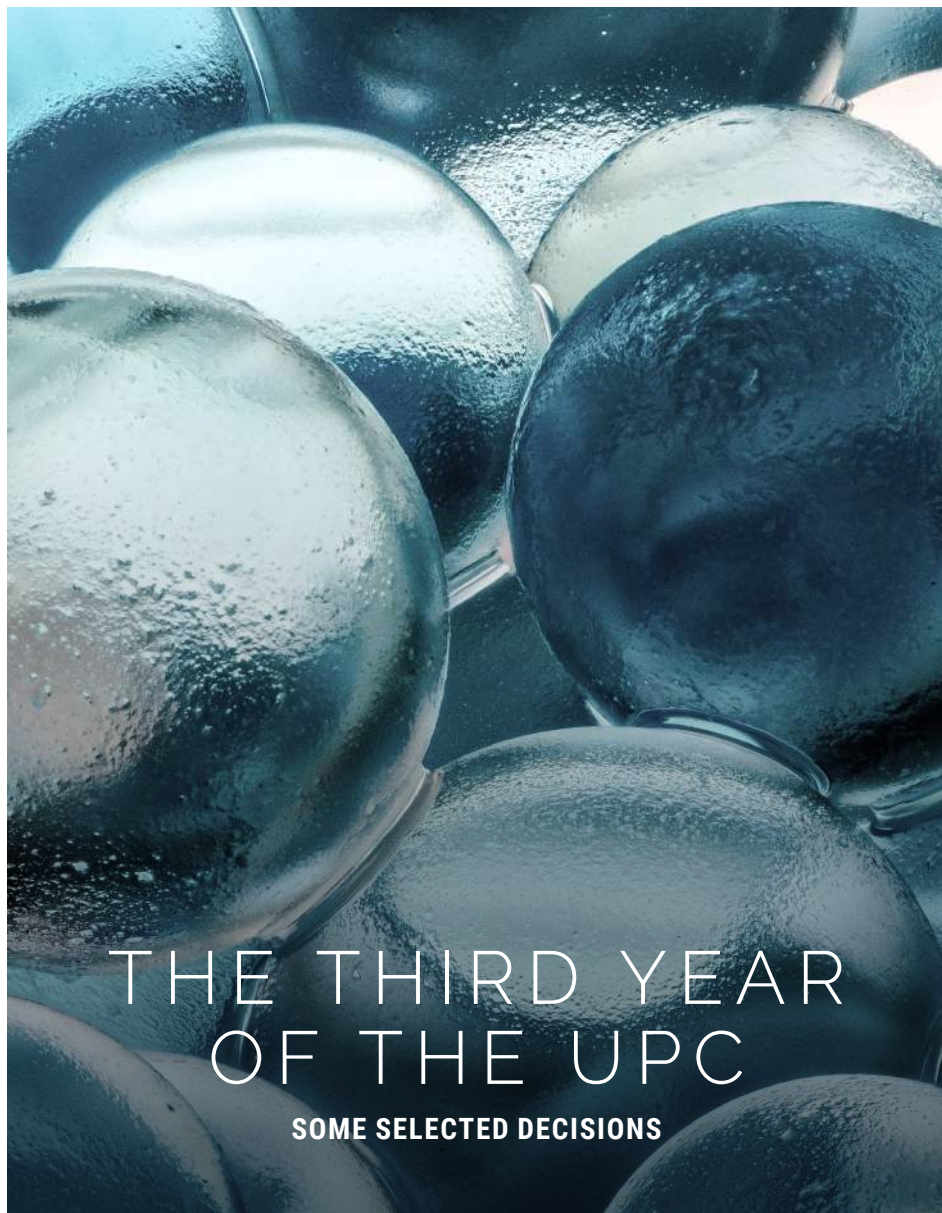


# GRÜNECKER



THE THIRD YEAR  
OF THE UPC

**SOME SELECTED DECISIONS**

# THE THIRD YEAR OF THE UPC: SOME SELECTED DECISIONS

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# TABLE OF CONTENTS



PREFACE **Page 5**

## CASE I

LD DÜSSELDORF IN  
OTEC V. STEROS GPA  
INNOVATIVE  
on Revocation of an Order on Inspection and  
Preservation of Evidence and its Consequences

**Page 6**

## CASE II

COA IN ONWARD  
MEDICAL V. NICHE  
BIOMEDICAL  
on the Admissibility of Unregistered Claims  
in Interim Proceedings and of New Alternative  
Claims on Appeal

**Page 7**

## CASE III

COA IN EOFLOW V. INSULET  
on Confidentiality and Rules 262.2 and 262A RoP

**Page 8**

## CASE IV

COA IN SUN  
PATENT V. VIVO  
on FRAND Determinations and Preliminary  
Objections

**Page 10**

## CASE V

COA IN KEEEX V. ADOBE/  
OPENAI/TRUEPIC/JDF  
on the Limits of the “long-arm” Jurisdiction

**Page 12**

## CASE VI

COA IN SYNTORR LP V.  
ARTHREX INC. ET AL.  
Consideration of ATE Insurance in Security  
for Costs Assessments

**Page 14**



## CASE VII

### COA IN BHAGAT V. OERLIKON

on Award of Damages

**Page 16**

## CASE VIII

### COA MERIL V. EDWARDS AND AMGEN V. SANOFI

on Inventive Step

**Page 18**

## CASE IX

### COA IN FUJIFILM V. KODAK

on Requirements of Enforcement and  
Penalty Payments

**Page 20**

## CASE X

### COA IN PHILIPS V. BELKIN

on Directors' Liability for Patent Infringement  
and the Availability of Corrective Measures

**Page 22**

## CASE XI

### COA IN BOEHRINGER INGELHEIM V. ZENTIVA

on Imminent Infringement and Bolar Exemption

**Page 24**

## CASE XII

### COA IN VALINEA V. TIRU

on Requirements for Preservation of Evidence

**Page 26**

THE AUTHORS **Page 28**

An aerial photograph of a river delta, showing a network of water channels and land. The image is color-graded with a teal/cyan tint, while the land areas are in shades of brown and tan. The text is centered in the middle of the image.

