



UPC_CFI_386/2024
UPC_CFI_610/2024

Decision
of the Court of First Instance of the Unified Patent Court
Local Division of the Hague
delivered on 10/10/2025
concerning: infringement action and counterclaim for revocation as
well as a declaration of non-infringement

HEADNOTES

1. Infringement action about shelf dividers. Patent valid and infringed. Indirect infringement. Long-arm jurisdiction.
2. Counterclaim for declaration of non-infringement with revised product held inadmissible. There was no assertion of infringement prior to instituting the counterclaim nor had defendant applied in writing for an acknowledgement as meant in R. 61.1 RoP. Such assertion may not be deduced from the mere fact that the patent was invoked with respect to a different product. Relevant date is marked by the launch of the counterclaim. Failure to respond with an acknowledgement within 30 days from counterclaim does not trigger R. 61.1.b RoP, as it would run counter to the very point of R. 61.1 RoP: to prevent the commencement of unnecessary proceedings for a declaration of non-infringement when the proprietor or its licensee did not yet assert the patent with respect to a certain product (or process). It would also mean that effectively R. 61.1.a and b would be rendered redundant.

KEYWORDS

Infringement; validity; added matter; inventive step; counterclaim for declaration of non-infringement; inadmissible; long-arm jurisdiction;

CLAIMANT

- | | | |
|----|---|-----------------------------------|
| 1) | HL Display AB
(Claimant) - 131 26 Nacka Strand - Box 1118 -
Stockholm - SE | Represented by Gertjan
Kuipers |
|----|---|-----------------------------------|

DEFENDANT

- 1) **Black Sheep Retail Products B.V.**
 (Defendant) - Betsy van Goorstraat 22 -
 6702DC - Wageningen - NL

Represented by Tjibbe Douma

PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor/s</i>
EP2432351	HL Display AB

DECIDING JUDGES

Presiding judge and Judge-rapporteur	Edger Brinkman
Legally qualified judge	Margot Kokke
Legally qualified judge	Mélanie Bessaud
Technically qualified judge	Koen Callewaert

LANGUAGE OF PROCEEDINGS: English

SUBJECT-MATTER OF THE PROCEEDINGS

Infringement claim and counterclaim for revocation as well as a declaration of non-infringement (the admissibility of which is contested)

Claimant is hereinafter referred to as “**HL Display**” or “**Claimant**”. Defendant is hereinafter referred to as “**BSRP**” or “**Defendant**”.

PROCEDURE

1. The Court refers to the above-mentioned case files in the CMS for a list of submissions and exhibits.

1.1. The oral hearing took place on 22 August 2025.

1.2. At the oral hearing, also the two panel review requests were discussed. These concerned applications to deposit two physical objects dated 24 February 2025 (regarding the old and new product 2) and dated 5 June 2025 (regarding three further objects). The JR had dismissed both applications for lack of explanation why they could not have been filed earlier (see ORD_35239/2025 and ORD_28264/2025 respectively). The full panel, having heard the

parties, decided to overturn the JR decision on deposit of the old and new product 2 but to uphold the JR decision to dismiss the deposit of three further items.

1.3. In response to HL Display's objection¹, the panel further indicated that the novelty attack developed in its reply in the counterclaim by BSRP, was inadmissible because no proper reason had been given why it could not have been raised earlier, i.e. in the counterclaim itself. It did not follow from a further development of the arguments.

SUMMARY OF FACTS

2. The application is based on the following facts:

2.1. Claimant

2.1.1. HL Display is a Swedish-based company that is specialized in innovative and sustainable solutions for a better shopping experience. It is an international supplier of products and solutions for in-store communication and merchandising to the food and non-food retail sectors. HL Display distributes within Europe – among other things – a system for securing shelf accessories to a shelf.

2.2. Defendant

2.2.1. BSRP is a Dutch company that focuses on designing, producing and offering a broad range of no-nonsense products for the retail industry (shelf presentation solutions), such as shelf storage systems, shelf trays, shelf dividers and counter display units, shopping baskets and the like.

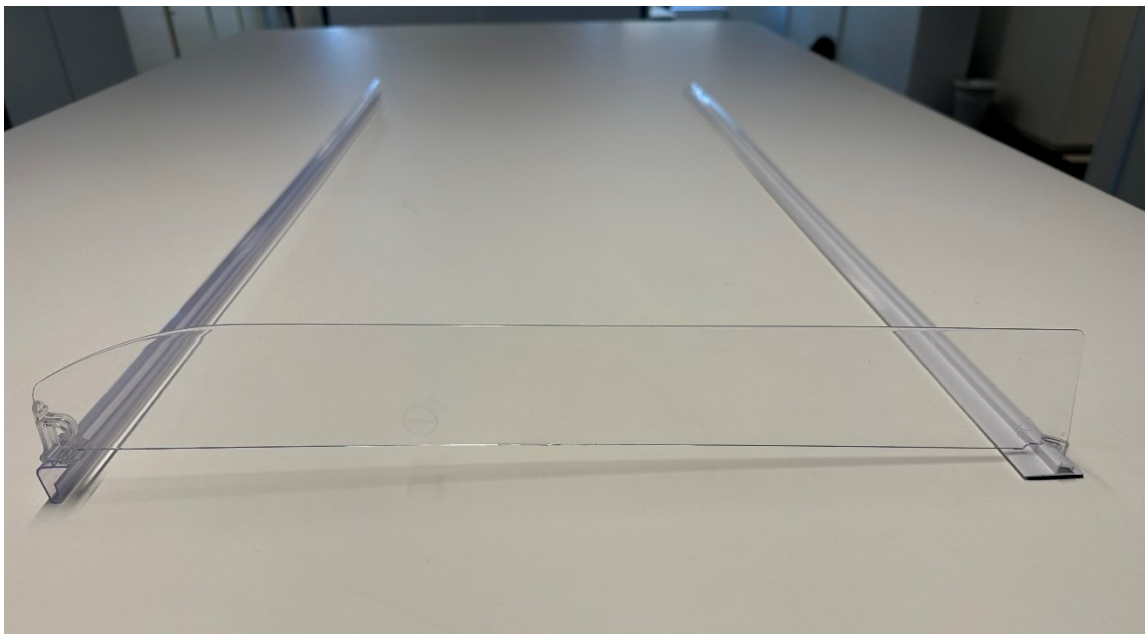
2.3. Mutual customer: Kruidvat

2.3.1. Kruidvat is a subsidiary of A.S. Watson Group, which is in turn a subsidiary of CK Hutchinson Holdings Limited. A.S. Watson Group releases tenders for the Benelux regarding the supply of shelf divider products. A tender is a formal invitation to suppliers to bid for a contract to supply these products or services. The A.S. Watson Group tenders cover the supply of products for Kruidvat (a large drugstore chain in the Netherlands and Belgium). Several companies seem to compete in these tenders. BSRP understands that HL Display was the first to supply Kruidvat with its shelf divider products (likely in the 2010-2014 timeframe).

2.3.2. Bruegmann had won one of the tenders (likely in the 2014-2016 timeframe). Subsequently, HL Display had won a tender (likely in the 2016-2018 timeframe). Since then, HL Display has not won the tender anymore. BSRP won the tender in recent years. As a result of the tenders as from 2019, BSRP's shelf accessory products have been on the market within the territory for which the patent at issue – granted on 27 June 2018 – has been validated (the "Territory") since at least September 2019. The last tender was for the period of 2023-2025. The products in this product category generally have a lifetime of around 10 years. Consequently, a total of approximately 1.100 Kruidvat stores are equipped with (a mix of) shelf accessory products from HL Display, Bruegmann and BSRP.

¹ Rejoinder to the reply to the defence to the counterclaim of 19 March 2025, chapter 4 (pages 24/5)

2.3.3. The products BSRP delivered to Kruidvat look like this:



2.4. The patent

2.4.1. The patent EP 2 432 351 B1 (hereinafter “**the patent**” or “**EP 351**”), was granted on 27 June 2018 and has an application date of 19 May 2010. It will expire on 19 May 2030. No opposition has been filed against the patent and – to the knowledge of HL Display – there are no prior or pending proceedings relating to the patent before the UPC or any national court or authority (including any action for revocation or a declaration of non-infringement). The patent is in force

in Austria, Belgium, Switzerland, Germany, France, United Kingdom, Ireland, Italy, Liechtenstein, the Netherlands, Norway, Poland, Portugal and Sweden.

2.4.2. The patent is titled “*System for securing shelf accessories to a shelf*”. The patent has 7 claims. HL Displays asserts claims 1, 2 and 5.

2.4.3. The independent claim 1 reads as follows, divided into features:

1.1	System for securing shelf accessories to a shelf, comprising
1.2	a front securing device (20), which is configured for fixing to the front edge of a shelf,
1.3	a rear securing device (30) comprising an elongated profiled element having a cross-sectional profile, with a lower base plate (31), a first arm (32) projecting upwards from the base plate, and a second arm (33), with a rear end (33a), projecting rearwards from the first arm and being configured for fixing on top of a shelf substantially parallel with the longitudinal direction of the shelf, and
1.4	a shelf accessory (10) having a front engagement member (11) configured for engagement with the front securing device, as well as a rear engagement member (40) comprising a forward projecting third arm (43) configured for engagement with the rear securing device and comprising a front end (44), which third arm (43) is configured to, in mounted position, be received between the base plate (31) and the second arm (33) of the profiled element of the rear securing device (30), wherein
1.5	the rear securing device (30) and the rear engagement member (40) are configured to allow rotation of the shelf accessory (10) about an axis which is substantially parallel with the longitudinal direction of the profiled element when the rear engagement member (40) is in engagement with the rear securing device (30) characterized in that
1.6	the rear securing device (30) comprises a first stop face (32a) which is constituted by a forward-facing surface of the first arm (32),

1.7	the rear engagement member (40) comprises a second stop face (47) which is constituted by a rearward-facing surface disposed in front of the front end (44) of the third arm, wherein the distance (B) between the second stop face (47) and the front end (44) of the third arm is less than the distance (A) between the first stop face (32a) and the rear end (33a) of the second arm and in that
1.8.1	said first (32a) and second (47) stop faces are configured to be brought into and out of mutually overlapping relation in the vertical direction by rotating the shelf accessory (10) about said axis,
1.8.2	such that the first (32a) and second (47) stop faces, in mutual contact, prevent the rear engagement member (40) from being disengaged from the rear securing device (30) when the shelf accessory (10) is held substantially parallel with the top side of the shelf and the first and second stop faces thereby are vertically overlapping,
1.8.3	and to allow the rear engagement member (40) to be released from the rear securing device (30) when the front end of the shelf accessory has been lifted such that the shelf accessory has assumed an angle to the top side of the shelf and the first and second stop surfaces thereby are vertically non- overlapping.

