3, l. 29-32). As a solution, WO'379 proposes a lithographic printing plate precursor comprising a substrate having a planar surface, and a radiation-sensitive imageable layer disposed over the planar

surface of the substrate. The substrate comprises an aluminium-containing plate having a grained and etched planar surface. On the grained and etched planar surface an inner aluminium oxide layer is disposed. The inner aluminium oxide layer has an average dry thickness of at least 650 nm and up to 3000 nm. It comprises a multiplicity of inner micropores having an average inner micropore diameter of less than or equal to 15 nm and typically less than or equal to 10 nm. Furthermore, an outer aluminium oxide layer is disposed on the inner aluminium oxide layer. This layer comprises a multiplicity of outer micropores having an average outer micropore diameter of at least 15 nm and up to 30 nm. The layer has an average dry thickness of at least 130 nm and up to 650 nm. A combination of two anodizing processes is carried out in such a manner as to achieve the recited features of both the inner and outer aluminium oxide layers (p. 8, l. 4-8).

86. Thus WO'379 describes a precursor with features **1**, **1.1**, **1.1.1**, **1.2**, **1.3**, **1.3.1**, **1.3.2**, **1.3.3** and **1.3.4**, which is not disputed by the Claimant and also not the result of an erroneous legal assessment. The outer micropores of the outer aluminium oxide layer and the inner micropores of the inner aluminium oxide layer correspond to the large-diameter portion and the small-diameter portion of the micropores of the patent-in-suit. Since the outer micropore diameter can be determined from a top view SEM image (p. 9, l. 25-28), this is the diameter of the outer micropores in the surface of the anodized film.

87. WO'379 also describes feature **1.3.5**. This follows from the passages referred supra despite the fact that WO'379 does not specify whether the measured small-diameter portions refer to the communication position. However, since the specified diameter is less than or equal to 10 nm (p. 47-48, table II), this information refers logically as well to the communication position, thereby disclosing feature **1.3.5**, which is not doubted by Claimant either.

*No disclosure of feature **1.3.6***

88. WO'379, however, does not disclose feature **1.3.6**.

89. In principle, when assessing novelty, the disclosure of a prior-art document also extends to a result which is automatically achieved as a result by reworking a procedure which is being described in a manner, which allows reworking by the person skilled in the art, or where the procedure for reworking is obvious to a person skilled in the art which aims at arriving at a specific technical result. In that way the result itself, at which the skilled person arrives

by reworking according to the disclosed procedure, is also directly and unambiguously disclosed. However, this requirement is not met, if the desired result may only be achieved by accident as the procedure for reworking is neither sufficiently disclosed nor suggested by the prior art (cf. in that sense also BGH, 30.1.2024 – X ZR 15/22, GRUR 2024, 749 – Organogelmaterial at paras. 75 et seq.).

90. When applying this standard, feature **1.3.6** is not directly and unambiguously disclosed by WO'379. Defendants claim that reworking example 7 of WO '379 inevitably leads to a product which also possess the property described in feature 1.3.6. However, they exclusively rely on the reworking of that example by Dr Merka, one of the inventors of the technical teaching of WO '379, who states that he carried out the reworking by applying "the same procedure" he used "at that time" (Exhibit T 27, p. 2). Hence, the reworking is not based on process conditions which the average person skilled in the art would be able to extract from the disclosure of the document but on specialist knowledge of one of its inventors. Therefore, even if it were accepted that the person skilled in the art would have sufficient reason to rework example 7 in order to study the properties of the result achieved thereby, it has not been submitted that the document itself discloses in sufficient details the conditions for reworking example 7.

91. However, the lightness L* is not inevitably disclosed intrinsically by reworking the teaching of WO'379 either. The description discloses various treatment steps for preparing the aluminium substrate of the invention examples on page 43 and the following pages. Which treatment steps are crucial for the reworking in order to determine the claimed characteristics subsequently, is not part of the disclosure nor are the claimed characteristics inevitably obtained in light of the many possible combinations of process conditions for preparing the aluminium substrate not being specified (cf. p. 14, l. 15 to p. 15, l. 24, particularly p. 15, l. 21-23). This view is also supported by the fact that the patent-in-suit itself is silent on the circumstances necessary to obtain the required property.

NOVELTY OVER **US 5,566,952** (**US'952**; T22)

92. The subject-matter of claim 1 is new with respect to US'952 (Art. 65 (2) UPCA in conjunction with Art. 138 (1) a), Art. 54 (2) EPC).

*Disclosure of features **1**, **1.1**, **1.1.1**, **1.2**, **1.3** and **1.3.1***

93. US'952 relates to a two-stage anodic oxidation process for aluminium which is particularly employed as a support material for offset-printing plates (col. 1, l. 9-12) (features **1**, **1.1**). US'952 has set itself the task of providing an improved process for the anodic oxidation of roughened planar aluminium (cl. 4, l. 58-61). In this context, US'952 provides a process with a first and a second step for anodizing a support material (feature **1.3**) under specific conditions, concerning the amount of sulfuric and phosphoric acid, temperature and voltage (col. 5, l. 5-18). The materials produced are advantageously used as supports for off-set-printing plates, i.e., a radiation-sensitive coating is applied to one or both sides of the support material. Suitable radiation-sensitive (photosensitive) coatings basically comprise any coatings which, after radiation (exposure), optionally followed by developing and/or fixing, yield a surface in image configuration, which can be used for printing (col. 7, l. 29-38, claim 16) (features **1**, **1.2**, **1.1.1**, **1.3.1**).

94. The fact that US'952 discloses a precursor with features **1**, **1.1**, **1.1.1**, **1.2**, **1.3** and **1.3.1**. is not disputed by Claimant and not the result of an erroneous legal assessment. Contrary to Defendants, it does not disclose features **1.3.2** to **1.3.5** and **1.3.6**.

*No disclosure of features **1.3.2** to **1.3.5***

95. Rightfully, Defendants do not dispute that the patent specification does not directly and unambiguously mention geometrical dimensions of micropores or the spatial design of the anodized film. Contrary to Defendants, however, features **1.3.2** to **1.3.5** are not disclosed implicitly either.

96. Defendants refer to example 2 (col. 10, l. 17-29 i.c.w. example 1, col. 9, l. 49 to col. 10, l. 14) and rely on an alleged reworking thereof (test report, T30). Defendants allege that such reworking would result in two anodization layers and thus in micropores with a large-diameter portion and a small-diameter portion according to features **1.3.2** to **1.3.5** which is disputed by Claimant in particular stating one single anodization layer to be the result of the reworking if no undisclosed process conditions are employed.

97. However, Defendants did not sufficiently demonstrate that a reworking inevitably leads to features **1.3.2** to **1.3.5**.

98. A claimant of a (counter-)claim for revocation relying on a reworking has to elaborate on the details of the process conditions of the alleged reworking in a comprehensive way.

Otherwise, there is no basis for verifying whether the applied process conditions are sufficiently clear from the disclosure in the prior art document relied on. For conditions, which the prior art document does not disclose, such claimant has to explain, in which way they were chosen and why the skilled person inevitably would make this choice or – alternatively – that all possible different choices would inevitably lead to the same result. Only after the submission of comprehensive facts on the process condition employed and their source, it can be assessed, and, if needed, evidence can be taken as to whether these process conditions lead to the alleged result and whether, where they are part of a choice, such choice corresponds to the usual general known practice.

99. The Defendants did not demonstrate the details of their alleged reworking comprehensively enough from the outset in their counterclaim for revocation, as required. As far as they further elaborate on necessary details in their later briefs, such further statements are too late.

100. Anyway, these statements would not sufficiently demonstrate either that a reworking of example 2 of US'952 would inevitably lead to micropores according to features **1.3.2** to **1.3.5** when applying the standards outlined supra.