THE UPC CONTINUES  
TO GAIN MOMENTUM.

# PREFACE

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The UPC continues to gain momentum. Now in its third year, the Court has seen yet another increase in the number of cases filed. This trend is also reflected in our own practice.

The reasons for this development are evident. The Court has proven itself to be an effective forum for patent litigation, combining speed with a high standard of decision-making. Users of the Court have built up trust, resulting in more cases being filed. At the same time, the system is still evolving.

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The Court is addressing critical legal issues continuously, resulting in a quickly evolving body of case law.

For practitioners, it is a challenge to keep track of the UPC case law. This is why Grünecker's patent litigators provide summaries of selected decisions that have been rendered over the past year.

If you have any queries, please contact us.

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**GRÜNECKER**

# LD Düsseldorf in OTEC v. Steros GPA Innovative

## on Revocation of an Order on Inspection and Preservation of Evidence and its Consequences

Pursuant to Art. 60(8) UPCA and R. 198.1 RoP (applying also to inspections), measures for the preservation of evidence are revoked upon Respondent's motion, if the Applicant has not filed a complaint within 31 calendar days or 20 working days (whichever is longer) from disclosure of the expert report as specified in the Court order.

According to Art. 60(9) UPCA, R. 198.2, RoP Defendant is entitled to a compensation for any injuries caused by the measure for preservation of evidence. With decision of May 4, 2026 (UPC\_CFI\_855/2025)<sup>1</sup>, the LD Düsseldorf clarified that the compensation for injuries caused by any measure for

preservation of evidence does not cover attorney's fees. Such costs need to be claimed via a separate application for a cost decision (R.151 RoP).

Furthermore, on basis of R. 198.1 RoP, R. 199.2 RoP, all evidence obtained is to be returned to the Defendant and any physical copies of documents received are to be destroyed and digital copies are to be irrevocably deleted.

<sup>1</sup> *OTEC v. Steros GPA Innovative, LD Düsseldorf, UPC\_CFI\_855/2025, May 4, 2026 (Link).*

# CoA in Onward Medical v. Niche Biomedical

on the Admissibility of Unregistered Claims in Interim Proceedings and of New Alternative Claims on Appeal

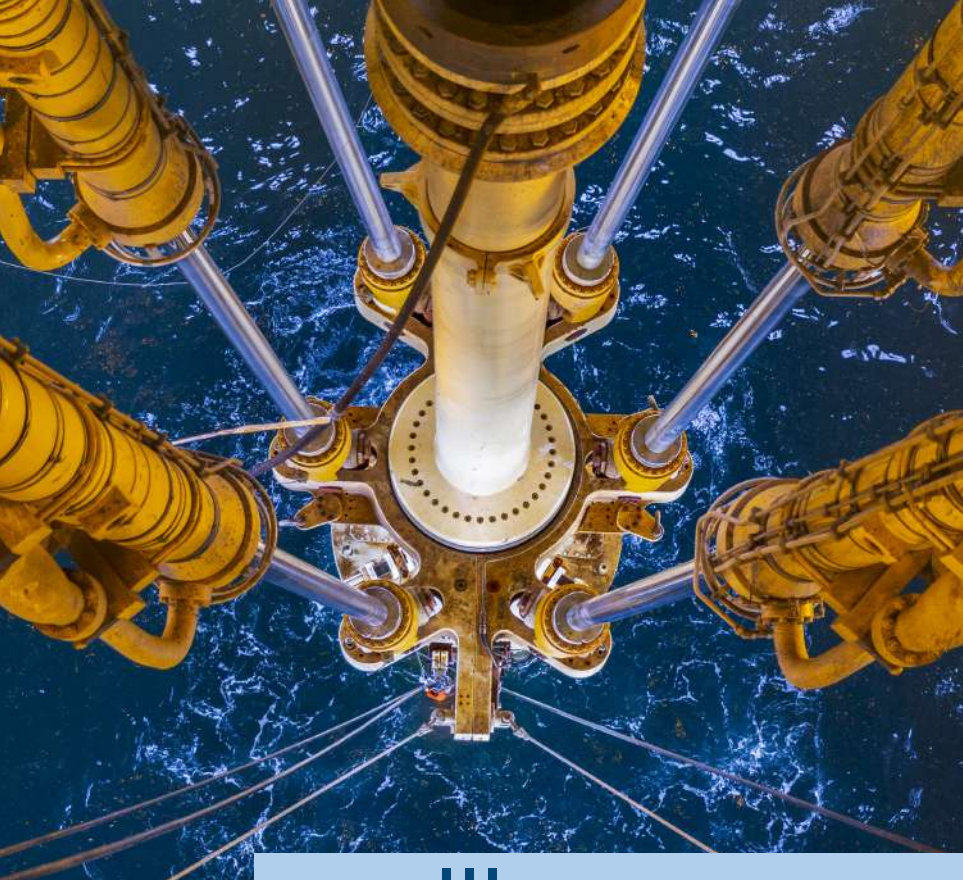
In this decision rendered on March 27, 2026 (UPC\_CoA\_898/2025)<sup>2</sup>, the CoA overturned the LD Munich's decision that the assertion of proposed claim amendments to a granted patent should be rejected in interim proceedings a priori. In consequence, the CoA has thus opened up the possibility for the Applicant to assert its patent based on an unregistered claim even in interim proceedings. The provisions of the UPC expressly provide for this option only in main proceedings in the context of an application to amend the patent under R. 30 RoP. The CoA found that R. 211.2 RoP does not require that there be sufficient certainty regarding the validity of the patent "as granted."