2.4.4. **Claim 2** is dependent of claim 1 and reads as follows:

2.1	System according to any one of Claim 1, in which the rear securing device (30) or the rear engagement member (40) comprises a friction member,
2.2	which is made of an elastic material.

2.4.5. **Claim 5** is dependent of claims 1 to 4 and reads as follows:

5.1	System according to any one of Claims 1-4, in which the rear securing device (30) comprises a magnet for fixing the rear securing device to a shelf comprising a magnetic material.
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2.4.6. The description contains the following:

Field of the invention

[0001] The present invention relates to a system for securing shelf accessories to a shelf. The invention also relates to a shelf comprising such a system. The invention is especially well suited to the securement of shelf dividers, feed devices and other shelf accessories for use with shop shelves.

Background of the invention

[0002] In general stores, for example, goods are often displayed on shelves. In order to improve the display of the goods and facilitate the loading and unloading of the goods, a host of different accessories, such as shelf dividers, various types of feed devices, and various types of product trays, etc. are used. Such accessories are often fixed to the shelves.

[0003] According to the prior art, the accessories can be fixed to the shelf in a number of different ways, for example mechanically with screws or the like, by snap fastening or by adhesion with double-sided adhesive tape or the like.

[0004] The arrangements which are used to fix the accessories to the shelves should have some basic characteristics. One important characteristic is that it should be possible to fix the accessories in arbitrary positions along the length of the shelf, so that the distances between the accessories can be made arbitrarily long to fit different packagings and quantities of goods. In addition, the accessories should be firmly secured to the shelf to prevent them from being accidentally removed or displaced from their intended positions.

[0005] The securement of the accessories should also ensure that they stand steady, so that they do not tilt. In this context, it is of great importance that firm securement is ensured, at the same time as the securing arrangement allows the accessories to be easily fastened and removed.

[0006] The accessories should be secured to the shelf both at its front and rear end in order to prevent either end of the accessory from being lifted from the shelf. Especially if the accessory comprises a front plate or front stop plate which the goods rest against, for example in the case of a sloping shelf or a feed device, the force of the goods upon the front plate produces a turning moment upon the accessory, which endeavours to lift the rear portion of the accessory from the shelf. Such lifting of the rear end of the accessory is naturally undesirable, since it can cause disorder on the shelf and can result, moreover, in the front end of the accessory being turned out of its engagement with a front securing device, whereupon both the accessory and the goods can crash down from the shelf.

[0007] A desired characteristic is that it should be possible to arrange a shelf with a simple manoeuvre by first fitting the desired number of accessories to the shelf and then displacing them along the shelf into the definitive position of the respective accessory, so as finally to fix the accessories in these positions.

[0008] Even once the shelf is arranged and the accessories are placed in their respective positions, it is sometimes necessary to reorganize the shelf, with one or a few shelf dividers having to be moved, taken away or fastened. This is the case, for example, when the distance between two shelf dividers has to be adapted to a new product or product packaging of different dimensions. In order to facilitate such reorganization of parts of an already arranged shelf, it is therefore desirable for individual accessories to be able to be displaced along the shelf into a new position.

[0009] In the arrangement of a new shelf and in the reorganization of an already arranged shelf, it is desirable to be able to displace the accessories along the shelf by taking hold of just the front edge of the accessory and shifting the entire accessory by guiding the front edge in either direction. This eliminates the need to reach one arm and the hand in towards the rear end of the accessory so as simultaneously, with both hands, to displace both ends of the accessory along the shelf. Such simultaneous displacement of both ends of the accessory is both strenuous and ergonomically disadvantageous and complicated to perform, especially if the distance between shelves arranged one above the other is small and if goods present on the shelf make access to the rear end of the accessory difficult.

[0010] In addition, the arrangements for the securement of the accessories should be aesthetically appealing, should not unnecessarily hinder loading or unloading of goods onto or from the shelf or adjoining shelves, and should be simple and cheap to produce and assemble.

[0011] It is desirable, moreover, that the arrangements for securing accessories to a shelf should be able to be directly applied to pre-existing shelves without the need to exchange or adapt these existing shelves.

[0012] Apart from the fact that the accessories should be releasable from the shelf, it is an advantage if the fastening devices with which the accessories are fixed to the shelf are also detachable. This makes it easier, inter alia, to keep the shelves clean and to carry out major reorganizations of the shelves. Recently, magnetically working securing devices have therefore become increasingly popular. These fastening devices comprise a magnet, usually one or more thin permanent magnets with which the securing device can be detachably fixed to shelves made of magnetic material, such as steel. Once the securing device has been fixed magnetically to the shelf, the accessories can be detachably fixed, for example by snap-fastening action, to the securing devices.

Prior art

[0013] [DE 299 02 933 U1](#) describes a device for securing a shelf divider. The shelf divider comprises at its front and rear end mutually pretensioned jaws, which can grasp a front and a rear T-rail jutting up from the shelf. In order to allow displacement of the shelf divider along the shelf, both the front and rear jaws are required to be separated by the application of a separation force to a purpose-built member disposed on the front and rear jaws. It is therefore necessary to reach in to the rear end of the divider in order to allow decoupling and displacement of the divider.

[0014] WO 03/005862 A2 and [US 5,803,276](#) describe systems for securing shelf accessories. In these systems, the rear end of the accessories is held fixed to the shelf by means of snap-fastening engagement with a rail jutting up from the shelf. In these systems, too, it is necessary to reach in to the rear end of the shelf accessory in order to obtain release of the rear end and thus allow displacement of the accessory.

[0015] [WO 2005/084498](#) describes a system for securing shelf accessories, in which the rear end of the accessory has a first hook which engages with an oppositely directed second hook disposed on the shelf. The second hook is configured as a profiled element extending in the longitudinal direction of the shelf. With this system, securement of the rear end of the shelf accessory is obtained in the direction perpendicular to the shelf plane. This solution, however, offers no securement of the rear end of the accessory in the longitudinal direction of the shelf.

[0016] SE 531 411 C2 describes a system for fixing accessories to a shelf, which system comprises a rear securing device. The rear securing device resembles in certain respects the rear securing device described in [WO 2005/084498](#), but additionally comprises a friction rail which, in contact with a rear engagement member disposed on the shelf accessory, also ensures firm securement of the rear end of the shelf accessory in the longitudinal direction of the shelf.

[0017] The systems described in [WO 2005/084498](#) and SE 531 411 C2 offer good securement of the accessories under normal use and simple release, as well as relocation of the accessories. If the accessories are mistakenly disengaged from the front securing device, or if the front securing device is mistakenly displaced relative to the shelf, in these systems it can happen, however, that the rear engagement member disposed on the accessory is accidentally disengaged from the rear securing device. This can, in turn, cause the accessory to tip over or come loose from the shelf, which is not desirable. If the front securing device is magnetically fixed to the shelf, a knock against the shelf accessory or the front securing device can bring about rearward displacement of the front securing device and hence of the accessory. The rear engagement member of the accessory can then be disengaged from the rear securing device. There is consequently a risk that disorder is created on the shelf, for example if a passing customer happens to knock against a front securing device or an accessory with a customer trolley or a goods basket.

Summary of the invention

[0018] One object of the invention is therefore to provide an improved system for securing shelf accessories to a shelf.

[0019] Another object is to provide a system of this kind which deters the rear engagement member of the accessory from mistakenly being disengaged from the rear securing device.

[0020] A further object is to provide a system of this kind which allows simple intentional release and repositioning of the accessory.

[0021] One more object is to provide a system of this kind which allows simple repositioning of the accessory and which nevertheless allows the rear end of the shelf accessory to be firmly secured in mounted position.

[0022] Yet another object is to provide a system of this kind which is simple and relatively cheap to produce and easy to use with different types of shelves.

[0023] These and other objects are achieved with a system of the kind which is defined in the preamble to patent Claim 1 and which has the distinguishing features defined in the characterizing part of the claim.

[0024] By virtue of the interacting stop faces on the rear engagement member of the shelf accessory, and the rear securing device, the rear end of the accessory is simply and effectively deterred from accidentally coming loose from the rear securing device if, for example, the front end of the shelf accessory or the front securing device suffers a knock or the like. This is especially advantageous if the front securing device is fixed to the shelf by means of a magnet, since such magnetic fixing can cause the front securing device and the accessory to be displaced rearwards towards the rear securing device if, for example, a passing customer happens to knock against the accessory or the front securing device. At the same time, the system according to the invention allows very simple intentional release of the engagement between the rear engagement member of the accessory and the rear securing device by deliberately releasing the front engagement member from the front securing device and thereafter simply lifting the front end of the accessory and guiding the accessory somewhat in the rearward direction. After this, the accessory can be released and/or displaced easily, and without the need to reach a hand into the rear end of the accessory, into a new position in which it can be refixed by lowering the front end of the accessory and bringing the front engagement member into engagement with the front securing device.