101. In particular, the Defendants did not sufficiently substantiate that they did not apply an undisclosed waiting time as suggested by Claimant. The Defendants stated in their Rejoinder to the Application to amend the patent (hereinafter referred to as Rejoinder AA) that no waiting time was employed between the two anodization steps. However, according to the second witness declaration of Dr Merka (exhibit FBD-T81), there was "no additional current-free immersion in sulfuric acid as described in Exhibit K 48b (so-called "waiting time") [in between the two anodizing treatments]." The word "additional" obviously relates to the step in which the sample was rinsed with water and squeezed after the first anodizing treatment. However, the declaration does not specify how long this intermediate step did take. A further lack of substantiation lies in the fact that Defendants did not motivate either why a person skilled in the art would have employed such rinsing and squeezing step between the two anodization steps, such interim step not being mentioned in Example 2, which, to the contrary, even calls for a continuous anodization process (cf. col. 10, l. 17 in conjunction with col. 9 l. 49), thereby explicitly opting against a discontinuous process (cf. col. 5. l. 65-66). As far as Defendants' private expert in its second expert declaration concludes that the conditions reported in Example 2 of US'952 are

suitable for forming a second anodized layer and this would be in accordance with the gist of US'952 (Rejoinder AA mn. 68), this does not suffice because suitable is not equivalent to inevitable as required for the result of a reworking to directly and unambiguously disclose a patent's teaching. Therefore, Defendants have not substantiated that the conditions disclosed for example 2 inevitably result in the desired 2-layer micropore structure without sticking to further undisclosed necessary process conditions.

102. Moreover, for the reason outlined supra Dr Merka, being one of the inventors of WO'379, is not representative of the skilled person because he has special knowledge.

*No disclosure of feature **1.3.6***

103. For the same reasons, the lightness L* of the anodized film is neither disclosed explicitly nor implicitly by a reworking of example 2. In particular, Defendants also employed rinsing and squeezing interim steps during the surface treatment without elaborating on the further details and on why the skilled person would employ such steps at least not explicitly mentioned in example 2.

LEGAL FRAMEWORK INVENTIVE STEP

104. The suitable starting point for the assessment of inventive step is not limited to the closest prior art. Since there may be several ways to arrive at a conclusion, there may accordingly exist several starting points. The decisive point is rather whether such starting point constitutes a suitable starting point which the relevant person skilled in the art would take into account, if confronted with the problem to be solved (cf. Central Division Munich Section, decision of 16 July 2024, UPC_CFI_14/2023 mn. 8.6; Central Division Paris Seat, decision of 21 January 2025, UPC_CFI_311/2023 mn. 57). In this regard, on a regular basis, a solution as claimed is obvious, if, starting from a suitable starting point in the prior art, the skilled person would be motivated (i.e., have an incentive) to consider the solution and implement it as a next step (cf. Central Division Munich Section, decision of 16 July 2024, UPC_CFI_14/2023 mn. 8.6).

INVENTIVE STEP STARTING FROM EP 2 878 452 A1 (EP'452; T41)

105. Applying these principles, the subject-matter of claim 1 is not based on an inventive step, starting from EP'452 (T41) in conjunction with common general knowledge or, alternatively, in combination with other documents.

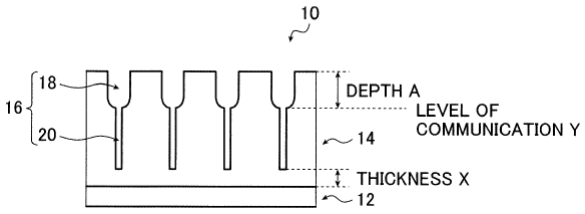
*EP'452 discloses all features but feature **1.3.6***

106. EP'452 relates to a lithographic printing plate support and a method of manufacturing a lithographic printing plate support, as well as a lithographic printing plate precursor (para. [0001]). It strives to provide a lithographic printing plate support that has excellent scratch resistance, enables a lithographic printing plate formed therefrom to have a long press life, and is capable of obtaining a lithographic printing plate precursor exhibiting excellent on-press developability (para. [0008]) and therefore is even more so a suitable starting point.

107. As a solution, EP'452 suggests to control the micropore shape, particularly the shape of a large-diameter portion thereof, in the anodized film (para. [0009]).

108. Figure 1 of EP'452 depicted below shows a schematic embodiment of micropores within the anodized film according to EP'452:

FIG. 1



109. The lithographic printing plate support (10) has a laminated structure in which an aluminium plate (12) and an anodized aluminium film (14) are stacked in this order (para. [0017], Fig. 1). The lithographic printing plate precursor is obtained by forming an image recording layer such as a photosensitive layer or a thermosensitive layer on the lithographic printing plate support (paras. [0184] et. seqq., claim 8). Therefore, features **1**, **1.1**, **1.1.1**, **1.2**, **1.3**, **1.3.1** are shown.

110. The anodized film (14) of EP'452 has micropores (16) extending from its surface toward the aluminium plate (12) side, and each micropore (16) has a large-diameter portion (18) and a small-diameter portion (20), whereby the large-diameter portion extends from the surface of the anodized film to an average depth (depth A) of 75 nm to 120 nm and the small-diameter portion communicates with a bottom of the large-diameter portion and further extends to an average depth of 900 nm to 2000 nm from the level of communication with the large-diameter portion (paras. [0017], [0024], Fig. 1, claim 1). Thus, EP'452

shows features **1.3.2** and **1.3.4**.

111. An average diameter of the large-diameter portion at the surface of the anodized film is at least 10 nm but less than 30 nm and a ratio of the depth A to the average diameter (depth A/average diameter) of the large-diameter portion is more than 4.0 but up to 12.0. An average diameter of the small-diameter portion at the level of communication is more than 0 nm but less than 10.0 nm (para. [0011], l. 11-15, [0026], [0046], claim 1). Therefore, EP'452 shows features **1.3.3** and **1.3.5**.

112. The fact that EP'452 describes a precursor with features **1**, **1.1**, **1.1.1**, **1.2**, **1.3**, **1.3.1**, **1.3.2**, **1.3.3, 1.3.4** and **1.3.5** is rightfully not disputed by Claimant. However, it does not disclose feature **1.3.6**, which is not disputed by Defendants.

*Suitable starting point with respect to the feature **1.3.3/1.3.5** despite preferred deviating ranges*

113. Although EP'452 points out that, in terms of longer press life, the average diameter of the large-diameter portion at the surface of the anodized film is preferably from 10 to 25 nm, more preferably from 11 to 15 nm and even more preferably from to 11-13 nm (para. [0026]), the person skilled in the art would not discard the region above 15 nm, because EP'452 teaches that alternative ranges between 10 and 15 nm are preferable in terms of press life only, which is only one desirable property, whereas, according to EP'452's teaching, the broader range already provides long press life and in addition excellent on-press developability and excellent deinking capability (para. [0026]). Since the skilled persons knows that there are always trade-offs and that, in particular, press life generally has a trade-off relationship with the on-press developability and it has been difficult to simultaneously achieve these properties (para. [0006]), the skilled person will not optimize press life unilaterally.

Motivation to improve image visibility

114. Starting from EP'452, there is no motivation from the document itself to modify the lightness L* of the aluminium substrate. But there is a general motivation for considering image visibility of a print-out image on the basis of general common knowledge.

General common knowledge

115. The documents discussed in the following relate to a lithographic printing plate precursor and strive to improve image visibility. They confirm the general common knowledge that image visibility is improved when the contrast and therefore the lightness difference between exposed and unexposed portions is increased. Moreover, most of these documents even show that, contrary to a statement in the patent-in-suit's description (para. [0017]), the inventors of the patent-in-suit did not find for the first time that the lightness L* of the surface of the anodized film on the image recording layer side influences image visibility.

116. EP 1 577 262 B1 (EP'262; T36) refers to a large lightness difference between exposed and unexposed portions of the image recording layer (para. [0025] et seqq.) in order to improve image visibility after exposure and before development (paras. [0019], [0023]). However, contrary to Defendant's opinion, EP'262 is silent to the effect of lightness L* of an anodized film itself.

117. EP 1 614 541 A2 (EP'541; T37) proposes to increase the lightness difference between exposed and unexposed portions and thus the contrast of the print-out image before development by a printing plate precursor having a combination of essential features (para. [0009] l. 11-20). Although an aluminium support of the plate precursor with a grained and anodized surface that appears white, i.e., which has CIE 1976 lightness values L* higher than 70 and CIE 1976 color coordinates a* and b* each in the range from -4 to +4, is only one such feature apart from a coating on said support with a specific low visible light absorption and from specific ΔL* values between exposed and non-exposed areas, EP'541 confirms that a brighter background provided by the aluminium support contributes to a better contrast (para. [0009] l. 22-24).