The term "patent in question" is merely a reference to the specific patent asserted.

Any disproportionate burden on the Respondent resulting from the assertion of an unregistered patent claim or from an excessive number of auxiliary claims can be taken into account on a case-by-case basis pursuant to R. 211.3 RoP.

The CoA also found that the CoA may, in principle, allow new (alternative) claims in interim appeal proceedings in case the appellee is not materially prejudiced.

<sup>2</sup> *Onward Medical v. Niche Biomedical, CoA, UPC\_CoA\_898/2025, March 27, 2026 (Link)*.



CASE 

# CoA in EOFlow v. Insulet

on Confidentiality and Rules 262.2 and 262A RoP

In this order issued on March 18, 2026 (UPC\_CoA\_930/2025)<sup>3</sup>, the CoA clarified that confidential business information disclosed to the opposing party in UPC proceedings will generally lose its status as confidential if disclosed without an express confidentiality restriction, such as an order under R. 262A RoP, a confidentiality agreement, or a voluntary undertaking. The CoA also (once again) drew a clear distinction between R. 262.2 RoP, which concerns restrictions on public access, and R. 262A RoP, which provides the mechanism for restricting the use or disclosure of confidential information inter partes.

Following an infringement decision, the Defendant had been ordered to provide information to the Claimant, including financial data, invoices and related commercial data. The information was submitted to the Claimant without any confidentiality obligation, but with the expectation on the Defendant's side that Claimant's use of such sensitive information would im-

plicitly be limited to the ongoing UPC proceedings. The Defendant relied on this argument when later seeking confidentiality protection under R. 262.2 RoP.

The CoA rejected the Defendant's appeal and upheld the CD Milan's refusal to grant the requested confidentiality order. According to the CoA, there is no implicit procedural limitation under the UPC rules that automatically limits the receiving party's use of disclosed information to the litigation purpose. Once the Defendant had provided the information to the Claimant without a prior confidentiality order pursuant to R. 262A RoP (or similar measures), the information no longer qualified as confidential.

The decision is another reminder that sensitive information should be disclosed to the opposing party only once suitable protection is in place, in particular through a timely application under R. 262A RoP and R. 262.2 RoP.

<sup>3</sup> *EOfFlow v. Insulet, CoA, UPC\_CoA\_930/2025, March 18, 2026 (Link)*.



CASE

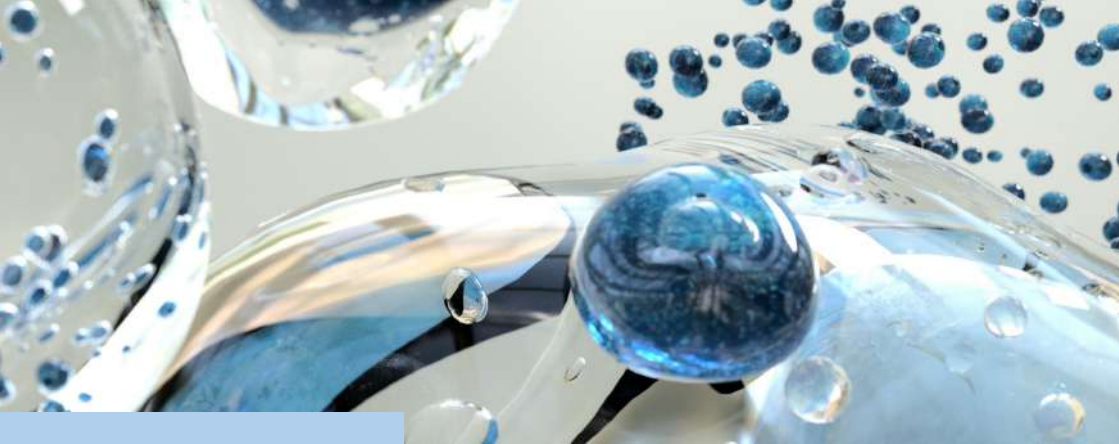
## IV

# CoA in Sun Patent v. Vivo

on FRAND Determinations  
and Preliminary Objections

In this order issued on March 16, 2026 (UPC\_CoA\_904/2025 and UPC\_CoA\_905/2025)<sup>4</sup>, the CoA confirmed that the UPC may defer the assessment of a preliminary objection concerning jurisdiction and admissibility to the main proceedings where this is justified by considerations of procedural efficiency and case management.

The CoA further clarified that such a decision may be taken not only by the judge-rapporteur under R. 20.2 RoP, but also by the panel itself where the matter has been referred to the panel pursuant to R. 102.1 and R. 331 RoP.



The dispute arose in the context of SEP infringement actions in which the Claimant, an SEP holder, sought, inter alia, a determination of FRAND licence terms as a condition for injunctive relief.

The Defendants argued that an independent FRAND rate-setting claim did not fall within the UPC's competence under Art. 32 UPCA and should therefore have been dismissed at the preliminary objection stage.

The CoA rejected the appeal and upheld the LD Paris's decision to deal with the admissibility of the FRAND-related claim in the main proceedings.

According to the CoA, the infringement action constituted the main subject matter of the proceedings, whereas the FRAND determination was linked to the Claimant's request for injunctive relief and might become unnecessary if no infringement were found.