[0025] In the system according to the invention, the profiled element of the rear securing device has a cross-sectional profile, with a lower base plate, a first arm projecting upwards from the base plate, and a second arm, with a rear end, projecting rearwards from the first arm. The rear engagement member expediently comprises a forward-projecting third arm with a front end, which third arm is configured to, in mounted position, be received between the base plate and the second arm of the profiled element of the rear securing device. The first stop face is then expediently constituted by a forward-facing surface of the first arm and the second stop face is expediently constituted by a rearward-facing surface disposed in front of the front end of the third arm, the distance between the second stop face and the front end of the third arm then expediently being less than the distance between the first stop face and the rear end of the second arm.

[0026] This ensures that the rear engagement member is in engagement with the rear securing device even if the accessory has been displaced rearwards relative to the rear securing device to the point where the two stop faces have come into contact with each other. At the same time, intentional disengagement of the rear engagement member from the rear securing device is made possible.

[0027] The securing device and the rear engagement member are configured to allow rotation of the shelf accessory about an axis which is parallel with the longitudinal direction of the profiled element when the rear engagement member is in engagement with the rear securing device. This enables the rear engagement member to be easily disengaged from the rear securing device by deliberately lifting the front end of the accessory by a predetermined distance from the top side of the shelf and thereafter displacing the accessory somewhat in the rearward direction. In this way, the rear end of the accessory can be released easily, and in an intuitively easily comprehensible manner, for removal or repositioning, for example by displacement of the accessory along the longitudinal direction of the shelf.

[0028] Either the rear securing device or the rear engagement member expediently comprises a friction member, which is made of an elastic material. The friction member allows, through frictional interaction with a corresponding member of the other of the rear securing device and the rear engagement member, a friction force between them which is sufficiently large to prevent displacement of the rear end of the accessory along the profiled rail under normal use. Moreover, the elastic friction member exerts a clamping force which ensures an engagement without unwanted play.

(...)

[0040] The rear securing device 30 is constituted by an extruded or injection-moulded profiled element of substantially uniform cross section over the whole of its length. The cross section of the rear securing device has a bottom plate 31, a first arm 32 projecting upwards from the bottom plate 31, and a second arm 33 projecting rearwards from those ends of the first arm 32 which are distal to the bottom plate. The first arm 32 has, on an end portion distal to the bottom plate, a forward-facing first stop face 32a. The second arm 33 has a free rear end 33a. A friction member in the form of an elastic friction rail 34 projecting upwards from the bottom plate 31 is arranged essentially below the rear end 33a of the second arm. The bottom plate 31, the first 32 and the second 33 arm are made of

PVC, whilst the friction rail 34 is made of softened PVC. The rear securing device 30 is expediently produced by co-extrusion of these two materials, which gives a simple and cheap production of the rear securing device. A thin, ribbon-shaped permanent magnet (not shown) is fixed to the bottom side, facing away from the first arm 32, of the bottom plate 31. In the illustrative embodiment, both the front and the rear securing devices comprise an elongated, ribbon-shaped magnet, which extends substantially along the full length of the respective profiled element. It is also possible, however, for each profiled element to be provided on its bottom side with a plurality of magnets distributed along the length of the profiled element.

[0041] The shelf accessory 10 further comprises a rear engagement member 40. The rear engagement member has a continuous recess 41 disposed close to the rear, lower corner of the shelf accessory. The recess 41 is delimited in the rearward direction by a downward-jutting portion 42. A third arm 43 projects in the forward direction from the lower end of the downward-jutting portion 42. The third arm has a front free end 44. The recess 41 is further delimited by a first, rear edge portion 45 of the shelf accessory 10, which slopes forwards and upwards from the downward-jutting portion 42, and by a second front edge portion 46 of the shelf accessory. The second edge portion 46 is disposed in front of the first edge portion 45 and has a horizontal part 46a and a part 46b which is curved downwards in front of the horizontal part. A second, rearward-facing stop face 47 is disposed between the first 45 and second 46 edge portion and extends substantially vertically between these edge portions.

[0042] As can most clearly be seen from Fig. 3, the first stop face 32a of the rear securing device 30 is arranged at a certain distance A from the rear end 33a of the second arm 33. The second stop face 47 of the rear engagement member 40 of the shelf accessory 10 is arranged at a certain distance B from the front end 44 of the third arm 43. The distance B is less than the distance A.

[0043] With reference to Figs. 4a-c, the use of the system is described below. The front securing device 20 is fixed to the shelf, which is made of steel, by quite simply placing the securing device on top of the shelf, on or close to the front edge of the shelf and substantially parallel therewith. The front securing device 20 is hence held in place by the magnetic force. Correspondingly, the rear securing device 30 is fixed on or close to the rear edge of the shelf, substantially parallel with the front securing device 20. The two securing devices 20, 30 are fixed at a distance apart corresponding to the distance between the front 11 and rear 40 engagement member of the shelf accessory 10 to be fixed to the shelf.

[0044] When a shelf accessory is to be fixed to the shelf, it is brought in over the shelf, approximately to the position shown in Fig. 4a, so that the front 11 and rear 40 engagement members are placed approximately above the respective securing device 20, 30. After this, the rear end of the shelf accessory 10 is guided down towards the rear securing device 30, and the third arm 43 of the rear engagement member 40 is slipped in between the bottom plate 31 and the second arm 33 of the rear securing device 30 (see Fig. 4b). The friction rail 34 is hereby elastically deformed, whereupon the friction rail 34 comes to exert an upwardly directed force which presses the third arm 43 upwards so that it comes to bear against the bottom side of the second arm 33 of the rear securing device 30. Once the rear engagement member 40 has thereby entered into engagement with the rear securing device 30, the front end of the shelf accessory is guided downwards until the front engagement member 11 has been snap-fastened around the upward-projecting rail 22 of the front securing device 20.

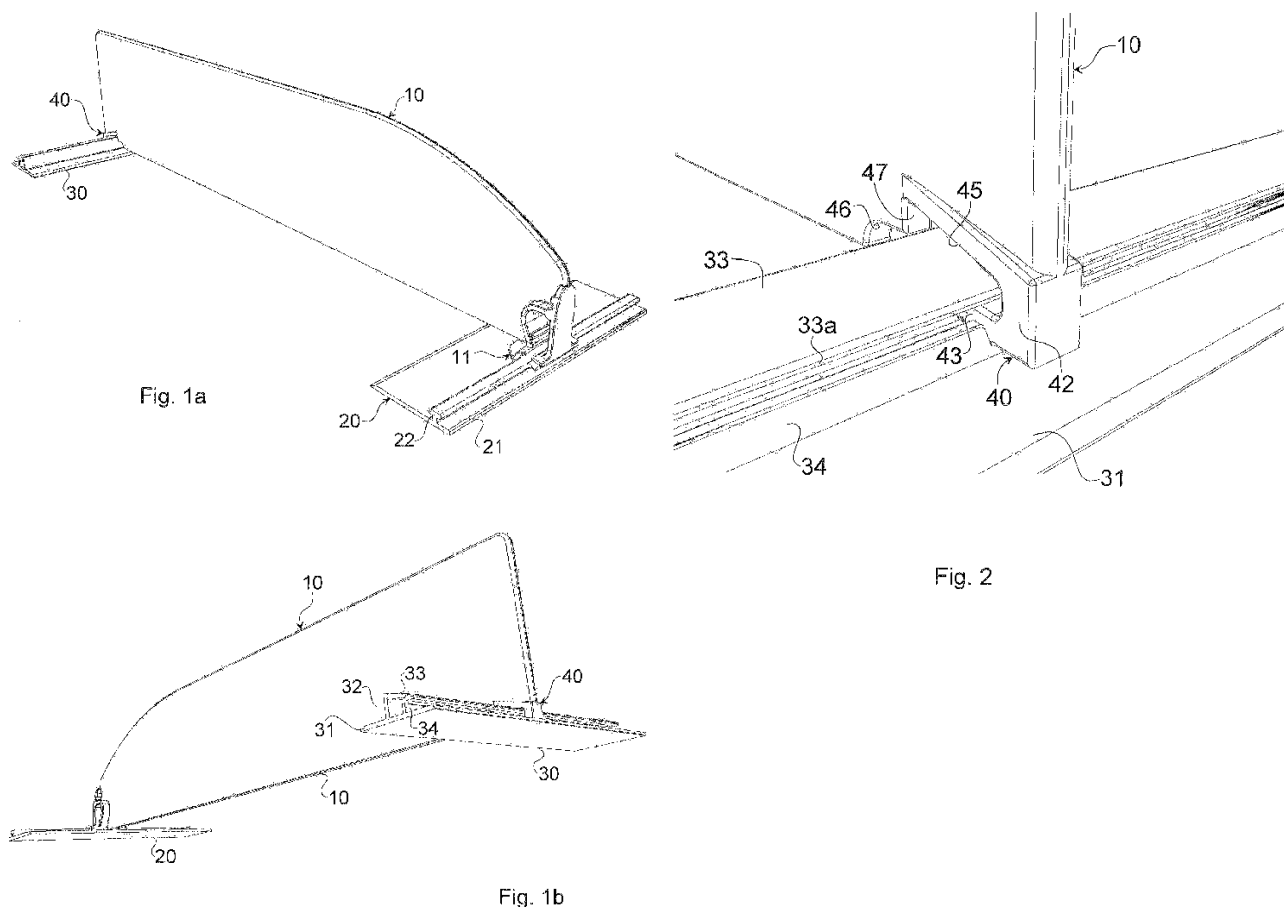
[0045] As the front end of the accessory is bent down in this way, the second stop face 47 of the rear engagement member 40 will be guided down in front of the first stop face 32a of the rear securing device so that the two stop faces 32a, 46 mutually overlap in the vertical direction. If, in this mounted position, the shelf accessory or the front securing device suffers a knock or the like, it can happen that the front engagement member 11 disengages from the front securing device 20, or that the front securing device 20 is displaced along the shelf in the rearward direction. The shelf accessory 10 is then consequently at risk of displacement in the rearward direction. In the event of such accidental rearward displacement of the shelf accessory, the second stop face 47 of the rear engagement member 40 comes to bear against the first stop face 32a of the rear securing device 30. Further relative displacement of the shelf accessory in relation to the rear securing device 30 is thereby deterred. Since the distance B is less than the distance A (see Fig. 3), the contact between the two stop faces will prevent the third arm 43 of the rear engagement member from disengaging from the rear securing device 30, between the second arm 33 and the bottom plate 31 and friction rail 34 respectively. In this way, the shelf accessory is thus simply and effectively prevented from accidentally coming loose from its engagement with the rear securing device, even if the shelf accessory comes loose from the front securing device or if the front securing device is displaced from its intended position on the shelf.