118. JP H8-144090 A (JP'090; T38) is provided by Defendants together with a machine translation in English (T38a). JP'090 reports that, in order to improve plate performance such as sensitivity and exposed image visibility compared to conventional aluminium supports, an aluminium plate must be treated such that it has an even and fine grain surface and that the color tone of the grain should be as white as possible. However, if etching is carried out excessively, printing durability will be extremely reduced, and if etching is car-

ried out too little, there will be problems such as stains during printing or lack of whiteness of grains (para. [0005]). Against this backdrop, JP'090 provides a method for graining an aluminium plate resulting in an uniform grain that leads to an anodized printing plate support with excellent plate-making performance such as sensitivity, fine line reproducibility, exposure visible image performance, and excellent stain resistance and printing durability (paras. [0001], [0010], [0047]). For the examples given therein, the whiteness related to the grain color L* value based on the L*a*b* color system is between 75 and 80 (paras. [0047] et seq., table 1). Contrary to Claimant's opinion, it is insofar irrelevant that JP'090 relates to a conventional, non-DOP plate. First, as discussed supra, claim 1 of the patent-in-suit is not directed to a DOP-plate only. Apart from that, the skilled person would have taken into account prior art regarding non-DOP plates although the skilled person will not automatically transfer features of non-DOP plate to DOP plates which are counter to specific constraints regarding DOP plates. Against this backdrop, in case para. [0005] should not reflect general knowledge anyway, the skilled person will at least learn from JP'090 that a white surface of the aluminium support improves image visibility of the image after exposure.

119. In order to improve visibility of a visible image after exposure which is considered to be not sufficient despite of the use of color formation and decoloration techniques (paras. [0013], [0014]), EP 2 839 968 A1 (EP'968, T39) proposes a lithographic printing plate precursor having at least a white substrate and an image-recording layer, wherein the white substrate has a reflection density of 0.25 or less at a side having the image-recording layer (claim 1, para. [0017] under (1)). According to Defendants and not disputed by Claimant, a reflection density of 0.25 or less corresponds to an L* value of approx. 80 or more. As one example (apart from a white layer on the aluminium substrate) EP'968 proposes an aluminium support which is subjected to a roughening treatment and an anodizing treatment so as to have a steepness degree a45 of 30 % or less. Such aluminium support may be employed with or without a white layer or an undercoat layer (para. [0022]). The reflection density as proposed improves contrast between exposed and unexposed portions of the image recording layer and thus image visibility of the print-out image after exposure (para. [0022]).

Lack of inventive step starting from EP'452 in combination with common knowledge

120. With EP'452 disclosing all features of claim 1 of the patent-in-suit but feature **1.3.6**, feature **1.3.6** was obvious on the basis of general common knowledge as outlined above.

121. The use of a particular means may be obvious even without a corresponding specific motivation if, by its nature, said means, as a general means to be considered for a plurality of applications, belongs to the general knowledge of the relevant skilled person, the use of the functionality in question is objectively appropriate in the context to be assessed and no special circumstances can be identified which make an application appear impossible, difficult or otherwise impractical from a technical point of view (cf. BGH, decision of 15 June 2021 – X ZR 58/19, GRUR 2021, 1277 mn. 47 – Führungsschienenanordnung).

122. These requirements are met in the case at hand.

123. As shown, at least by the above-mentioned documents, increasing the lightness L* of the background is a commonly known means for improving contrast and thus image visibility even in the context of a printout image of a printing plate precursor. To set this value above 70 was therefore obvious.

124. As further shown, the use of the functionality in question is objectively appropriate in the context of further improving a printing plate precursor. No special circumstances have been shown or are otherwise apparent which could make the application of this general knowledge appear impossible, difficult or impracticable in the context to be assessed in the case at hand.

125. In particular, according to EP'452, the properties of the printing plate as to a long press life, excellent on-press developability and excellent deinking ability in continued printing and after suspended printing are due to shape of the micropores of the anodized film, mainly the average diameter (average aperture size) of the large-diameter portion of the micropores at the surface of the anodized film and the average depth of the large-diameter portion within the ranges as proposed therein (paras. [0026] et seq., [0030] et seq.). However, according to EP'452, the invention as proposed therein is not linked to a specific surface treatment of the aluminium plate before anodization (cf. paras. [0077], [0079], [0083] to [0087]). No obstacle is apparent from EP 541, JP 090 and EP 968 either, since at least EP'541 and EP'968 consider the plates proposed therein suitable for on-press-development. Even if the person skilled in the art knows that there is a trade-off between a bright and thus comparably smooth surface of the anodized film on the one side and good

adhesion of the image recording layer thereto and thus press life on the other side, the skilled person would not be hindered to consider to make the surface brighter in order to improve image visibility because the micropores according to EP'452 deliver improved properties including better press life as discussed supra, thus giving even more room for a smoother and brighter surface without compromising too much on-press life and other advantageous properties of the printing plate provided by EP'452. This is even the more true because, as already discussed, claim 1 does not call for a long press life or a good balancing of the printing plate properties. Claim 1 is not limited to a specific manufacturing method of the aluminium substrate or to DOP plates either. Therefore, in particular, Claimant's objection that the surface of the aluminium substrate according to the above-mentioned documents is prepared in a different way than that of the patent-in-suit or that not all documents refer to DOP-plates is irrelevant.

Lack of inventive step starting from EP'452 in combination with EP'968, JP'090 or EP'541

126. Even if the fact that a brighter surface of the anodized layer improves image visibility was not part of the common general knowledge of the relevant skilled person, the subject-matter of claim 1 would be anticipated starting from EP'452 in combination with EP'968 or JP'090.

127. The skilled person tasked with finding an improved printing plate has motivation to start from EP'452 because it provides superior properties due to the advantageous design of the micropores. Since poor image visibility is a well-known problem for DOP plates and no remedy is provided in EP'452, the skilled person, starting from EP'452, has a motivation to improve image visibility without further ado. Browsing the relevant patent literature, the skilled person has motivation to take into account each of the documents EP'262, EP'541, JP'090 and EP'968, learning therefrom that image visibility is improved when the contrast and therefore the lightness difference between exposed and unexposed portions is increased. Furthermore, at least each of EP'541, JP'090 and EP'968 teaches the skilled person that the image visibility of a printout image is affected by the lightness L* of the aluminium substrate.

128. The skilled person would then have turned its attention in particular to EP'968 which aims to provide a lithographic printing plate precursor capable of undergoing on-press development which is excellent in visibility of the visible image after exposure (par. [0016]).

When considering the two examples provided therein to achieve excellent image visibility (para. [0022]), the skilled person has motivation to select the second example which proposes a surface treatment for the aluminium support resulting in steepness degree a45 of 30 % or less in order to achieve the required reflection density of 0.25 or less being equivalent to a lightness of approx. 80 or more, because such aluminium support can be formed with or without a white layer (paras. [0022], [0098]) and thus gives the opportunity to reduce complexity whereas a white layer in addition would only result in a particularly high image visibility (para. [0099]). Apart from that, as discussed supra, claim 1 does not exclude an additional layer between the anodized film and the image recording layer, thus not excluding in particular a white layer for further improving image visibility beyond the level achieved by the proposed reflection density of the aluminium support itself.

129. Albeit para. [0022] also mentions the anodization treatment, such anodization treatment is no part of the treatment to achieve the reflection density as can be seen from para. [0098]. As explained in para. [0098], the steepness degree a45 of 30 % or less is due to the reduction of the steepness degree a45 by the etching treatment of the aluminium support after the completion of the roughening treatment. Therefore, the skilled person would have combined the printing plate precursor of EP'452 having an advantageous micropore shape proposed therein and achieved by the anodization treatment with the surface treatment proposed by EP'968 leading to a lightness of the surface of the anodized film above approx. 80. For the reasons discussed supra, the skilled person will not refrain from such combination. In particular, the objection of the claimant that the surface of aluminium substrate of the above-mentioned documents is prepared in different way than that of the patent-in-suit or that not all documents refer to DOP-plates is irrelevant in this context. Claim 1 of the patent-in-suit is not limited to a specific manufacturing method of the aluminium substrate, neither refers EP'968 to a non-DOP plate. As discussed supra, claim 1 does not require to arrive at an optimal balance of desired plate properties or a certain degree of such properties including a certain press life.

130. The obvious error in EP'968 with regard to the method for determining a45 (para. [0026]) will not hinder the skilled person either. It is obvious that 512 x 512 measuring points on a surface of 50 x 50 µm² do not correspond to a resolution in the XY direction of 1.9 µm as indicated in para. [0026]. Since the resolution in z direction is set to 1 nm (para. [0026]),

it is obvious that the error does not lie in the specification “512 x 512 points on the surface of 50 x 50 µm”, but in the specification of the resolution in XY direction of 1.9 µm.