The CoA also noted that the Defendants had in any event raised a FRAND defence in the infringement proceedings, meaning that the relevant FRAND-related facts and arguments would have to be addressed in the main proceedings irrespective of the admissibility of the FRAND-related request itself.

<sup>4</sup> *Sun Patent v. Vivo*, CoA, UPC\_CoA\_904/2025, March 16, 2026 ([Link](#)).

## CASE

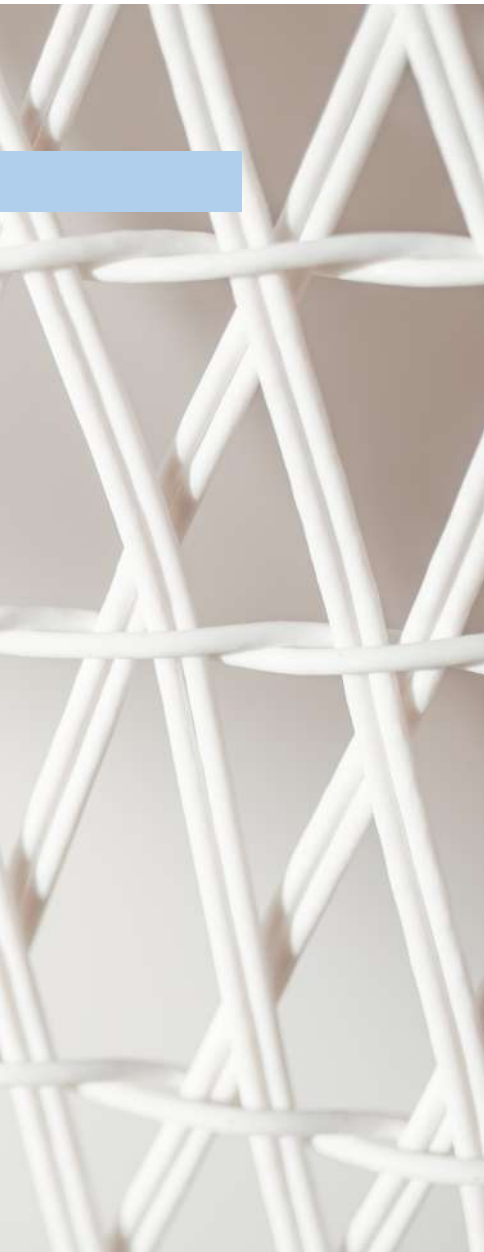
# CoA in Keeex v. Adobe/OpenAI/ Truepic/JDF

on the Limits of the  
“long-arm” Jurisdiction

In this order rendered on March 13, 2026 (UPC\_CoA\_922/2025, UPC\_CoA\_923/2025, UPC\_CoA\_924/2025 and UPC\_CoA\_925/2025)<sup>5</sup>, the CoA held that there is a clear limit to the UPC’s long-arm jurisdiction over alleged infringements outside UPC territory.

The Claimant, Keeex, had brought an infringement action before the LD Paris against a group of Defendants including Adobe/OpenAI/Truepic and Joint Development Foundation Projects (JDF) and sought to include also





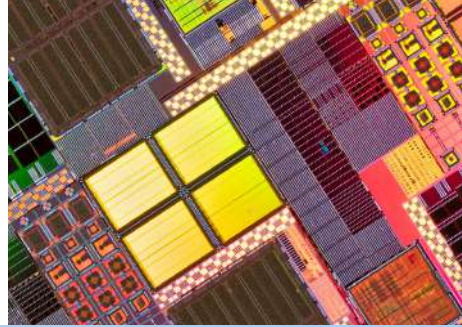
alleged infringements outside UPC territory, in particular in Switzerland, Spain, the United Kingdom, Ireland, Norway and Poland.

The Defendants preliminary objected to the jurisdiction of the LD Paris. In its order dated November 27, 2025 the LD Paris rejected those objections and held that it had jurisdiction not only over infringement within, but also outside UPC territory.

In its order the CoA set aside the order of the LD Paris. With regard to internal jurisdiction, the CoA clarified that based on Art. 7(2) of Regulation 1215/2012 (the Brussels Recast Regulation), the Court has jurisdiction only to hear cases concerning damage occurring in its territory, which is the only link between the Court seized and the subject matter of the dispute.

With regard to international jurisdiction, the CoA further confirmed that in certain cases Art. 71b(3) of the Brussels Recast Regulation potentially provides an additional rule of jurisdiction relating to Defendants domiciled outside the European Union.

<sup>5</sup> *Keeex v. Adobe/OpenAI/Truepic/JDF, CoA, UPC\_CoA\_922/2025 et al., March 13, 2026 (Link).*



CASE

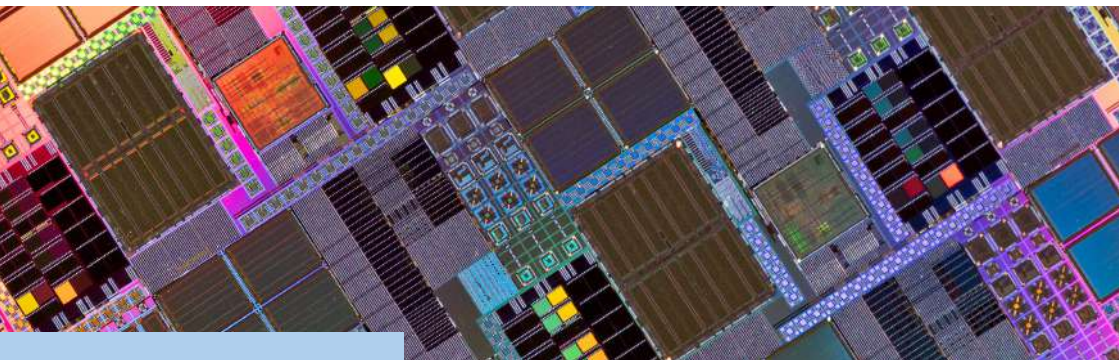
VI

## CoA in Syntorr LP v. Arthrex Inc. et al.

Consideration of ATE  
Insurance in Security for  
Costs Assessments

On February 18, 2026 (UPC\_CoA\_890/2025 et al.)<sup>6</sup>, the CoA set aside an order of the LD Munich requiring the Cypriot Claimant to provide security for costs in the amount of EUR 2.000.000,00. The CoA dismissed the Defendants' request for security and ordered the release of the bank guarantee already provided by analogy to R. 352.2 RoP.