[0046] When the shelf accessory 10 is to be deliberately removed from the shelf, its front end is lifted upwards so that its front engagement member 11 comes loose from the projecting rail 22 of the front securing device 20. After

this, the front end of the shelf accessory, as the shelf accessory is rotated about an axis lying parallel with the longitudinal direction of the securing device 30, is lifted, until the second stop face 47 is above and detaches from the first stop face 32a and the first arm 32 of the rear securing device. The shelf accessory can thereafter be guided rearwards, whereupon the third arm 43 of the rear engagement member is disengaged from the rear securing device. The shelf accessory 10 can then be removed or displaced along the shelf into a new desired position in which it can be refixed to the shelf by making the rear 40 and front 11 engagement members engage with the rear 30 and front 20 securing device respectively, as has been described above.

[0047] The invention should not be deemed to be limited to the above-described embodiments, but can be varied within the scope of the following patent claims. For example, the accessory, instead of being constituted by a shelf divider, can be constituted by any other shelf accessory whatsoever which shall be fixed to the shelf. The system according to the invention can also comprise a number of different types of accessories which are fixed to a shelf. The constituent parts of the system can be made, of course, of a host of different materials. Furthermore, the front and/or the rear securing device, instead of comprising magnets for fixing to a shelf of magnetic material, can comprise other fixing means, such as double-sided adhesive tape, screw or rivet joints. The securing devices can also be fixed to a shelf by means of glue. In the case of sloping shelves, it can be especially advantageous to fix the front securing device by means of one or more magnets, whilst the rear securing device is fixed to the shelf by means of double-sided adhesive tape. The firmer securement which is obtained with the double-sided adhesive tape deters the constituent parts of the system from sliding forwards and downwards along the sloping shelf under the influence of gravity. This is especially advantageous if the accessories or the front securing device comprise stop plates which are rested against by the goods placed on the shelf. In the shown embodiment, a friction member in the form of a friction rail is arranged projecting upwards from the base plate of the rear securing device. In certain applications, however, the friction member can be dispensed with. The shown friction rail can also be replaced with other friction members, for example a friction rail projecting downwards from the free end of the second arm. In another embodiment, the friction member is constituted by a friction rail which projects upwards from the free end of the first arm.

2.4.7. The patent contains the following drawings:



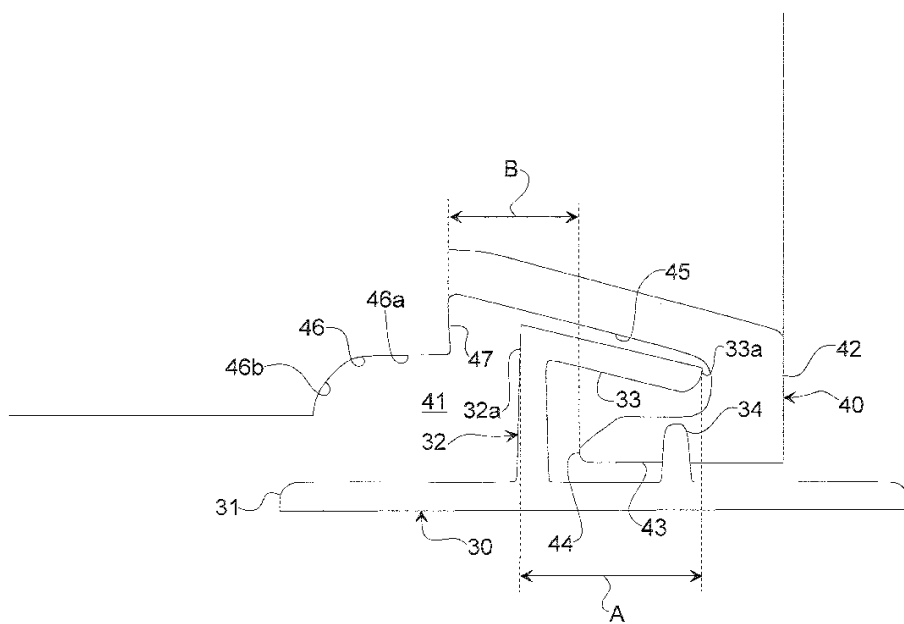


Fig. 3

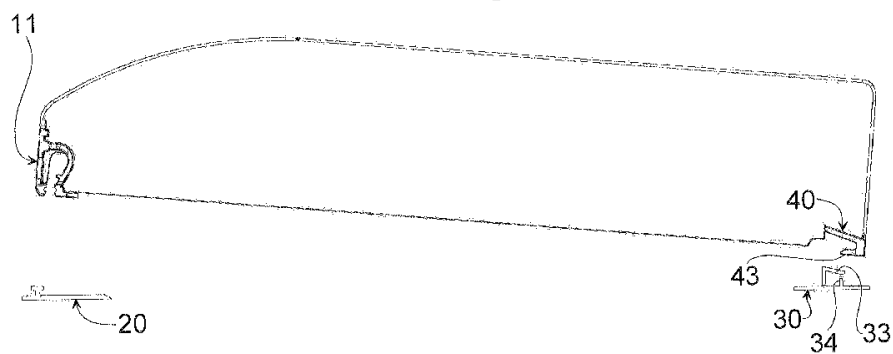


Fig. 4a

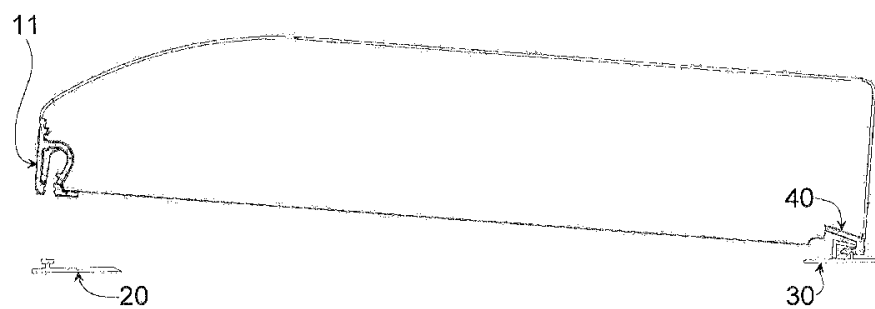


Fig. 4b

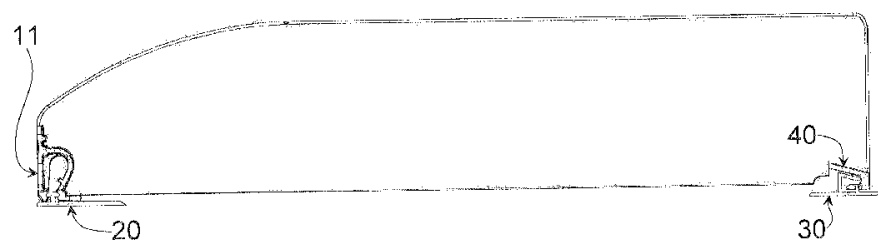


Fig. 4c

ORDERS SOUGHT BY CLAIMANTS

3. Asserting infringement of claims 1, 2 and 5, HL Display is seeking the following orders:

I. to order BSRP, immediately from the date of service of the judgment, to cease and desist from making, offering, placing on the market, using, and importing and storing for those purposes:

a) A system for securing shelf accessories to a shelf, comprising a front securing device (20), which is configured for fixing to the front edge of a shelf, a rear securing device (30) comprising an elongated profiled element having a cross-sectional profile, with a lower base plate (31) a first arm (32) projecting upwards from the base plate, and a second arm (33), with a rear end (33a), projecting rearwards from the first arm and being configured for fixing on top of a shelf substantially parallel with the longitudinal direction of the shelf, and a shelf accessory (10) having a front engagement member (11) configured for engagement with the front securing device, as well as a rear engagement member (40) comprising a forward projecting third arm (43) configured for engagement with the rear securing device and comprising a front end (44), which third arm (43) is configured to, in mounted position, be received between the base plate (31) and the second arm (33) of the profiled element of the rear securing device (30), wherein the rear securing device (30) and the rear engagement member (40) are configured to allow rotation of the shelf accessory (10) about an axis which is substantially parallel with the longitudinal direction of the profiled element when the rear engagement member (40) is in engagement with the rear securing device (30) characterized in that the rear securing device (30) comprises a first stop face (32a) which is constituted by a forward facing surface of the first arm (32), the rear engagement member (40) comprises a second stop face (47) which is constituted by a rearward-facing surface disposed in front of the front end (44) of the third arm, wherein the distance (B) between the second stop face (47) and the front end (44) of the third arm is less than the distance (A) between the first stop face (32a) and the rear end (33a) of the second arm and in that said first (32a) and second (47) stop faces are configured to be brought into and out of mutually overlapping relation in the vertical direction by rotating the shelf accessory (10) about said axis, such that the first (32a) and second (47) stop faces, in mutual contact, prevent the rear engagement member (40) from being disengaged from the rear securing device (30) when the shelf accessory (10) is held substantially parallel with the top side of the shelf and the first and second stop faces thereby are vertically overlapping, and to allow the rear engagement member (40) to be released from the rear securing device (30) when the front end of the shelf accessory has been lifted such that the shelf accessory has assumed an angle to the top side of the shelf and the first and second stop surfaces thereby are vertically non-overlapping;

b) In particular, wherein the system for securing shelf accessories to a shelf of subparagraph a) includes the feature that the rear securing device (30) or the rear engagement member (40) comprises a friction member, which is made of an elastic material;

c) In particular, wherein the system for securing shelf accessories to a shelf of subparagraphs a) and b) includes the feature that the rear securing device (30) comprises a magnet for fixing the rear securing device to a shelf comprising a magnetic material;

d) More in particular the BSRP product;

and to cease and desist from supplying and offering to supply means relating to an essential element of the invention (as set out above under a) - c)), for putting it into effect, such as a

shelf accessory (10) and a rear securing device (30), more in particular the shelf accessory of the BSRP product and the rear securing device of the BSRP product;