131. Alternatively, the skilled person would also have turned its attention to JP’090. For the reasons outlined above, the skilled person will not refrain from evaluating JP’090 on the grounds of JP’090 concerning non-DOP plates even if claim 1 was limited to DOP plates. In particular, the skilled person knows that features of non-DOP plates can be transferred to DOP-plates as far as due account is taken to the constraints regarding DOP plates. JP’090 teaches to improve image visibility by making the grain surface of the aluminium support as white as possible, but that there is a trade-off between a smooth and thus white surface and the printing durability requiring a surface being rough enough (para. [0005]). Although knowing about increased requirements to adhesion between the anodized film and the image recording layer for DOP plates, the skilled person would have realised that, similarly as discussed supra, the improved plate properties including press life provided by the advantageous shape of the micropores according to EP’452 give room to improve image visibility without compromising too much on other properties. Therefore, for the same reasons discussed for EP’968, the skilled person would have applied a surface treatment improving the lightness of the surface of the anodized film.

132. Alternatively, the skilled person would also have turned its attention to EP’541. EP’541 aims at providing a method for making a lithographic printing plate by means of a heat-sensitive precursor which forms a high contrast print-out image immediately after exposure to infrared light (para. [0009], l. 7-9). As mentioned supra, the solution encompasses a support having a bright, white surface, characterized by a lightness value L* not less than 70, more preferable not less than 75 (cf. also para. [0069]). Additional properties envisaged by EP’541 and outlined above are not excluded by the subject-matter of claim 1. In particular, claim 1 allows for color coordinates a* and b* as laid down in EP’541, para. [0009] l. 12-14, for a coating according to EP’541, para. [0009] l. 15-17 as an additional layer upon the anodized film of the support and for a lightness difference between exposed and unexposed areas as described in EP’541, para. [0009] l. 18-20. Again, similarly as discussed supra, since the improved plate properties including press life provided by the advantageous shape of the micropores according to EP’452 give room to improve image visibility without compromising too much on other properties, the skilled person would have applied the measures proposed by EP’541 for improving the image visibility.

Again, claim 1 does not require to arrive at an optimal balance of desired plate properties or a certain degree of such properties including a certain press life.

INVENTIVE STEP STARTING FROM JP 2015-189021 A (JP'021; T42)

133. The subject-matter of claim 1 is not based on an inventive step, starting from JP'021 (T42) in conjunction with general common knowledge or, alternatively, in combination with other documents.

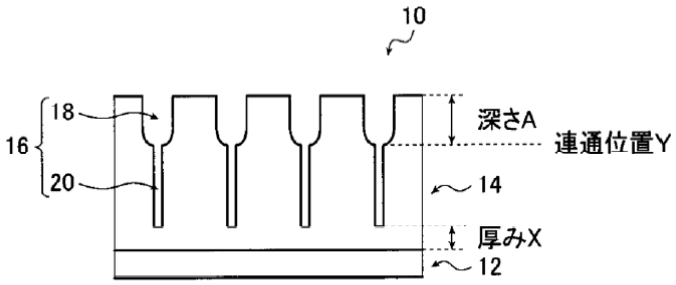
JP'021 discloses all features but feature 1.3.6

134. JP'021 is provided by Defendants together with a machine translation in English (T42a). Identifying a lack of corrosion resistance of the support in non-image areas causing appearance failures such as minute spot stains in DOP plates, it intends to provide a lithographic printing plate support from which a lithographic printing plate precursor can be obtained, which is excellent in printing durability, the number of waste papers and ink removing properties when being processed (paras. [0001], [0006], [0007]). Against this backdrop, JP'021 is an alternative suitable starting point.

135. As a solution, JP'021 suggests to control the shape of the micropores in the anodic oxide film and the properties of the anodic oxide film (para. [0008]).

136. Figure 1 of JP'021 depicted below shows a schematic embodiment of micropores within the anodized film according to JP'021:

[Fig. 1]



A: Depth
Y: Communication Position
X: Thickness

137. The lithographic printing plate precursor comprises an image recording layer on a lithographic printing plate support (claim 8). The lithographic printing plate support (10) has a laminated structure in which an aluminium plate (12) and an aluminium anodic oxide

film (14) are laminated in this order (para. [0013], Fig. 1). Therefore, features **1**, **1.1**, **1.1.1**, **1.2**, **1.3**, **1.3.1** are shown.

138. The anodic oxide film (14) has micropores (16) extending from its surface toward the aluminium plate (12), and the micropores (16) are composed of large diameter holes (18) and small diameter holes (20) (para. [0013]). The large diameter hole (18) extends from the surface of the anodic oxide film (14) to an average depth of 40 to 120 nm (depth A, Fig. 1), the small-diameter hole communicating with the bottom of the large-diameter hole extends from the communication position (communication position Y, Fig. 1) to a position with an average depth of 750 to 2000 nm (paras. [0009], [0021], claim 1). Thus, JP'021 shows features **1.3.2** and **1.3.4**.

139. The average diameter of the large diameter hole on the surface of the anodic oxide film is 10 nm to 30 nm, and the average diameter and depth A of the large diameter hole satisfies the relationship (depth A / average diameter) = 2.5 to 12 (para. [0009], claim 1). The average diameter of the small diameter hole at the communication position is greater than 0 nm and 10.0 nm or less (para. [0009], claim 1). Therefore, JP'021 shows features **1.3.3** and **1.3.5**.

140. The fact that JP'021 describes a precursor with features **1**, **1.1**, **1.1.1**, **1.2**, **1.3**, **1.3.1**, **1.3.2**, **1.3.3, 1.3.4** and **1.3.5** is rightfully not disputed by Claimant. However, it does not disclose feature **1.3.6**, which is not disputed by Defendants.

Lack of inventive step

141. For the same reasons discussed supra with regard to EP'452, the subject-matter of claim 1 of the patent-in-suit is not based on an inventive step starting from JP'021 in conjunction with general common knowledge or, alternatively, the documents discussed supra.

142. In particular, according to JP'021, the properties of the printing plate as to an excellent printing durability, ink removal properties, ease of ink removal and corrosion resistance also are due to the dimension of the micropores, namely the large diameter holes (18) and the small diameter holes (20) as described, obtained by two or more anodization steps as outlined in JP'021 (para. [0022]). However, according to JP'021, the invention as proposed therein is not linked to a specific surface treatment of the aluminium plate before anodization (cf. paras. [0041], [0042], [0043], [0045], [0046]).

INVENTIVE STEP STARTING FROM EP 2 594 408 A1 (EP'408; T2)

143. The subject-matter of claim 1 is not based on an inventive step, starting from EP'408 (T2) in conjunction with general common knowledge or, alternatively, in combination with other documents.

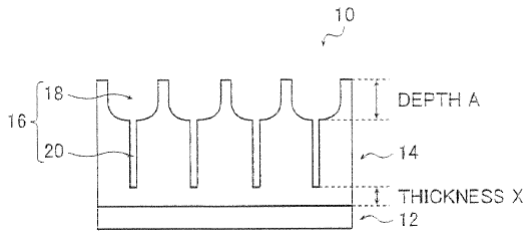
*EP'408 discloses all features but feature **1.3.6***

144. EP'408 relates to a lithographic printing plate support and a presensitized plate obtained using the support (para. [0001]). Being aware of a potential trade-off relation between press life and deinking ability after suspended printing or on-press developability (para. [0009]), it intends to provide a lithographic printing plate support that has excellent scratch resistance and is capable of obtaining a presensitized plate which exhibits excellent on-press developability and enables a lithographic printing plate formed therefrom to have a long press life, and excellent deinking ability after suspended printing and, according to a second aspect of the invention, in addition excellent resistance to dotted scumming while suppressing the occurrence of white spots (paras. [0012], [0013]). Against this backdrop, the second aspect of EP'408 is even more so an alternative suitable starting point.

145. As a solution, EP'408 suggests to control the shape of the micropores in the anodized film and, with regard to the second aspect of the invention, in addition, the thickness of the anodized film between the bottoms of the micropores and the aluminium plate, specifically the depth of large-diameter portions of the micropores and the distance from the bottoms of small-diameter portions thereof in the anodized film to the aluminium plate (paras. [0014], [0015], [0142]).