The Court held that the LD Munich had wrongly exercised its discretion under Art. 69(4) UPCA and R. 158.1 RoP by failing to consider the Claimant's existing After The Event ("ATE") insurance as a significant element of its financial position.



The Claimant had obtained ATE insurance from a Maltese insurer with a limit of indemnity of EUR 4.000.000,00. The policy included an Anti-Avoidance Endorsement (“AAE”), which was central to the Court’s decision. Under the AAE, the policy was non-voidable and non-cancellable in respect of the Defendants’ costs, conferred direct enforcement rights on the Defendants, and included a straightforward mechanism for payment.

The CoA considered that these terms provided sufficient protection against the risk that a future costs order may not be recoverable or may be enforceable only with undue difficulty. It also

rejected Defendants’ concerns about the policy’s terms, policy’s validity, the insurer’s solvency, and the insurer’s termination rights. Specifically, given the 60-day termination period, the Defendants could request a provision of further security or even a stay until further security is provided.

The decision shows that ATE insurance can, in principle, spare a Claimant from having to provide a security. The key question, however, will be whether the policy terms provide sufficient protection.

<sup>6</sup> *Syntorr LP v. Arthrex Inc. et al.*, CoA, UPC\_CoA\_889/2025, February 18, 2026 ([Link](#)) and UPC\_CoA\_890/2025, February 18, 2026 ([Link](#)).



CASE VII

# CoA in Bhagat v. Oerlikon

on Award of Damages

According to Art. 68(1) UPCA, damages can be awarded for any case an infringer knowingly, or with reasonable grounds to know, engaged in patent infringement. Art. 68(2) UPCA stipulates that damages shall not be punitive.

Art. 68(3) UPCA further defines that the Court shall take into account, i.a. lost profits, unfair profits made by the infringer (“infringer’s profits”) and, in appropriate cases, also moral prejudice caused to the injured party.

The CoA clarified in *Bhagat v. Oerlikon* (UPC\_CoA\_8/2025)<sup>7</sup> on December 9, 2025, that a company, which is active in the respective market, acts at least negligently, if it fails to monitor the patent landscape before launching a product that infringes. Hence, damages can be awarded against this company.

Furthermore, the CoA held that reputational damage may be moral prejudice according to Art. 68(3) UPCA. However, merely offering a patent infringing product during a tradeshow does not establish reputational damage.



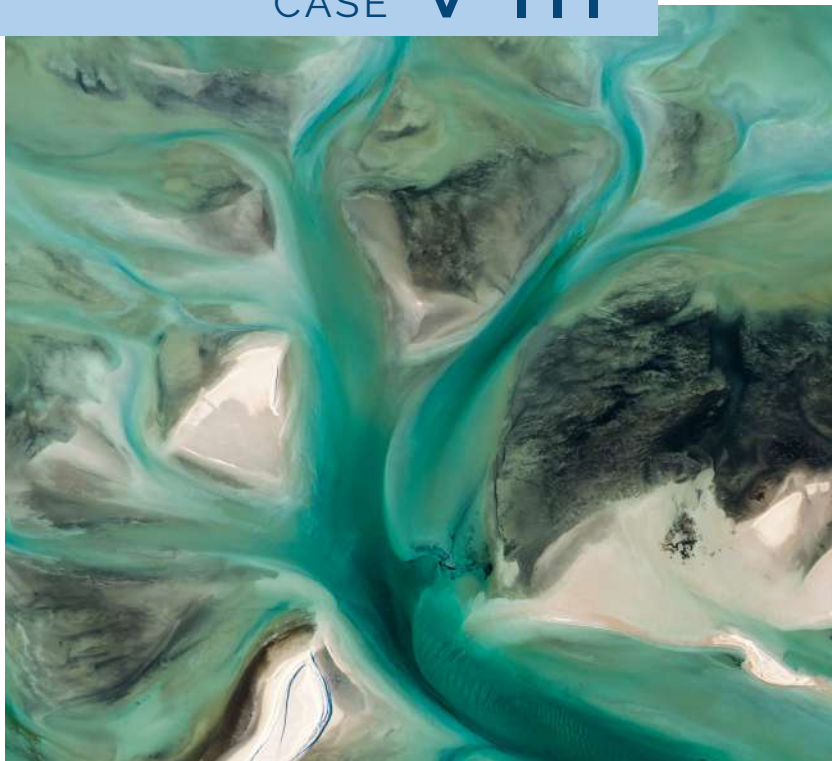
The decision clarifies that companies have a certain duty to monitor the patent landscape before launching a product. If they fail to do so, they will be liable for damages. It will be interesting to see if the Court comes up with scenarios that may exempt a party from damage liability, or if this basically results in automatic damage liability, similar to German law.

<sup>7</sup> *Bhagat Textile Engineers v. Oerlikon Textile*, CoA, UPC\_CoA\_8/2025, December 9, 2025 ([Link](#)).