II. to declare that BSRP has infringed the patent EP 2 432 351 B1 by committing the acts as specified in I. above;

III. to order BSRP at its own expense, within one week after service of the judgment to be rendered in these proceedings to:

- a) recall and definitively remove the products as specified in the injunction order from all channels of commerce; and
- b) destroy all products as specified in the injunction order and which are in the custody or control of BSRP;

IV. to order BSRP, within three weeks after service of the judgment to be rendered in these proceedings, to inform HL Display of:

- a) the origin and distribution channels of the infringing products;
- b) the quantities produced, manufactured, delivered, received or ordered, as well as the prices paid for the infringing products; and
- c) the identity of any third person involved in the production or distribution of the infringing products;
- d) the number and dates of the products offered;
- e) the advertising carried out, broken down by advertising medium, its distribution, the distribution period and the distribution area, including evidence of these advertising activities;
- f) the costs, broken down by individual cost factors and the profits realised;

all substantiated by means of all relevant supporting documents, including but not limited to legible orders, order confirmations, invoices and copies of other purchase and sales documents;

V. to order BSRP to pay a recurring penalty of up to be imposed by the Court for every day, part of a day counting as a full day, that the order specified under I, III and IV is breached, or a penalty of EUR

250 for each individual product or part thereof with which the order specified under I, III and IV is breached;

VI. to declare that BSRP is liable to compensate HL Display for all damages that are incurred and will incur due to the acts specified I. above as to be specified separate damage proceedings;

VII. to order BSRP to pay the reasonable and proportionate legal costs of these proceedings and other expenses;

VIII. to declare that the orders according to items I, III, IV and VII are immediately enforceable notwithstanding any appeal.

DEFENDANT'S POSITION

4. Defendant argues that claimant's request is unfounded in several respects. Defendant alleges that the challenged embodiment does not realize features 1.3, 1.5, 1.6 and 1.8.1-1.8.3 nor claim 2 and 5, while further disputing indirect infringement. BSRP also proposed an alternative design, hereinafter referred to as product 2, which allegedly additionally lacks feature 1.7. For this they filed a declaration of non-infringement as a counterclaim. BSRP also claims the patent is invalid on the grounds of added matter and lack of inventive step and formulated a (second) counterclaim to revoke the patent. Finally, Defendants request that an injunction be made subject to the provision of security by HL Display pursuant to Art. 82(2) UPCA and requests mitigation of the requested penalties.

GROUND FOR THE ORDER

5. COMPETENCE

5.1. Defendant, domiciled in the Netherlands, rightfully did not dispute the international and relative competence of this (Local Division of the) Court. This also applies to the long arm jurisdiction of the Court regarding countries outside UPC Territory where the patent is valid, notably Liechtenstein, Ireland, Norway, Poland, Switzerland and United Kingdom where the patent is valid. At the hearing, the court raised the issue of the defence of invalidity for the non-CMS in view of the ECJ ruling in the BSH/Electrolux case. The defendant clarified that its counterclaim for revocation only pertained to the CMS; for the non-CMS, it was to be considered a defence. The defendant also clarified that no revocation claims had been instituted in any of the non-CMS countries. The Court therefore assumes competence for hearing the infringement claims regarding all designated countries in the EP, even if they are not UPC contracting member states. Regarding non-CMS EU or Lugano Member States, however, the Court will evaluate whether there is a serious, non-negligible chance that the competent national court will invalidate the patent. Regarding non-EU Member States, the Court may make an inter partes decision on validity.

5.2. For the rest, competence was not disputed for the counterclaims.

6. ADMISSIBILITY OF THE COUNTERCLAIM FOR DECLARATION OF NON-INFRINGEMENT

6.1. HL Display disputed the admissibility of this counterclaim for a declaration of non-infringement as to product 2. It referred to R. 61 RoP. The Court agrees with HL Display that, prior to instituting the counterclaim, HL Display did not assert infringement with respect to product 2 nor had BSRP applied in writing for an acknowledgement as meant in R. 61.1 (a) and (b) RoP. Such assertion may not be deduced from the mere fact that the patent was invoked with respect to a different product.

6.2. The Court finds that the relevant date here when all requirements of R.61.1 (a) and (b) should be fulfilled, is the launch of the counterclaim. It could be argued that the counterclaim as such is a written application to the proprietor as meant in R.61.1 (a), and failure to respond with an acknowledgement within 30 days might trigger R. 61.1.b RoP, but that interpretation would run counter to the very point of R. 61.1 RoP: to prevent the commencement of unnecessary proceedings for a declaration of non-infringement when the proprietor or its licensee did not yet assert the patent with respect to a certain product (or process). It would also effectively render R. 61.1.a and b RoP redundant.

6.3. For these reasons, the Court finds that the counterclaim for declaration of non-infringement is not admissible.

7. THE PATENT

7.1. The patent concerns the following. In general stores, for example, goods are often displayed on shelves. In order to improve the display of the goods and facilitate the loading and unloading of the goods, a host of different accessories, such as shelf dividers, are used. Such accessories are often fixed to the shelves (par. [0002] of the patent).

7.2. The patent describes that in the prior art, the accessories can be fixed to the shelf in a number of different ways, for example mechanically with screws or the like, by snap fastening or by adhesion with double-sided adhesive tape or the like (par. [0003]). In prior art such as DE 299 02 933 U1, WO 03/005862 A2 and US 5,803,276, a device or system for securing shelf dividers/accessories is disclosed. However, in these devices or systems, it is necessary to reach in to the rear end of the shelf accessory in order to obtain release of the rear end and thus allow displacement of the accessory (pars. [0013] and [0014]).

7.3. WO 2005/084498 describes a system for securing shelf accessories (par. [0015]). The patent further mentions SE 531 411 C2 (par. [0016]). In these systems in the prior art, however, if the accessories are mistakenly disengaged from the front securing device or if the front securing device is mistakenly displaced relative to the shelf, it can happen that the rear engagement member disposed on the accessory is accidentally disengaged from the rear securing device. This is not desirable. If the front securing device is magnetically fixed to the shelf, a knock against the shelf accessory or the front securing device can bring about rearward displacement of the front securing device and hence of the accessory. The rear engagement member of the accessory can then be disengaged from the rear securing device. Therefore, there is a risk that for instance a passing customer happens to knock against a front securing device or an accessory, which creates disorder on the shelf (par. [0017]).

7.4. The (alleged) invention of the patent aims to overcome the problems and drawbacks

described above that were present in the prior art. The invention laid down in EP 351 relates to a system for securing shelf accessories to a shelf. This (alleged) invention is especially well suited to the securing of shelf dividers, feed devices and other shelf accessories for use with shop shelves (par. [0001] of EP 351). The goal of the (alleged) invention is therefore to provide an improved system for securing shelf accessories to a shelf (par. [0018]). This improvement follows from the following objects (described below) that are achieved by the (alleged) invention.

7.5. One object of the invention is to provide a system of this kind which deters the rear engagement member of the accessory from mistakenly being disengaged from the rear securing device (par. [0019]). By virtue of the interacting stop faces (32a and 47) on the rear engagement member (40) of the shelf accessory, and the rear securing device (30), the rear end of the accessory is simply and effectively deterred from accidentally coming loose from the rear securing device if, for example, the front end of the shelf accessory or the front securing device suffers a knock or the like (par. [0024]). This is achieved by the patent according to claim 1.

7.6. A further object is to provide a system of this kind which allows simple intentional release and repositioning of the accessory (par. [0020]). The system according to the (alleged) invention also allows very simple intentional release of the engagement between the rear engagement member of the accessory and the rear securing device by deliberately releasing the front engagement member from the front securing device and thereafter simply lifting the front end of the accessory and guiding the accessory somewhat in the rearward direction. After this, the accessory can be released and/or displaced easily, and without the need to reach a hand into the rear end of the accessory, into a new position in which it can be refixed by lowering the front end of the accessory and bringing the front engagement member into engagement with the front securing device (par. [0024]). This is achieved by the present (alleged) invention according to claim 1.

7.7. One more object is to provide a system of this kind which allows simple repositioning of the accessory and which nevertheless allows the rear end of the shelf accessory to be firmly secured in mounted position (par. [0021]). The system according to the (alleged) invention which deters the rear engagement member of the accessory from mistakenly being disengaged from the rear securing device, at the same time allows very simple intentional release of the engagement between the rear engagement member of the accessory and the rear securing device by deliberately releasing the front engagement member from the front securing device and thereafter simply lifting the front end of the accessory and guiding the accessory somewhat in the rearward direction.

8. SKILLED PERSON

8.1. According to BSRP the relevant skilled person for EP 351 is an engineer with experience in designing and producing shelf presentation products in the retail industry. HL Display did not dispute this, and the Court will follow this definition of the skilled person which seems reasonable.

9. CLAIM CONSTRUCTION

9.1. The Court notes that the description and drawings must be used as explanatory aid for claim.² While they should be used to interpret the claims, given the primacy of the claims generally the description and drawings do not limit the subject-matter of the claimed invention.³ It is also noted that, as has been considered by the UPC, a claim need not be limited to preferred

² UPC_CoA_335/2023 App_576355/2023, par. 2 (*10x/Nanostring*), UPC_CoA_1/2024 APL_8/2024, par. 26 (*SESImagotag/Hanshow*).