146. Figure 9A of EP'408 depicted below shows a schematic embodiment of micropores within the anodized film according to the second aspect of EP'408:

FIG.9A



147. A lithographic printing plate support (10) is of a laminated structure in which an aluminium plate (12) and an anodized aluminium film (14) are stacked in this order (para. [0144]). The presensitized plates can be obtained by forming an image recording layer such as a photosensitive layer or a thermosensitive layer on the lithographic printing plate support (para. [0270]). Therefore, features **1**, **1.1**, **1.1.1**, **1.2**, **1.3**, **1.3.1** are shown.

148. The anodized film (14) has micropores (16) extending from its surface toward the aluminium plate (12) side, and each micropore (16) has a large-diameter portion (18) and a small-diameter portion (20) (para. [0144]). The large-diameter portion (18) extends to a depth of 5 nm to 60 nm from the anodized film surface (depth A). The small-diameter portion (20) communicates with the bottom of the large-diameter portion (18) and further extends to a depth of 900 nm to 2000 nm from the communication position (paras. [0148], [0154], [0166]). Thus, EP'408 shows features **1.3.2** and **1.3.4**.

149. The large-diameter portions (18) have an average diameter (average aperture size) of 10 nm to 60 nm at the surface of the anodized film (para. [0150]), whereas their shape is not particularly limited (para. [0159]). The small-diameter portions (20), the shape of which is not particularly limited either (para. [0171]), have a communication position average diameter of more than 0 nm but less than 20 nm, preferably up to 15 nm, more preferably up to 13 nm and most preferably from 5 nm to 10 nm in terms of the (the improvement of) deinking ability after suspended printing and on-press developability (para. [0162]). Therefore, EP'408 shows features **1.3.3** and **1.3.5**.

150. The fact that EP'408 describes a precursor with features **1**, **1.1**, **1.1.1**, **1.2**, **1.3**, **1.3.1**, **1.3.2**, **1.3.3, 1.3.4** and **1.3.5** is rightfully not disputed by Claimant. However, it does not disclose feature **1.3.6**, which is not disputed by Defendants.

Lack of inventive step

151. For the same reasons discussed supra with regard to EP'452, the subject-matter of claim 1 of the patent-in-suit is not based on an inventive step starting from EP'408 in conjunction with general common knowledge or, alternatively, the documents discussed supra.

152. In particular, according to EP'408, the properties of the printing plate support as to long press life, excellent deinking ability after suspended printing, excellent resistance to dotted scumming and excellent resistance to white spot formation, and to the presensitized

plate obtained using the support having excellent on-press developability are due to the dimensions of the micropores – in particular the average diameter (average aperture size) at the surface of the anodized film, the depth of the large-diameter portion, the average diameter at the communication position and the depth of the small-diameter portions (paras. [0150] to [0172]) – and the thickness of the anodized film between the bottoms of the small-diameter portion and the surface of the aluminium plate thereunder (paras. [0173] et seq.). However, according to EP'408, the invention as proposed therein is not linked to a specific surface treatment of the aluminium plate before anodization (cf. paras. [0186], [0187] and para. [0189] in conjunction with paras. [0074], [0076] to [0099]).

ADDED MATTER

153. Since the subject-matter of claim 1 lacks an inventive step, it is not decisive whether the subject-matter of dependant claim 6 in addition extends beyond the content of the European patent application as originally filed under WO 2019/044087 A1, published by the European Patent Office as EP 3 476 616 A1 (EP'616'A1; T50). However, contrary to Defendants, the subject-matter of claim 6 does not constitute such separate ground for revocation under Art. 65 (2) UPCA in conjunction with Art. 138 (1) c) EPC.

154. Claim 6 as originally filed claimed a specific surface area ΔS "not less than 20 %". In contrast, the wording of claim 6 as granted reads "… the specific surface area ΔS is ≤ 20 % …".

155. However, construed properly, claim 6 has to be interpreted to refer to a specific surface area ΔS "≥ 20 %", because the incorrect symbol "≤" is obvious erroneous in the light of the set of claims as granted and the patent specification.

156. The structure of the claims as granted already indicates that the mathematical symbols "≤" and "≥" – or, alternatively, the position of the mathematical symbol ("≤ 20 %" instead of "20 % ≤") – are mixed up in claim 6 as granted. By directly referring to claim 6 only, dependent claim 7 specifies the subject-matter of claim 6 exclusively and in doing so sets the range for ΔS to be 20-40%. Such range only makes sense if the range set in claim 6 is read as "≥ 20 %" instead of "≤ 20 %". If claim 7 had the purpose to restrict ΔS to 20 %, the specification of a range between 20 and 40 % would be superfluous.

157. This finding is confirmed by the patent description which always has to be taken into account, even in cases where the wording of a claim seems to be unambiguous at first sight,

because the patent specification has the function to explain the invention and thus constitutes its own "lexicon". Para. [0048] of the description explicitly points out that the range of specific surface area ΔS is preferably not less than 20 %, more preferably 20 % to 40 %, thereby exactly reflecting the structure of claim 6 and 7, if properly interpreted. Accordingly, para. [0383] in the section discussing the examples shown in table 2 on p. 41 et seq. of the description points out that press life was longer when the specific surface area ΔS was not less than 20 %.

158. Example 16 of table 2 having a ΔS value of 17 % does not lead to another result. It is the sole example with a ΔS value under 20 % and does not fall into the scope of claim 1 as granted because it does not belong to the examples having micropores with a large-diameter and a small diameter-portion as required by claim 1 (cf. para. [385] and table 1 on p. 42 showing that example 16 lacks a second anodization step).

II. INDEPENDENT CLAIMS AS GRANTED

159. As far as Claimant wishes to defend dependant claims separately, such defence is inadmissible because Claimant did not file a proper application to amend the patent pursuant to R. 30 RoP in this regard.

LEGAL FRAMEWORK

160. Contrary to Claimant, Art. 65 (3) UPCA does not give a proprietor of a patent the opportunity to partially fend off a (counter-)claim for revocation without filing a proper request specifying the extent to which the patent-in-dispute shall be maintained in part (deviating opinion with regard to subclaims: Central Division, Paris seat, decision of 22 January 2025, UPC_CFI_310/2023, GRUR-RS 2025, 637 mn. 138). Chapter IV of the UPCA including Art. 65 UPCA deals with the powers of the court. In this context, Art. 65 (3) UPCA relates to the substance of a decision on the validity of a patent, thereby only clarifying that a patent shall be revoked in part, if the grounds for revocation affect the patent only in part – regardless of whether the unaffected part can be found in an independent claim as granted or in the description. However, Art. 65 (3) UPCA does not deal with the basis for such decision, i.e., the proper request to be made by the proprietor of the patent in order to achieve that the patent is upheld in part and thus is revoked in part only. Such basis is addressed in Art. 76 UPCA "Basis for decisions and right to be heard" in Chapter VI "Decisions" of the UPCA. Pursuant to Art. 76 (1) UPCA, the court shall decide in accordance

with the requests submitted by the parties and shall not award more than is requested. This strict principle, which mandates a clear and comprehensive application, also applies if a patent proprietor wishes to defend its patent at least in a limited version.

161. In this context, R. 30 RoP calls for an Application to amend the patent and governs the details of such request if a patent proprietor, when defending against a counterclaim for revocation (R. 30 RoP in direct application) or an action for revocation (R. 30 RoP in conjunction with R. 50.2 RoP), wishes to achieve that the patent is upheld in part.

162. Pursuant to R. 30.1 (a) RoP, the request must contain the proposed amendments of the patent's claims and/or specification, including where applicable and appropriate one or more alternative sets of claims (auxiliary requests). Contrary to Claimant's view in the oral hearing, the term "amendment of the claims" does not only relate to amendments in the wording of a claim by adding features from the description to it, but also encompasses an amendment by which an originally independent claim is dropped so that its subject-matter, together with the additional features of one or several claims dependent thereon, forms the new independent claim. The term "amendments of the claims" addresses any change to the subject-matter of the claims. By relying on a combination of claims, the patent proprietor changes the subject-matter of the claims as granted. This finding is confirmed by R. 30.1 (a) RoP calling for the submission of one or more alternative sets of claims where applicable and appropriate. Such alternative sets are in particular appropriate on a regular basis, where the patent proprietor wishes to rely on a combination of the independent claim as granted with one or more claims dependent thereon as the new independent claim because the references made in other dependent claims have to be adjusted accordingly.