# CoA Meril v. Edwards and Amgen v. Sanofi

on Inventive Step

## CASE VIII



With its decisions of November 25, 2025, the 1st (UPC\_CoA\_530/2024 et al.)<sup>8</sup> and 2nd (UPC\_CoA\_528/2024 et al.)<sup>9</sup> panel of the CoA provided guidance, inter alia, on the UPC's assessment of inventive step. Both panels uniformly define a holistic approach.

The CoA's inventive step analysis starts with identifying the objective problem. From the perspective of the skilled person at the priority date, the Court considers what the invention, read as a whole in light of the description and drawings, adds over the prior art – per *Meril v. Edwards*, this does not require an improvement; instead, it can also be a non-obvious alternative to a solution known in the prior art. The CoA emphasizes that hindsight must be avoided, which shall be reflected when defining both the objective problem and the skilled person. For this reason, in *Amgen v. Sanofi*, the CoA adopted a broader definition of the skilled person than the Court of First Instance.

In a second step, the Court identifies one or more realistic starting points in the prior art, i.e. disclosures that the skilled person would have considered of interest when trying to solve the objective problem. In assessing obviousness as a third step, the Court exam-

ines whether the skilled person would – not merely could – have arrived at the claimed solution. According to the CoA, this requires a pointer or motivation to take the next step, unless the next step is a matter of routine. In *Amgen v. Sanofi*, the CoA further stated that taking the next step also requires a reasonable expectation of success for the skilled person - relevant factors are, among others, the complexity, costs and the strength of the pointer. The party asserting obviousness failed to prove such reasonable expectation of success.

Despite differences to the approaches taken by the EPO and national courts, the CoA emphasizes that all approaches should lead and generally do lead to the same conclusion.

In *Amgen v. Sanofi*, the CoA further shaped principles of claim construction. It held that (a) medical use claims require a meaningful treatment / therapeutic effect, and (b) for the interpretation of an independent claim, conclusions cannot be drawn from dependent claims in case they merely include additional features.

<sup>8</sup> *Meril v. Edwards*, CoA, UPC\_CoA\_530/2024 et al., November 25, 2025 ([Link](#)).

<sup>9</sup> *Amgen v. Sanofi*, CoA, UPC\_CoA\_528/2024 et al., November 25, 2025 ([Link](#)).

## CASE | IX

## CoA in Fujifilm v. Kodak

on Requirements of  
Enforcement and  
Penalty Payments

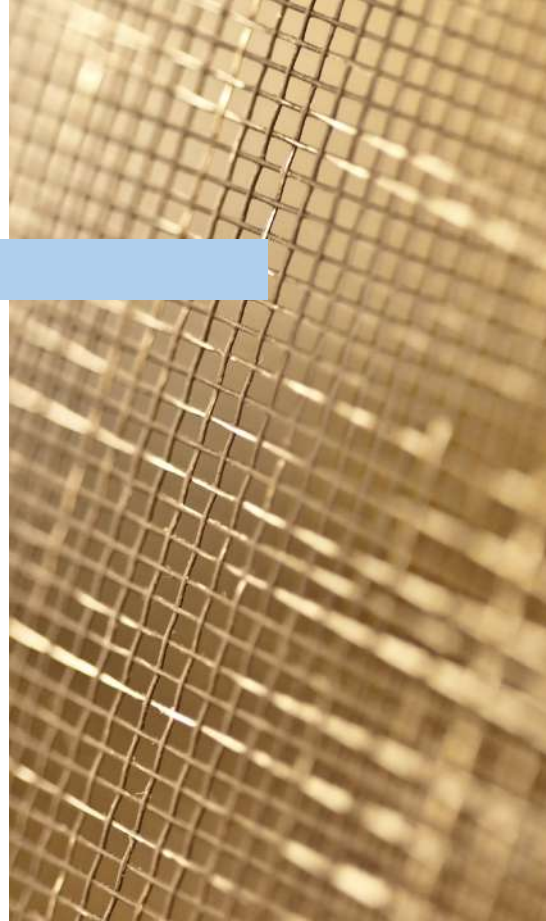
The decision of October 14, 2025 (UPC\_CoA\_699/2025)<sup>10</sup> addresses an abundance of issues to be observed (or not to be observed) to make a Defendant pay penalties.

The road to the payment of a penalty is short. Only a few steps are needed:

- Motion for an Order and Order for the forfeiture of a penalty in case of future non-compliance.
- Enforcement Notice
- Non-compliance
- Separate order on penalty actually to be paid

### **ORDER FOR THE FORFEITURE OF FUTURE NON-COMPLIANCE**

Typically, a Claimant will file a motion for an order for forfeiture of penalties in case of non-compliance and typically the Court will render such order as part of the decision on the merits. Yet, the Claimant can file the motion later and the Court can render the order at a later moment in time.



The order (and of course the respective motion)

- shall specify a lump sum payment or a penalty per specified time period, per item, per act etc.
- can specify the time as of which penalties shall be payable (if not, the Claimant has to set a deadline, which if too short triggers a reasonable deadline with the Defendant having the burden of proof for any unreasonableness)

### **ENFORCEMENT NOTICE**

Any such order can only result in penalties if the Claimant has filed a motion with the Court which part of the decision they want to enforce. Translations are not necessary if the order is to be enforced by penalties set by the Court (otherwise only a translation of the operative part of a decision is needed).

### **NON-COMPLIANCE**

The Claimant has to show non-compliance, be it injunction or information, destruction, recall etc.