³ LD Düsseldorf in *FUJIFILM/Kodak* (UPC_CFI_355/2023) dated 28 January 2025, see p. 27 second to last paragraph.

embodiments.⁴ Nonetheless, in special circumstances it can be clear to the skilled person that the description and drawings are in fact intended to limit the claim, e.g. to specific embodiments.

9.2. The Court agrees with HL display that BSRP relies on an unjustifiably narrow claim construction. BSRP has not shown special circumstances to add features to the claim wording, relying on the description and drawings. Also, the Court rejects BSRP's argument that HL Display did not make its claim interpretation clear in its statement of claim. From the statement read as a whole, taking into consideration the explanation by HL Display regarding infringement, the way it interpreted features of claim 1 (and subsequent claims) is sufficiently clear.

9.3. Single embodiment

9.3.1. BSRP asserts that the *"claimed invention in EP 351 relies on the technical features of one single embodiment"*. BSRP further suggests that no multiple embodiments are disclosed in the disclosure of EP 351, but rather only one single embodiment. BSRP also asserts that all the specific features of this 'single embodiment' have a structural and functional relationship. As HL Display has pointed out however, this is incorrect. For example, under the section 'detailed description of embodiments' (plural) in the patent, par. [0047], clearly describes several embodiments. Also, as mentioned above, a claim generally should not be limited to one specific embodiment, in absence of clear indications to the contrary.

9.4. In engagement (feature 1.5)

9.4.1. Feature 1.5 reads as follows:

"the rear securing device (30) and the rear engagement member (40) are configured to allow rotation of the shelf accessory (10) about an axis which is substantially parallel with the longitudinal direction of the profiled element when the rear engagement member (40) is in engagement with the rear securing device (30)"

Feature 1.5 thus specifies that the rear securing device (30) and the rear engagement member (40) are configured to allow rotation of the shelf accessory (10) about an axis which is substantially parallel with the longitudinal direction of the profiled element when the rear engagement member (40) is in engagement with the rear securing device (30).

9.4.2. According to BSRP, *"for the engagement state to be present the first (32a) and second (47) stop faces should be mutually overlapping"* (see par. 54 of the Statement of Defence), thereby referring to feature 1.8 and suggesting that engagement is no longer present when there is no mutual overlap of the stop faces (anymore). This interpretation cannot be followed. A skilled person would not interpret 'in engagement' in this way. It is clear to a skilled person that engagement of the rear engagement member with the rear securing device refers to the situation where the forward projecting third arm (43) of the rear engagement member (40) is received between the base plate (31) and the second arm (33) of the profiled element of the rear securing device (30). This interpretation is clear for a skilled person from the wording of claim 1 alone, see features 1.4, 1.5 and 1.8. It is further confirmed by the description, e.g. par. [0025] to [0027] and [0046].

9.4.3. Contrary to what BSRP asserts, the mere rotation of the shelf accessory such that the second stop face is above the first stop face (i.e. the first and second stop faces are no longer

⁴ LD Düsseldorf in *SodaStream Industries Ltd./Aarke AB* (UPC_CFI_373/2023) dated 31 October 2024, see p. 16 second paragraph.

mutually overlapping in the vertical direction) does not already mean disengagement. Engagement is only lost if subsequently the shelf accessory is guided in the rearward direction such that the forward projecting third arm (43) of the rear engagement member (40) is removed from between the base plate (31) and the second arm (33) of the profiled element of the rear securing device (30). Therefore, for disengagement, the shelf accessory should not only be lifted (so that the first and second stop faces are no longer vertically overlapping) but it should also be guided in the rear direction. This is clear from e.g. par. [0027]:

“The securing device and the rear engagement member are configured to allow rotation of the shelf accessory about an axis which is parallel with the longitudinal direction of the profiled element when the rear engagement member is in engagement with the rear securing device. This enables the rear engagement member to be easily disengaged from the rear securing device by deliberately lifting the front end of the accessory by a predetermined distance from the top side of the shelf and thereafter displacing the accessory somewhat in the rearward direction.”

See also e.g. par. [0046]:

“After this, the front end of the shelf accessory, as the shelf accessory is rotated about an axis lying parallel with the longitudinal direction of the securing device 30, is lifted, until the second stop face 47 is above and detaches from the first stop face 32a and the first arm 32 of the rear securing device. The shelf accessory can thereafter be guided rearwards, whereupon the third arm 43 of the rear engagement member is disengaged from the rear securing device.”

9.5. First stop face (feature 1.6)

9.5.1. Feature 1.6 reads as follows:

“the rear securing device (30) comprises a first stop face (32a) which is constituted by a forward-facing surface of the first arm (32)”

9.5.2. BSRP asserts that the first stop face (32a in fig. 3) should be located at the top of the first arm and that it should be forward-facing in the sense of straight (vertical). As to the location, the Court refers here to its reasoning on added matter (see 10.1.11-10.1.15). As to the forward-facing surface of the stop face, the Court finds for HL Display. When read in connection with the purpose to – succinctly put – create a ‘lock’ (by interaction with the second stop face 47 of the rear engagement member, see 10.1.14 and 10.2.1 hereafter), it is clear to a skilled person what is meant with “forward-facing”. Such surface does not need to be (totally) straight/vertical. It only needs to be able to ‘interlock’ with the second stop face (overlapping surfaces). Likewise, it can be a protrusion on the first arm in order to obtain that lock.

9.5.3. Contrary to what BSRP asserts, this reading of the claim feature does not mean it will encompass the prior art. Succinctly put here (more detail in the chapter on inventive step), it is not disclosed in the prior art to use the specific setup of the two overlapping faces in combination with specification of the relationship between distances A and B specified in feature 1.7.

9.6. Engagement/disengagement (feature 1.8)

9.6.1. Feature 1.8 reads as follows:

1.8.1 “said first (32a) and second (47) stop faces are configured to be brought into and out of mutually overlapping relation in the vertical direction by rotating the shelf accessory (10) about said axis,”

1.8.2 “such that the first (32a) and second (47) stop faces, in mutual contact, prevent the rear engagement member (40) from being disengaged from the rear securing device (30) when the shelf accessory (10) is held substantially parallel with the top side of the shelf and the first and second stop faces thereby are vertically overlapping,”

1.8.3 “and to allow the rear engagement member (40) to be released from the rear securing device (30) when the front end of the shelf accessory has been lifted such that the shelf accessory has assumed an angle to the top side of the shelf and the first and second stop surfaces thereby are vertically non-overlapping.”

9.6.2. According to BSRP, features 1.8.1-1.8.3 “require the rear engagement member and the rear securing device to switch between an ‘engaged’ and ‘disengaged’ state and for the first and second stop faces to switch between vertical overlapping (and in mutual contact) and vertically non-overlapping”. Here again, the Court sides with HL Display. Feature 1.8 does not require any switching between an ‘engaged’ and ‘disengaged’ state. The configuration required by feature 1.8 allows for disengagement (see also the word “allow” in feature 1.8.3). As set out in the patent, and as already mentioned above regarding the feature of “in engagement” of feature 1.5, actual disengagement requires a further rearward displacement of the shelf accessory.

9.6.3. A skilled person would interpret feature 1.8 as follows, in the light of the description. Feature 1.8.1 specifies that the first and second stop faces can be brought into and out of mutually overlapping relation in the vertical direction by rotating the shelf accessory (10) about said axis (the axis in the sense of feature 1.5).

Feature 1.8.2 then specifies that, in the situation where the shelf accessory (10) is held substantially parallel with the top side of the shelf and the first and second stop faces thereby are vertically overlapping, the first and second stop faces, in mutual contact, prevent the rear engagement member (40) from being disengaged from the rear securing device.

Feature 1.8.3 in turn specifies that, on the other hand, when the front end of the shelf accessory has been lifted such that the shelf accessory has assumed an angle to the top side of the shelf and the first and second stop faces thereby are vertically non-overlapping, the rear engagement member (40) is in this position allowed to (i.e. able to) be released from the rear securing device (30). A rotated position in which the first and second stop faces are out of mutually overlapping relation in the vertical direction thus allows for disengagement of the rear engagement member from the rear securing device. Actual disengagement is achieved in such situation by subsequently displacing the accessory in the rearward direction, see e.g. par. [0027] and [0046] of the patent and the explanation above regarding feature 1.5.

9.7. Other points raised regarding claim interpretation

9.7.1. BSRP further raised various features it seeks included in claim 1 as granted on the same grounds as it argues (regarding the ‘free’ rear end of the second arm (claim feature 1.3), a friction member/rail and magnetic fixation. Since the description and figures of the patent in these respects are the same as of the application as filed, for brevity and to avoid repetition, the Court refers here to its reasoning why the omission of those features is no added matter (and hence they are also not required to be read into the claim), which makes claim construction regarding these features unnecessary here.

10. VALIDITY

10.1. Added matter

10.1.1. An extension of subject matter is deemed inadmissible if the subject matter of the granted claim goes beyond the content of the application as originally filed. In order to determine this, the Court must first establish what information a skilled person, based on an objective assessment and on the filing date, would immediately and unambiguously derive from the entirety of the application as filed, using their general technical knowledge. In doing so, implicitly disclosed subject matter must also be regarded as part of the content, i.e. subject matter that clearly and unambiguously results from what is expressly stated.⁵

10.1.2. BSRP alleges that the subject matter of EP 351 would extend beyond the content of the application as originally filed. The reason for this, according to BSRP, is that the amendments made during the prosecution introduced some features into claim 1 while omitting some other features which according to BSRP are inextricably linked to the introduced features.⁶

The friction member/friction rail (projecting upwards from the base plate)

10.1.3. BSRP asserts that the friction member/rail (34 in fig. 3) is inextricably linked to the rest of the features as claimed in claim 1, and hence the omission thereof amounts to added matter (intermediate generalisation). The Court finds with HL Display that BSRP has not been able to show (although it has the burden of proof in the counterclaim) why the skilled person would consider the presence of a friction member/rail to be necessary to the claim, read in light of the disclosure of the application as a whole. The original application discloses on p. 16 and 17 that a friction member is optional (underlining added) and that the optional friction member, if used at all, can be on the second arm of the rear securing device projecting downwards:

“The invention should not be deemed to be limited to the above-described embodiments, but can be varied within the scope of the following patent claims. For example, [...]. In the shown embodiment, a friction member in the form of a friction rail is arranged projecting upwards from the base plate of the rear securing device;

In certain applications, however, the friction member can be dispensed with. The shown friction rail can also be replaced with other friction members, for example a friction rail projecting downwards from the free end of the second arm. In another embodiment, the friction member is constituted by a friction rail which projects upwards from the free end of the first arm.”