163. Furthermore, R. 30.1 (b) and R. 50.2 RoP calling for an explanation with regard to the requirements of Art. 84, Art. 123 (2), (3) EPC support the finding that the term "amendments of the claims" in the meaning of R. 30 RoP also encompasses the dropping of an independent claim as granted so that a claim formerly dependent thereon constitutes the new independent claim. The explanation required by R. 30.1 (b) and R. 50.2 RoP reflects the shift in the burden of demonstration and proof with regard to the patentability of the subject-matter of the amendment which lies on the patent proprietor, if the patent as granted has to be revoked. This also applies, if the amendment is based on dependent claims because, during the procedure up to grant, the patentability of the subject-matter

of dependent claims was not necessarily assessed independently from that of the relevant independent claim because dependent claims are supposed to concern particular embodiments of the invention only as laid down by its essential features in the relevant independent claim (cf. R. 43 (3) of the Implementing Regulations to the Convention on the Grant of European Patents (EPC's Implementing Regulations)).

164. The aforementioned understanding is also in line with the interpretation of the term "amendment" in Art. 101 (3) EPC by the Enlarged Board of Appeal of the EPO (cf. decision of 24 March 2015, G 3/14, mn. 79).

165. Contrary to Claimant's view, R. 29a (c) RoP does not call for another understanding. Belonging to the formal requirements for such defence, the provision concerns the content of the Defence to a (counter-)claim for revocation only and stipulates in this regard that arguments with respect to an independent validity of any dependent claim the patent proprietor wishes to rely on have to be already made in the Defence to the (counter-)claim for revocation, thus allowing to read all arguments regarding in particular the distinction from the state of the art in one context in the Defence and not split up between the Defence and the Application to amend the patent. An interpretation of R. 29a (c) RoP so as to allow the patent proprietor to rely on any independent claim without filing an Application to amend the patent would be counter to in particular R. 30.1 (c) RoP limiting the number of proposed amendments to a reasonable number in the circumstances of the case, and to the overarching principle of effectiveness and proportionality (Art. 41 (3), Art. 42 (1) UPCA). Scrutinizing separately any independent claim, which usually contains multiple references to several preceding dependent claims and to combination thereof, as it is the case here, for independent validity without a request in accordance with R. 30 RoP would impose an unreasonable burden on the court. Especially for patents with a plurality of independent claims and combinations thereof, R. 30.1 (c) RoP would be ineffective if the reliance on an independent claim was not an amendment in the meaning of R. 30 RoP. In addition, such understanding would favour patents with a plurality of independent claims and combinations thereof without any reason to do so.

166. Pursuant to R. 30.1 (c) RoP, as a further requirement for an Application to amend the patent, the patent proprietor, if he files more than one proposed amendment, has to determine the order of priority in which he wishes to rely on the proposed amendments.

When interpreted reasonably, the indication required by R. 30.1 (c) RoP whether the proposals are conditional or unconditional also encompasses an indication of the substance of the relevant condition, thereby determining the ranking of the proposals among themselves.

167. Finally, the broader purpose of Art. 65 (3) UPCA and R. 30 RoP supports the requirement of a request unambiguously determining the subject-matter and the order of priority in which the patent is defended. Art. 65 (3) UPCA and R. 30 RoP avoid a request for limitation filed by the patent proprietor with the EPO which would be necessary if the patent proprietor was not allowed to amend its patent in the revocation procedure before the UPC. However, they do not serve the purpose to avoid a specific request by the patent proprietor determining the limitation which would also be necessary in a limitation procedure before the EPO (cf. R. 92 (2) d) EPC's Implementing Regulations).

168. The requirements as laid down in R. 30, R. 50.2 RoP in the understanding as outlined above are in accordance with the UPCA. Art. 56 (2) UPCA enshrines the right to be heard and obliges the court to take due account of the interests of the parties. Art. 76 (2) UPCA specifies aspects of the right to be heard. Art. 43 UPCA emphasizes the principle that the relevant party determines the subject-matter of its case. As discussed, Art. 76 (1) UPCA strictly binds the court to the parties' requests. In the context of a (counter-)claim for revocation, the right to be heard and the principle of fairness require that a patent proprietor and in particular a claimant of an infringement action must specify in which regard he wishes to defend the validity of the patent-in-suit in part, thereby not only fending off the claim for revocation but also creating a new basis for his infringement action. Otherwise, the claimant of a revocation action and the defendant of an infringement action would be unreasonably burdened in its defence against the right to exclusivity conferred by the patent or even against an alleged infringement, if they were obliged to prepare themselves to refute each possible separately valid independent claim usually containing multiple references to preceding claims and combinations thereof without the patent proprietor having to make unambiguously clear the subject-matter he wishes to be maintained and, in case of several amendments proposed, their relevant order of priority. The relevant order is of paramount importance because the claimant of an action for revocation may be bothered only by a certain subject-matter of the exclusivity right whereas he may consider another subject-matter to be acceptable. Against this backdrop, R. 30, R.

52.2 RoP as interpreted supra take due account to the aforementioned principles as laid down in the UPCA.

INADMISSIBLE DEFENCE OF DEPENDENT CLAIMS IN THE CASE AT HAND

169. Applying these principles, a separate defence of dependent claims as granted is not admissible in the case at hand. Claimant did not properly apply for an amendment of the patent-in-suit based on dependant claims or a combination thereof as new independent claim.

170. Claimant filed an admissible Application to amend the patent together with its brief of 15 April 2024 (containing the Reply in the infringement procedure, the Defence to the counterclaim for revocation and the Application to amend the patent, hereinafter referred to as "Reply"), which contains three explicit auxiliary requests. However, Claimant did not file any auxiliary request which relates to subclaims 2, 3, 5, 6 or 7 or a combination thereof as a new independent claim.

171. The fact that Claimant elaborates in its Reply on the patentability of subclaims 2, 3, 5, 6 and 7 does not replace a proper application to amend the patent.

172. As far as Claimant amends subclaim 6 by auxiliary request 3, the amendment is subject to the condition that its subject-matter as granted extends beyond the content of the patent application as originally filed (cf. Reply, para. 2, para. 432 et seqq., section G. of the operative part). Since this is not the case (see supra), the panel does not have to adjudicate on the auxiliary request 3 (see with further details infra). Apart from that, auxiliary request would not constitute a separate defence of claim 6 either because it encompasses all other claims (cf. exhibit K44).

173. Furthermore, if one assumed an admissible (implicit) auxiliary request pertaining to any or several dependent claim as granted as new independent claim the relationship to the explicit auxiliary requests would be unclear. Claimant filed auxiliary request 1 by declaring:

> "Alternatively, and only in case the Court would come to the conclusion that US 952 is detrimental to the novelty of claim 1 of the patent in suit, the claimant will rely on an Auxiliary Request 1 in which the printing plate precursors are limited to DOP plates through the claim limitation "*wherein the image recording layer is removable with ink*

and/or fountain solution" " (cf. Reply para. 337, likewise in case of lack of inventive step in view of any disclosure in the prior art concerning non-DOP plates, para. 392).

174. This suggests that the Court is expected to examine auxiliary request 1 directly after finding claim 1 as granted to be invalid. The same seems to be true for the Claimant's remarks in the overview of the Reply (para. 2).

175. On the other hand, section E. of the operative part of the Reply contains language which seems to aim at a different direction, i.e., to first examine any independent claim as granted for validity before examining auxiliary request 1 (cf. "E. As **a subsidiary request,** insofar as the Court considers the claims of EP 3 476 616 B1 to be anticipated by any of the prior art documents invoked in the Counterclaim for Revocation under Articles 54(2) or 54(3) EPC, I. to **hold** that the Application to Amend EP 3 476 616 B1 submitted as Auxiliary Request 1 is admissible…"). In addition, such request seems only to be made in the case of lack of novelty ("anticipated … under Articles 54 (2) or 54 (3) EPC").

176. Against this background, it unclear whether the court is requested to proceed to any subclaim as granted or to auxiliary request 1 if claim 1 as granted is invalid. Similar concerns relate to auxiliary request 2 which, however, is subject to the condition of lack of novelty only (cf. Reply, para. 2, para. 341 in conjunction with para. 337 and 342, Section F. of the operative part).