When it comes to enforcement of other duties than the injunction, it may be required that the completeness of information is confirmed by an accountant, that a copy of recall letters is sent or a list of addressees

of recall letters is provided, that destruction of infringing products is confirmed by a bailiff or other independent authority, etc. An explicit legal basis for this in the UPCA or the Rules of Procedure is not required, since this is a matter of evidence. It serves legal certainty and prevents disputes at the time of enforcement.

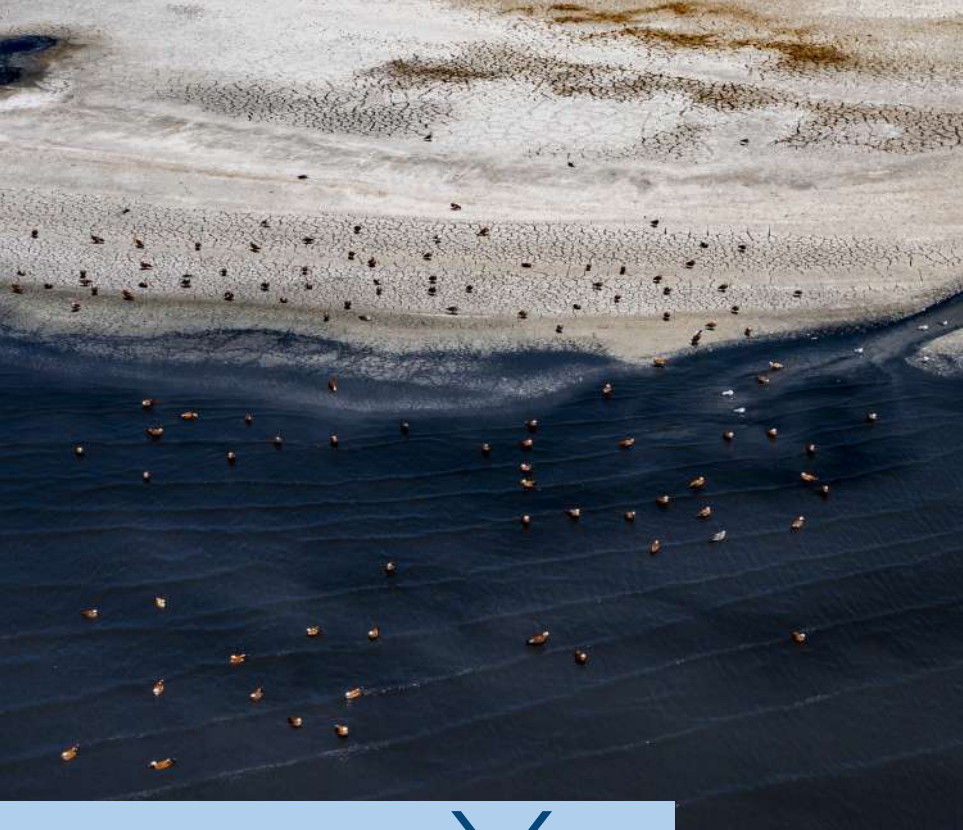
### **SEPARATE ORDER**

The Court does have to determine the penalty. The amounts determined in the decision (or subsequent order) for non-compliance should be the basis for calculating the amount payable. The Court may, however, deviate therefrom in favor of the Defendant for reasons of reasonableness and proportionality if the circumstances of the case so require. Relevant factors in this regard include, among others, aspects such as the severity of the established breach, its duration and the Defendant's ability to pay.

### **AMOUNT OF PENALTIES**

Amounts can be severe and a lot higher than under German law. Given that penalties can be provided per day or act, waiting for the first penalty decisions to issue is not an option.

<sup>10</sup> *Fujifilm v. Kodak, CoA, UPC\_CoA\_699/2025, October 14, 2025 (Link).*



CASE X

## CoA in Philips v. Belkin

on Directors' Liability for Patent Infringement  
and the Availability of Corrective Measures

In this decision rendered on October 3, 2025 (UPC\_CoA\_534/2024, UPC\_CoA\_19/2025 and UPC\_CoA\_683/2024)<sup>11</sup>, the CoA held that according to Art. 63(1) and 25 UPCA, an infringer is also someone who does not carry out the infringing acts himself, but to whom the infringing acts are attributable, such as an instigator, accomplice or accessory to the company's infringement. A managing director of a company would not be automatically liable – rather, his liability would require actions that go beyond his ordinary professional duties. This was the case if the managing director deliberately uses the company to infringe, or if he knows that the company is infringing, but fails to stop it, even though this was possible and reasonable. Important to note, according to the CoA, liability of a director would require awareness of the illegality of the conduct. In this case, the directors had obtained legal advice concluding that the relevant acts did not infringe – which was sufficient to negate liability.

Equally important, the CoA confirmed that corrective measures – such as recall, removal from channels of trade, and destruction – were the default remedies. It was on the infringer to demonstrate that such measures were disproportionate.



<sup>11</sup> *Phillips v. Belkin*, CoA, UPC\_CoA\_534/2024, October 3, 2025 ([Link](#)).



# CASE XI

## CoA in Boehringer Ingelheim v. Zentiva

on Imminent Infringement  
and Bolar Exemption

The CoA's August 2025 decision in *Boehringer Ingelheim v. Zentiva*<sup>12</sup> is one of the UPC's first major life-sciences rulings on "imminent infringement." The UPC has now developed a legal test based on whether the alleged infringer has already "set the stage" for infringement to occur, meaning that

all practical launch preparations have been completed and infringement depends only on the company's own restraint.

Boehringer sought provisional measures against Zentiva over generic nintedanib products intended to compete with Ofey®, protected by EP 1 830 843 until December 2025. The Court confirmed that a marketing authorization alone is insufficient, but held that completion of pricing, reimbursement, and procurement preparations may establish imminent infringement where commercialization could begin almost immediately.