10.1.4. Also, in the claims of the original application, the subject matter of original claim 3 – which contains the required ‘rotation’ and was introduced into claim 1 (see feature 1.5) – did not comprise a friction member (which rather was part of the subject matter of original claim 4). It is thus clear to the skilled person that, for the rotation (and the engagement) described in original claim 3, a friction member is not necessary.

10.1.5. Thus, various embodiments with and without a friction member are described in the original application. It is clear that the original application does not give any specific connection (inextricable link) of the friction member (let alone a friction member on the base plate

⁵ UPC CoA 2 October 2025, UPC_CoA_764/2024 and UPC_CoA_774/2024, *expert klein v. Seoul Viosys*

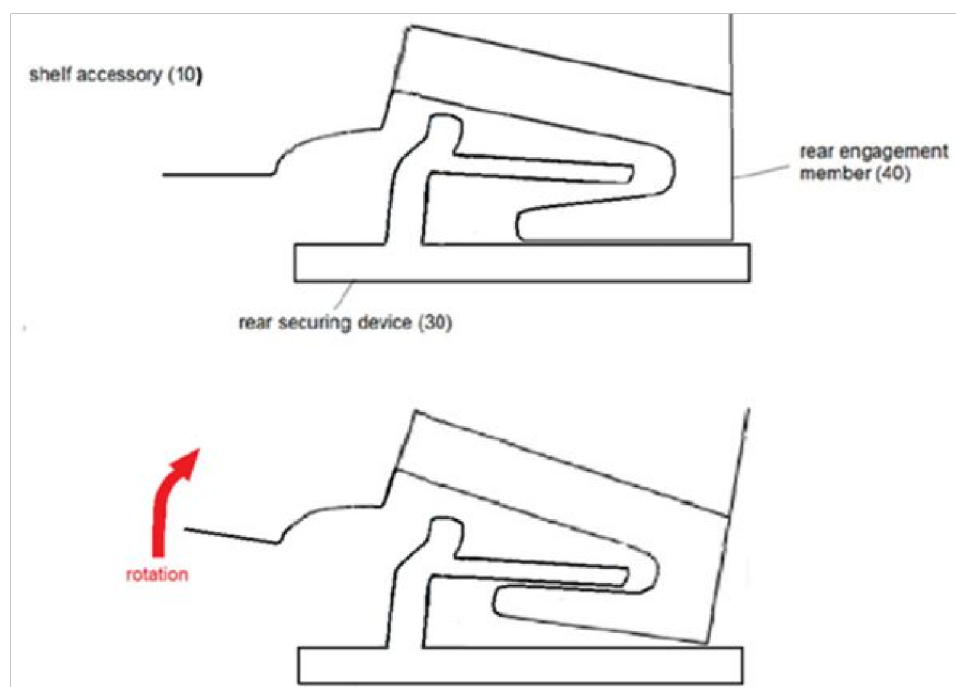
⁶ See UPC Court of Appeal dated 14 February 2025, *Abbott/Sibio* (UPC_CoA_382/2024).

projecting upwards) to any specific configuration described therein. The skilled person cannot discern any functional or structural relationship between a friction member (let alone a friction member on the base plate projecting upwards) and the rest of the features described under the section ‘detailed description of embodiments’ in the original application.

10.1.6. BSRP has pointed to p. 9, l. 23-35 of the original application which describes a friction member projecting upwards from the base plate in a specific embodiment. In view of the disclosure of the application as a whole, however, it is clear that a friction member is optional, while moreover also for its position various options are provided. For the skilled person it is thus clear that it does not have an inextricable link to the elements in claim 1, i.e. the claimed invention.

10.1.7. BSRP then proceeds by referring to specifically p. 14, l. 16-36 of the original application, which describes that in a specific embodiment a friction member projecting upwards from the base plate presses the third arm against the second arm. Also from this section it however does not follow that a friction member projecting upwards from the base plate would be necessary for ‘engagement’. As sufficiently explained by HL Display, the term ‘engaged’ refers to the situation where the forward projecting third arm (43) of the rear engagement member (40) is received between the base plate (31) and the second arm (33) of the profiled element of the rear securing device (30). It is clear to the skilled person that a friction member projecting upwards from the base plate is not necessary for engagement. Again, the friction member is clearly stated as being optional in the application as filed, including the original claims.

10.1.8. BSRP also does not properly explain that a friction member projecting upwards from the bottom plate would be “*essential for the proper functioning of the system*” of the specific embodiment on which BSRP relies for its added matter allegations. This lack of explanation is especially glaring, given HL Display explanation, that the skilled person would rather understand from the original application and also based on common general knowledge that a friction member is neither essential for rotation of the shelf accessory, nor for engagement. HL Display made its arguments more visible with these figures (not from the patent or its application) to illustrate why for engagement nor for rotation a friction member/rail is required:



10.1.9. BSRP's asserts that the illustrative embodiment of the figure shown above would 'rattle around'. This would mean according to BSRP that the embodiment would not meet the object of the invention. It seems however that BSRP attempts to rely again on a wrong interpretation of par. [0021] of the patent in that avoiding 'unwanted play' would be necessary for firm securing. As explained above, the skilled person already recognizes that the friction member is optional from the description and the original claims. Also for this reason it is clear to the skilled person that 'firm securing' (as described on page 6 of the original application) does not require a friction member.

10.1.10. Concluding: there is no inextricable link between the allegedly omitted feature of a friction member (let alone on the base plate projecting upwards) and the rest of the features of claim 1. BSRP has failed to show otherwise. Omission of this feature thus does not add matter.

'Free' rear end of second arm

10.1.11. According to BSRP in its counterclaim, the requirement of a friction member in claim 1 would mean that the rear end of the second arm (33) of claim 1 necessarily should be a 'free' rear end in the sense that no element can be present at the rear end of the second arm as otherwise the third arm (43) could not come to bear against the bottom side of the second arm. BSRP's argument is dependent on the incorrect allegation that a friction member that presses the third arm upwards such that it comes to bear against the bottom side of the second arm would be required/unjustifiably omitted. Already for this reason it fails.

10.1.12. HL Display further rightly notes that it is unclear why – as BSRP alleges – the presence of an element on the end of the second arm would prohibit the third arm from being pressed upwards such that it comes to bear against the bottom side of the second arm. The Court fails to see this.

Location of first stop face

10.1.13. BSRP asserts that claim 1 as granted would violate art 123(2) EPC because the claim specifies "a first stop face (32a) which is constituted by a forward-facing surface of the first arm (32)" (feature 1.6), without specifying the location of the first stop face on the forward-facing surface of the first arm more precisely (on the end portion of the first arm).

10.1.14. Following HL Display's reply, BSRP has not explained sufficiently clearly why the skilled person would consider the precise location of the first stop face on the first arm to be inextricably linked to the features in claim 1 as granted. There is no structural and functional link between the location of the first stop face on the forward-facing surface of the first arm and any feature from the description which was incorporated into claim 1 during prosecution. A skilled person would understand that the location of the first stop face should be such that the invention of claim 1 is achieved. This means that the distance (B) between a second stop face and a front end of the third arm is less than the distance (A) between a first stop face and a rear end of a second arm, such that the stop faces in mutual contact prevent the rear engagement member from being disengaged from the rear securing device when the shelf accessory is held substantially parallel with the top side of the shelf and the first and second stop faces thereby are vertically overlapping and such that it allows the rear engagement member to be disengaged from the rear securing device when the front end of the shelf accessory has been lifted such that the shelf accessory has assumed an angle to the top side of the shelf and the first and second stop surfaces thereby are vertically non-overlapping (see [0024]-[0026] of the patent).

10.1.15. The introduction of feature 1.6 which specifies that the first stop face (32a) is constituted by a forward-facing surface of the first arm (32) has basis in claim 2 of the original application. The subject matter of the original claim 2 was thus introduced into claim 1. Again, the inclusion of original claim 2 in claim 1 has not resulted in an unallowable intermediate generalization.

Magnetic fixation

10.1.16. BSRP asserts that magnetic fixation was unjustifiably omitted from claim 1. As explained by HL Display, on page 16 lines 25-29 of the original application it is clearly set out that the magnetic fixation of the front securing device and the rear securing device is optional. HL Display also refers to original claim 6. There is no structural and functional relationship between the allegedly omitted features and the features added to claim 1 from the description. BSRP has not been able to show otherwise.

The system according to the invention can also comprise a number of different types of accessories which are fixed to a shelf. The constituent parts of the system can be made, of course, of a host of different materials. Furthermore, the front and/or the rear securing device, instead of comprising magnets for fixing to a shelf of magnetic material, can comprise other fixing means, such as double-sided adhesive tape, screw or rivet joints. The securing devices can also be fixed to a shelf by means of glue. In the case of sloping shelves, it can be especially advantageous to fix the front securing device by means of one or more magnets, whilst the rear securing device is fixed to the shelf by means of double-sided adhesive tape. The

6. System according to any one of Claims 1-5, in which the front securing device (20) comprises a magnet for fixing the front securing device to a shelf comprising a magnetic material.

