

42. UPC Keynotes

Interpretation of the claim and the role of the expert

How should a patent claim be interpreted by the Court? And how far is the expert's opinion relevant? The UPC Court of Appeal has provided clarifications on this issue in a recent order issued on April 30th, 2025.

The relevant case involved the US based company Insulet Corporation (hereinafter referred to as "Insulet") challenging the first instance decisions rendered in favour of the Korean EOFlow Co. Ltd. (as former Defendant, then as Respondent, and hereinafter referred to as "EOFlow").

Insulet is a medical devices seller US company and holds an European Patent with Unitary Effect (no. 4201327) relating to an infusion pump for delivering therapeutic liquids to a patient.

As known, Insulet started a series of actions for infringement of its patent, in particular by suing on a hand EOFlow before the UPC Central Division – Milan seat, and, on the other hand and for the same reason (patent infringement), A. Menarini Diagnostics S.r.l. (hereinafter referred to as "Menarini") before the UPC Local Division of Milan.

Among the grounds on which the appeal was lodged, Insulet considered that the skilled person should had better understood the features of the patent claims and that the UPC Central Division in the first instance proceedings did not understand the teaching of the relevant US'994 correctly.

On this issue and on the contrary, EOFlow responded arguing that the skilled person understood correctly the features of the patent claims as well as the UPC Central Division did with regard to the US'994. Therefore, the first instance's decision was correct. EOFlow relied on the opinion of their own party expert regarding both the interpretation of the patent and the understanding of US '994 by a person skilled in the art. Furthermore, EOFlow argued that this opinion should be followed because Insulet had not provided an expert opinion of its own.

The Court expressly disagreed with these arguments and specified the following:

- "The interpretation of a patent claim is a matter of law";
- The Court cannot leave the judicial task of interpreting the patent claim to an expert;
- The Court has to construe the claim independently from the expert's opinion;
- A claim construction is based on what the person skilled in the art understands of the terms used in the patent claim, in the context of the patent claim as a whole, also considering the description and drawings;

- “The skilled person is a notional entity that cannot be equated with any real person in the technical field of the invention;
- The decisive factor is not the individual knowledge and abilities of a person, but rather the general specialist knowledge that is customary in the relevant field of technology, as well as the average knowledge, experience, and abilities in this specialist field. It is for the Court, not the expert, to assess these circumstances.
- However, if these circumstances concern facts that can be proven, the Court shall consider the expert opinions submitted by the parties with respect to such facts”.

In this respect, too, we can see how a jurisprudence of this new court is forming that allows us to better understand the scope and limits of its rules.

You can find the relevant decision here: https://upc.law/wp-content/uploads/2025/05/UPC_CoA_768_2024_Luxembourg_30_04_2025.pdf