The Court focused heavily on the Portuguese regulatory framework. Zentiva had already secured marketing authorizations, pricing approval, and Prior Evaluation Procedure (PEP) approval more than a year before patent expiry, enabling public hospitals



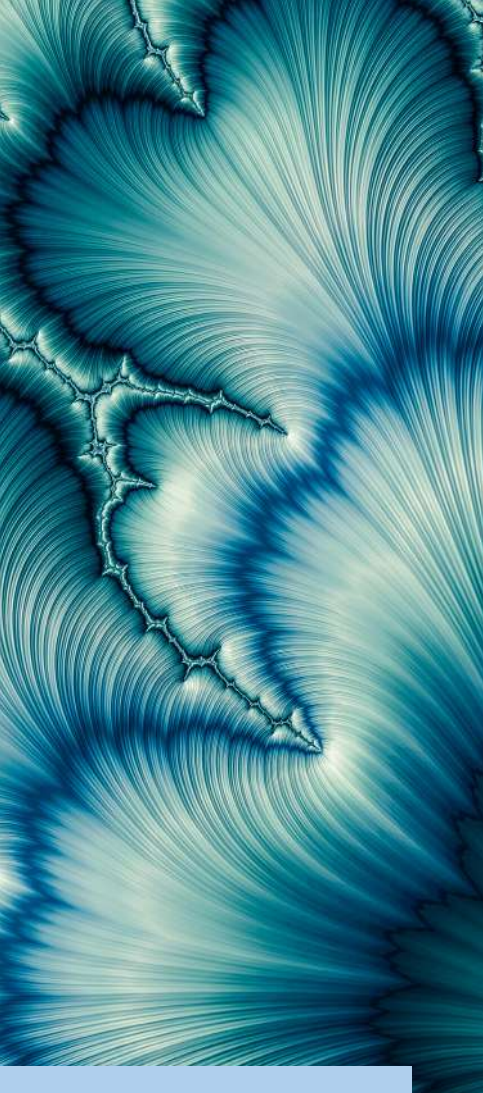
to acquire the generic medicine with minimal additional formalities. The Court concluded that the remaining INFARMED notification process was merely a short administrative formality and that Zentiva could therefore begin offering the product without meaningful further barriers. The judges also rejected Zentiva's reliance on the current Bolar exemption, emphasizing that existing EU law does not yet extend the exemption to pricing and reimbursement activities, despite proposed reforms under the draft EU Pharmaceutical Directive (COM (2023) 192 final, 2023/0132 (COD)), which would broaden regulatory safe harbors for generics.

As a result, the Court overturned the first-instance decision and granted a UPC-wide preliminary injunction covering all UPC states where the patent was in force. Zentiva was prohibited from making, offering, marketing, importing, or storing the generic prod-

ucts for the patented indication and faced penalties of up to EUR 10,000 per infringing package. The ruling is significant because it gives patentees a proactive enforcement tool before actual market launch, especially in pharmaceutical disputes where generics have completed reimbursement and procurement preparations ahead of patent expiry.

At the same time, the decision highlights the growing tension between patent enforcement and the EU's broader policy objective of expanding the Bolar exemption to facilitate earlier generic market entry.

<sup>12</sup> *Boehringer Ingelheim v. Zentiva, CoA, UPC\_CoA\_446/2025 et al., August 13, 2025 (Link).*



# CoA in Valinea v. TIRU

## on Requirements for Preservation of Evidence

According to Art. 60 UPCA, the Court may, even before commencement of proceedings on the merits, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement at the request of an Applicant which has presented reasonably available evidence to support the claim that the patent has been infringed or is about to be infringed. Such order for preservation can be granted *ex parte* or *inter partes*, after an oral hearing (see especially R. 194.1 RoP). In this context, the question of urgency of the action is of crucial importance, becoming especially decisive in the case of trade shows. In its decision *Valinea vs. TIRU*, the CoA confirmed its duty to determine whether the limits of the discretionary power of the Court of First Instance have been exceeded or whether the Court of First Instance, in exercising this discretion, has made an error of law.

## CASE XII

In *Valinea vs. TIRU*, the CoA upheld the Court of First Instance's order to preserve evidence *ex parte*. It ruled:

- The Court must distinguish between the assessment of urgency in the context of an application for preserving evidence and the assessment of urgency in the context of an application for provisional measures. While with regard to the latter the Court shall also have regard to any unreasonable delay in seeking provisional measures, this argument is not at stake with regard to an application for preserving evidence, it is not imposed either by the UPC Agreement or by the Rules of Procedure for an application for preserving evidence.
- When deciding on urgency, the Court takes into account whether there exists the probability or a demonstrable risk that evidence will be destroyed. The Court does not require that destruction of evidence is certain, though.

→ The CoA points out a second difference from provisional measures. For provisional measures, the Court must among others be satisfied with a sufficient degree of certainty that the patent is valid, while no such criterion is required within the framework of the Court's discretion to order measures to preserve evidence. This matter remains solely within the competence of the judge ruling on the merits or on the provisional measures, except where the presumption of validity can clearly be called into question, for example following a decision by a Board of Appeal of the European Patent Office in a parallel opposition procedure or in a revocation proceeding before a national Court concerning the same patent.

Thus, the Applicant is not obliged to identify and disclose prior art of which it may be aware, unless such prior art is, for specific reasons, likely to influence the *ex parte* decision to be taken.

<sup>13</sup> *Valinea vs. TIRU*, CoA, UPC\_CoA\_002/2025, July 15, 2025 ([Link](#)).

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