177. Apart from that, contrary to Claimant, there is no natural order of priority of the dependent claims as granted at hand because they relate to different aspects of the alleged invention. For instance, if the examination by the court led to the result that the subject-matter of claim 2 is patentable, it is not sufficiently clear from the statements in Claimant's Reply whether the court would be requested to further examine the independent validity of the combination of claim 1 with the additional features of subclaim 6 in its exclusive reference to claim 1 or whether Claimant aims at a version of subclaim 6 only that necessarily has all features of subclaim 2 and thus automatically is novel and inventive under said assumption. Vice versa, if the subject-matter of subclaim 2 was not patentable whereas the subject-matter of subclaim 6 in its exclusive reference to claim 1 would be patentable, it would be not unambiguously clear, whether Claimant wishes the patent as partially maintained to have an dependent claim which is dependent on such independent claim (comprising the features of subclaim 6 in combination with claim 1 only) and which additionally comprises the features of subclaim 2.

178. Claimant's brief of 30 September 2024 (containing the Rejoinder to the counterclaim of revocation and the Reply to the defence to the Application to amend the patent, hereinafter referred to as "Rejoinder CCR") justifies no other finding. Since Claimant declares its intent to focus on a combination of claim 1 and 3 and on a combination of claim 1, 3 and 7 as granted (cf. Rejoinder CCR, para. 64 et seqq.), it might be sufficiently clear, that it wishes to defend the patent-in-suit with a new independent claim which, in this regard primarily, comprises the features of claim 1 and the additional features of claim 2 and 3 and secondarily the features of claim 6 and 7, as far as claim 6 and 7 exclusively make reference to claim 1 to 3. However, it is not sufficiently clear if Claimant also wishes any other dependent claim to be maintained in its dependency on such combination, for instance a combination of claim 1 as granted and the additional features of claim 2 to 5 and of claim 6 and 7 as granted. In addition, it is not sufficiently clear, if the focus on said combinations means that Claimant no longer defends any other independent claim separately, for instance claim 5, and, as the case may be, in which overall order of priority dependent claims are defended separately. The fact that Claimant states that it fully maintains its positions as laid down in its Defence to the counterclaim for revocation (cf. Rejoinder CCR, para. 1) rather indicates that it does not restrict itself to the dependent claims building the focus of its Rejoinder CCR. As far as language in the Rejoinder CCR may suggest that dependent claims as granted take precedence over the auxiliary requests and that this may also be true for dependent claims of one auxiliary request with regard to the next auxiliary request (cf. Rejoinder CCR, paras. 66, 108, 121), this would not sufficiently remove the uncertainty in which order of priority dependent claims are defended separately and which other claims a set of claims shall comprise after a dependent claim may have been found separately valid.

179. As far as Claimant points out in its Rejoinder CCR (cf. para. 108) for the first time that, in addition, it relies on the auxiliary requests 1 to 3 not only individually but in all combination thereof without specifying the order of priority regarding the relationship of individual auxiliary requests to combinations thereof and of combinations among themselves, this constitutes a further lack of specificity.

180. Against this backdrop, it can be left open if and, as the case may be, under which circumstance the removal of deficiencies of an Application to amend the patent at a later stage is admissible, in particular whether R. 30.2 RoP applies to such removal.

181. If one considered the separate defence of dependant claims as granted admissible in the case at hand, in any case the additional arguments by which Defendants challenge the validity of such dependent in their Rejoinder to the Application to amend the patent would have to be regarded as admissible as well. At the earliest after the Rejoinder to the counterclaim for revocation and the Reply to the defence to the Application to amend the patent, Defendants had reason to deeper elaborate on the dependant claims as discussed by Claimant therein.

III. AUXILIARY REQUEST 1 (EXHIBIT K40)

182. The subject-matter of claim 1 and thus the subject-matters of claim 13 and claim 14 according to auxiliary request 1 also lack an inventive step.

183. According to auxiliary request 1, the wording of claim 1 as granted is to be supplemented by the following additional feature

"and wherein the image recording layer is removable with ink and/or fountain solution"

184. As discussed above, the defence of dependent claims as granted is inadmissible for reasons that go beyond the uncertainty as to the relationship between such defence and the defence based on auxiliary request 1. Since the defence of dependent claims is inadmissible regardless of its relationship to auxiliary request 2, the uncertainty caused by an uncertain relationship between the defence of dependant claims as granted on the one side and the defence with claim 1 according to auxiliary request on the other side is resolved and does not affect the admissibility of auxiliary request 1.

185. However, there might be further uncertainty as to the substance of the condition auxiliary request 1 is subject to. Claimant introduced auxiliary request 1 in order to overcome a lack of novelty over US'952 (cf. Reply para. 337) or a lack of inventive step in view of any of the disclosures in the prior art concerning non-DOP plates (cf. Reply para. 392). As far as such specific condition is not reflected in the overview to the Reply summarizing the requests (Reply, para. 2), there might be no contradiction yet, taking into account the character of a summary. However, section E.I of the operative part of the Reply deviates from the condition in the reasoning of the Reply under paras. 337, 392 by requesting the court to hold that the application to amend the patent submitted as auxiliary request 1 is admissible insofar as the courts considers the claims to be anticipated by any of the prior

art documents invoked in the counterclaim for revocation under Art. 54 (2) or 54 (3) EPC. Thereby, on the one hand, section E.I is broader as far as it refers to any of the prior art documents without restriction to such concerning non-DOP plates only. On the other hand, it is more restrictive because it refers to lack of novelty only by making reference to Art. 54 (2) or 54 (3) EPC.

186. However, the potential uncertainty can be left open. As discussed above, the subject-matter of claim 1 of auxiliary request 1 lacks inventive step, even if the additional feature would restrict it to DOP plate precursors, because EP'452, JP'021 and EP'408 relate to precursors for DOP plates (cf. EP'452, paras. [0006], [0008], [0012], [0026], [0046], [0296] et seqq.; JP'021, paras. [0004], [0169]; EP'408, paras. [0009], [0363] et seqq.). As also discussed above, a separate defence of dependent claims of auxiliary request 1 is inadmissible.

187. Similarly, it can be left open whether "ink" in the meaning of claim 1 of auxiliary request 1 is to be interpreted as "printing ink" and whether Defendants' objection under Art. 123(2) EPC and Art. 84 EPC are founded. For the same reason, it can be left open whether the alternative auxiliary request 1 replacing the term "ink" by "printing ink" constitutes a further amendment and, if so, would be admissible under R. 30.2 RoP.

IV. AUXILIARY REQUEST 2 (EXHIBIT K41)

188. The subject-matter of claim 1 and thus the subject-matters of claim 13 and claim 14 according to auxiliary request 2 also lack an inventive step.

189. According to auxiliary request 2, the wording of claim 1 as granted is amended in feature **1.3.4** as follows:

> **1.3.4²** each of the micropores (22a,22b) has a large-diameter portion (24) which extends from the surface of the anodized film (20a, 20b) to a depth of 10- ~~1000~~ 200 nm and a small-diameter portion (26) which communicates with a bottom of the large-diameter portion (24) and extends to a depth of ~~20-2000~~ 500-1,500 nm from a communication position between the small-diameter portion (26) and the large-diameter portion (24),

190. For the same reasons as discussed for auxiliary request 1, the uncertainty with regard to the relationship between the defence of dependent claims as granted or as proposed by

auxiliary request 1 on the one side and the defence of claim 1 as proposed by auxiliary request 2 on the other side is resolved by the admissibility of the defence of dependent claims and does not affect the admissibility of auxiliary request 2.

191. However, similar to auxiliary request 1, there might be further uncertainty as to the substance of the condition auxiliary request 2 is subject to. The language in the Reply regarding novelty in mn. 341 ("More alternatively") and mn. 345 ("novel over US'952 in any event" with reference to the reworking of example 2 of US'952 only (exhibit T31)) and the absence of any mentioning of auxiliary request 2 in the context of inventive step in the Reply (cf. in particular mn. 392) seem to suggest that Claimant relies on auxiliary request 2 under the sole condition that claim 1 as proposed by auxiliary request 1 lacks novelty over US'952. Again, section F.I of the operative part to the Reply deviates from this by requesting the court to hold that the application to amend the patent submitted as auxiliary request 2 is admissible if the court considers the claims to be anticipated by any of the prior art documents invoked in the counterclaim for revocation under Art. 54 (2) or 54 (3) EPC. Whereas the restriction to novelty is clearly confirmed by section F.I (as well as by the overview in mn. 2 of the Reply), Section F.I does not address a condition restricted to the lack of novelty over US'952. Furthermore, section F.I does not clearly show that auxiliary request 2 is conditional upon the lack of success of auxiliary request 1. A lack of clear order of priority between auxiliary request 1 and 2, would constitute specificity concerns.

192. Again, the potential uncertainty can be left open, because the subject-matter of claim 1 as proposed by auxiliary request 2 lacks an inventive step and, therefore, cannot be granted anyway.

193. Feature **1.3.4²** as proposed by auxiliary request 2 reduces the depth of the large diameter portion to a more narrow range of 10 nm to 200 nm and that of the small diameter portion to a more narrow range of 500 nm to 1500 nm. Undisputed by Defendants, such ranges are originally disclosed in paragraphs [0214] and [0221] of the patent application (para. [0217] and [0224] patent-in-suit).

194. The new feature cannot constitute an inventive step starting from each of the documents EP'452 (T41), JP'021 (T42) and EP'408 (T2) in combination with common general knowledge or, alternatively, the documents discussed above. Each of the documents EP'452 (T41), JP'021 (T42) and EP'408 (T2) show ranges falling in the ranges proposed by

auxiliary request 2.

195. According to EP'452, each large-diameter portion extends from the surface of the anodized film in the depth direction (thickness direction) to a depth of 75 nm to 120 nm. In particular, the depth of the large-diameter portion is preferably 85 nm to 110 nm and more preferably 85 nm to 105 nm because the press life and on-press developability are more excellent (para. [0030]). The bottom of each small-diameter portion is at depth of 900 nm to 2000 nm from the level of the communication with the large-diameter portion, preferably at a depth of 900 nm to 1500 nm in terms of the scratch resistance of the lithographic printing plate support (para. [0050]).

196. According to JP'021, the bottom of the large diameter hole is located at an average depth of 40 nm to 120 nm from the surface of the anodic oxide film. The depth is preferably from 45 nm to 100 nm, more preferably from 50 nm to 80 nm, in terms of better printing durability and on-press developability (para. [0026]). The bottom of the small diameter hole is located at a location extending 750 nm to 2000 nm further in the depth direction from the communicating position with the large diameter hole. From the viewpoint of scratch resistance, the bottom portion is preferably located at a location extending 900 nm to 1500 nm from the communicating position (para. [0034]).

197. According to EP'408, each large-diameter portion extends from the surface of the anodized film in the depth direction (thickness direction) to a depth of 5 nm to 60 nm. The depth is preferably from 10 nm to 50 nm from the viewpoint that the lithographic printing plate obtained using the lithographic printing plate support has a longer press life and more excellent deinking ability after suspended printing, resistance to dotted scumming and resistance to white spot formation, and the presensitized plate obtained using the support has more excellent on-press developability (para. [0154]). The small-diameter portions further extend in the depth direction (thickness direction) from the communication position with the corresponding large-diameter portion and have a depth of 900 nm to 2000 nm. The bottom of each small-diameter portion is preferably at a depth of 900 nm to 1500 nm from the communication position in terms of the scratch resistance of the lithographic printing plate support (para. [0166]).

198. Thus, the taught mandatory depth ranges for the large-diameter portions of EP'452 and JP'021 and the preferred depth ranges for the large-diameter portions of EP'408 as well

as the preferred depth ranges for the small-diameter portions of all three document fall into the ranges proposed by auxiliary request 2. Otherwise, the taught mandatory ranges overlap with the ranges proposed by auxiliary request 2.

199. Against this backdrop, for the same reasons as outlined supra for claim 1 as granted, the subject-matter of claim 1 proposed by auxiliary request 2 lacks an inventive step.

200. In addition, the patent-in-suit does not disclose any special effect of those restricted values (paras. [0217], [0224]). Therefore, the limited range is not associated with a qualitatively different technical teaching.

201. As discussed above, a separate defence of dependent claims of auxiliary request 2 is inadmissible.

D. LEGAL CONSEQUENCES

202. As result of the counterclaim for revocation, European patent EP 3 476 616 B1 is to be revoked in the territory of Germany, the only territory within the UPCA member states where the patent-in-suit was still in force at the date of UPCA's entry into force, i.e., 1 June 2023.

203. Consequently, the admissible infringement action regarding the German part of the patent-in-suit is unfounded and to be dismissed. Due to the lapse of the respective national parts of the patent-in-suit in relation to EPC member states apart from Germany and the UK before the UPCA's entry into force, the infringement action, being inadmissible insofar, is also dismissed. With regard to the remaining national part in relation to the UK, being still in force, both the infringement action and the corresponding requests of the counterclaim for revocation are now subject to a separated proceeding and will have to be decided upon in that separate proceeding.

204. The Defendants filed a request for interim award of costs. The request finds its basis in Art. 69 UPCA, R. 118(5), R. 150(2) RoP. The panel exercises its discretion to grant the interim award for an amount of EUR 300.000. Defendants did not specify the amount they seek, thus leaving it to the court to set such amount without further guidance. Since Defendants heavily rejected the amount of EUR 300.000, which Claimant sought for its interim award of costs in its statement of claim, on the grounds of being excessive (SoD, para. 558; Rejoinder, para. 539), the panel restricts the interim award to such amount

which is well below the sum of the recoverable court fees and the maximal costs recoverable for the value in dispute. The panel has not doubt that Defendants incurred costs at least in the amount set as interim award on cost.

E. COSTS

205. The decision on the (recoverable) costs with regard to both the infringement action and the counterclaim for revocation is based on Art. 69 (1) UPCA, R. 118.5 RoP.

206. Claimant clarified in the oral hearing that it did not intend to apply to increase the ceilings set forth in the Administrative Committee's decision on scale of ceilings under para 3. of its brief of 4 February 2025. Defendants did not apply for an increase of the ceilings either.

F. VALUE IN DISPUTE

207. The value of the dispute is set to EUR 15.000.000 after having heard the parties in the oral hearing.

G. NO PROVISIONAL INJUNCTION FOR UK

208. As far as claimant requests that the Court grant a provisional injunction for the UK in the event the Court should find any reason to stay the proceedings as they relate to infringing acts carried out in the UK, or not to grant a permanent injunction for the United Kingdom (UK) until further conditions are fulfilled, the proceedings have been separated and will be dealt with in subsequent proceedings after having discussed the consequences of the ECJ's decision. Since the national part of the patent-in-suit in relation to Germany is invalid, the panel sees no necessity to grant Claimant a preliminary injunction with regard to the UK-part in the meantime when taking due account to the interests of the parties involved.

DECISION:

A. The European patent EP 3 476 616 B1 is entirely revoked in the territory of Germany.

B. The application to amend the patent is dismissed.

C. The infringement action is dismissed.

E. The Claimant is ordered to pay the Defendants the sum of EUR 300.000 as an interim award on the legal costs and other expenses.

F. The Claimant has to bear the costs of the litigation.

G. The value in dispute for the infringement action and the counterclaim of revocation is set at EUR 15.000.000.

H. The Order E shall be enforceable only after the Defendants have notified the Court which part of the order they intend to enforce, this notification has been served on the Claimant and a certified translation of the order in the official language of a Contracting Member State in which the enforcement shall take place has been provided by the Defendants and served on the Claimant.

Delivered in Mannheim on 2 April 2025

NAMES AND SIGNATURES

Presiding judge Tochtermann	Peter Michael Dr. Tochtermann Digital unterschrieben von Peter Michael Dr. Tochtermann Datum: 2025.03.31 16:28:27 +02'00'
Legally qualified judge Böttcher	Dirk Andreas Böttcher Digital unterschrieben von Dirk Andreas Böttcher Datum: 2025.03.31 15:41:10 +02'00'
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Technically qualified judge Wismeth	Erwin Hermann WISMETH Digital signiert von Erwin Hermann WISMETH Datum: 2025.03.31 20:49:46 +02'00'
For the Sub-Registrar: Kranz, Clerk LD Mannheim	ANDREAS MICHAEL Kranz Digital signiert von: ANDREAS MICHAEL Kranz Name: CN = ANDREAS MICHAEL Kranz email = andreas.kranz@unifiedpatentcourt.org C = DE Datum: 2025.04.01 12:07:57 +02'00'

Information about appeal

An appeal against the present Decision may be lodged at the Court of Appeal, by any party which has been unsuccessful, in whole or in part, in its submissions, within two months of the date of its notification (Art. 73(1) UPCA, R. 220.1(a), 224.1(a) RoP).

Information about enforcement (Art. 82 UPCA, Art. Art. 37(2) UPCS, R. 118.8, 158.2, 354, 355.4 RoP)

An authentic copy of the enforceable decision or order will be issued by the Deputy-Registrar upon request of the enforcing party, R. 69 RegR.