10.2. Inventive step

EP 351 solves a technical problem

10.2.1. The main problem solved by the invention is described in par. [0017]:

"[...] If the accessories are mistakenly disengaged from the front securing device, or if the front securing device is mistakenly displaced relative to the shelf, in these systems it can happen, however, that the rear engagement member disposed on the accessory is accidentally disengaged from the rear securing device. This can, in

turn, cause the accessory to tip over or come loose from the shelf, which is not desirable. [...]"

10.2.2. As mentioned already above (see 10.1.14), it is described in par. [0024] that *"by virtue of the interacting stop faces on the rear engagement member of the shelf accessory, and the rear securing device, the rear end of the accessory is simply and effectively deterred from accidentally coming loose from the rear securing device if, for example, the front end of the shelf accessory or the front securing device suffers a knock or the like"*. Par. [0025] describes that the distance between the second stop face and the front end of the third arm is less than the distance between the first stop face and the rear end of the second arm. Par. [0026] then describes that *"this ensures that the rear engagement member is in engagement with the rear securing device even if the accessory has been displaced rearwards relative to the rear securing device to the point where the two stop faces have come into contact with each other"*. This is how the patent solves the abovementioned problem. At the same time, the system according to the patent allows for simple release and repositioning. Par. [0024] describes that *"at the same time, the system according to the invention allows very simple intentional release of the engagement between the rear engagement member of the accessory and the rear securing device by deliberately releasing the front engagement member from the front securing device and thereafter simply lifting the front end of the accessory and guiding the accessory somewhat in the rearward direction. After this, the accessory can be released and/or displaced easily, and without the need to reach a hand into the rear end of the accessory, into a new position in which it can be refixed by lowering the front end of the accessory and bringing the front engagement member into engagement with the front securing device"*. See also par. [0026] which describes that, despite the fact that the abovementioned problem is solved in the way described, *"at the same time, intentional disengagement of the rear engagement member from the rear securing device is made possible"*.

Problem does not only occur in case of claim 4 (magnetic fixation)

10.2.3. BSRP asserts in essence that EP 351 would only solve a problem in the situation of claim 4, which requires that the front securing device is fixed magnetically to a shelf. For other scenarios there would not be a problem according to BSRP. It further asserts that in such situation the patent either does not solve any technical problem, or such problems were already solved by the prior art. All this is incorrect and unsubstantiated.

10.2.4. As pointed out by HL Display, par. [0017] of the patent describes the situations in which the shelf accessory may be accidentally disengaged from the rear securing device, namely (i) after the accessories are mistakenly disengaged from the front securing device or (ii) after the front securing device is mistakenly displaced relative to the shelf. According to BSRP, however, the first situation would be *"almost impossible to occur with the front securing devices known on the market at the priority date and disclosed with the claimed embodiment of the Patent"*. In order to substantiate this assertion, BSRP points to patent application US 5 803 276 ("Vogler") related to a front securing device and front engagement member and suggests that this would be part of the common general knowledge at the priority date. However, the teaching of a single patent publication cannot be considered as common general knowledge.⁷

10.2.5. BSRP further asserts that this exact front securing device as shown in Vogler would be the same front securing device and front engagement member as disclosed in the *"claimed embodiment"* of the patent in suit. As mentioned before, the claimed invention is not limited to

⁷ EPO Guidelines for Examination, G.VII.3.1.

any specific embodiment. Rather, claim 1 merely requires a *“front securing device configured for fixing to the front edge of a shelf”* and a *“front engagement member configured for engagement with the front securing device”* (both elements also being part of the original claims). It is not limited to any specific front securing device or front engagement member that is shown in Vogler.

10.2.6. BSRP then asserts for the combination of the front securing device and front engagement member that would be shown in Vogler (and allegedly also in the patent and in the BSRP Product) that the *“presented problem of accessories being mistakenly disengaged from the front securing device does not realistically occur”*. This assertion of BSRP, which is disputed by HL Display, is not substantiated in any way, even if it has the onus to do so. It is unclear why accidental disengagement of accessories from the specific front securing device referred to by BSRP would not realistically occur. Bare assertions cannot suffice. Already for this reason it fails.

Problem not yet solved in the prior art

10.2.7. Contrary to what BSRP asserts, SE 531 411 C2 (“Lindén”; cited as prior art in [0016] of the patent specification) does not (claim to) provide firm securing of the rear end of the shelf accessory in the sense of the patent. For ‘firm securing’ of the rear end of the shelf accessory as mentioned by par. [0021], engagement without unwanted play which can be obtained with an optional friction member is not necessary. Rather, par. [0021] refers back to the first and second benefits and clarifies that the system allows for simple repositioning while also allowing for the accessory to be firmly secured (in at least the sense of the first benefit) in mounted position. This is also clear from the original application, in particular in view of the original claims. These benefits of the invention are provided by the changes that were made vis-à-vis the prior art.

10.2.8. BSRP asserted that the prior art document “EasyShelf 2006” (disclosed in HL Display’s product catalogue 2006) would have claimed to already solve the problems of the prior art systems as described in the patent, including the problem that if accessories are mistakenly disengaged from the front securing device or if the front securing device is mistakenly displaced relative to the shelf, the rear engagement member of the accessory can then be disengaged from the rear securing device with the consequent risk that disorder is created on the shelf. In its submission of 23 December 2024, HL Display disputed this incorrect assertion. EasyShelf 2006 does not (claim to already) solve these problems (which includes the abovementioned problem) described in the patent. BSRP now tries to frame this contestation as an *“attempt to rebut its own statements from 2006”*. BSRP’s suggestions are misleading at best. It attempts to create a contradiction where there is none.

Inventive step – problem-solution-approach

10.2.9. Since both parties applied the problem-solution-approach, so will the Court. Parties concur that at least features 1.7, 1.8.2 and 1.8.3 are missing in [WO 2005/084498](#) (“Ahlund”, cited as prior art in the patent [0015]) Lindén and Easy Shelf 2006. Benefits of the system according to the patent are that it (i) deters the rear engagement member of the accessory from mistakenly being disengaged from the rear securing device, (ii) allows for simple release and repositioning and (iii) allows for simple repositioning which nevertheless allows the rear end to be firmly secured in mounted position. See [0017] and [0024]. The first benefit is the technical effect achieved with the distinguishing features 1.7, 1.8.2 and 1.8.3. BSRP asserts that the technical effect of these features enforces its argument that the second and third benefits were already solved in the prior art. BSRP fails to understand however that the second and third benefits lie in

the fact that the effects described therein are preserved in the claimed system, despite the changes that were made vis-à-vis the prior art which allow for the first benefit to be achieved. In other words, the technical effect of the distinguishing features allows for the first benefit to be realized while nevertheless also maintaining the other benefits.

10.2.10. HL Display sufficiently (and convincingly) explained that when starting out from Ahlund (or Lindén or EasyShelf 2006) as realistic starting point(s) in the prior art, the objective technical problem correctly derived from this technical effect by a skilled person may be as follows: providing a shelf system in which an accessory is more securely fixed to a shelf while also allowing for simple release and repositioning.⁸ As also sufficiently (and convincingly) explained by HL Display, the solution of the patent was not obvious based on the above problem. The prior art does not teach to make distance B smaller than distance A nor the specific locking system of the rear engagement member and rear securing device and to release the accessory by lifting it (out of the overlapping surfaces). EP 351 is therefore inventive.

10.2.11. BSRP, asserting that the technical effect would not be achieved over the whole scope of the claim, submits that the objective technical problem would be the provision of an ‘alternative device’. It wrongfully suggests that the distinguishing features merely provide for an alternative solution over the prior art. Ahlund, Lindén and EasyShelf 2006 do not disclose a system for preventing the rear end of an accessory from being accidentally disengaged from the rear engagement member when either the accessory is mistakenly disengaged from the front securing device or when the front securing device is mistakenly displaced relative to the shelf. This problem, present in the systems of all these prior art documents, is solved by the patent.

10.2.12. BSRP also asserts that, starting from Ahlund, Lindén or EasyShelf 2006, *“it would be obvious for the skilled person to modify the distances (A) and (B) to the effect a rearward shift of the shelf accessory would not immediately release said shelf accessory from the shelf”* which *“would only entail a mere workshop modification”*. These assertions have not been sufficiently substantiated. BSRP has not showed any hint in the prior art given to the skilled person towards the claimed solution and is not able to explain why the skilled person would make such modification.

10.2.13. Concluding, BSRP’s inventive step attack should fail.

10.3. Conclusion on validity

10.3.1. From the above it is clear the patent is to be held valid. This means the Court will dismiss the counterclaim for revocation for the UPC CMS in which the patent is in force. For the EU member states in which the patent is in force, that are however not UPC CMS, as well as the Lugano member states, the Court finds there is no serious, non-negligible chance the patent will be revoked by the competent national court. Equally, for the other states in which the patent is in force, the Court holds *inter partes* that the patent is valid.

⁸ See HL Display’s Defence, par. 3.64.

11. INFRINGEMENT

11.1. BRSP does not dispute that its contested shelf accessory system contains features 1.1, 1.2, 1.4 and 1.7 of claim 1 of the patent. The contested features are discussed below.

11.2. Feature 1.3

11.2.1. Feature 1.3 reads as follows:

“a rear securing device (30) comprising an elongated profiled element having a cross-sectional profile, with a lower base plate (31) a first arm (32) projecting upwards from the base plate, and a second arm (33), with a rear end (33a), projecting rearwards from the first arm and being configured for fixing on top of a shelf substantially parallel with the longitudinal direction of the shelf, and”

11.2.2. BSRP asserts that the skilled person would understand from certain embodiments in the description and drawings that the rear end (33a) of feature 1.3 is ‘free’. With the claim construction of the Court following from the above (see the chapter on added matter, 10.1.11 and 10.1.12), this argument no longer holds. The BSRP Product thus meets the requirements of feature 1.3 of claim 1.

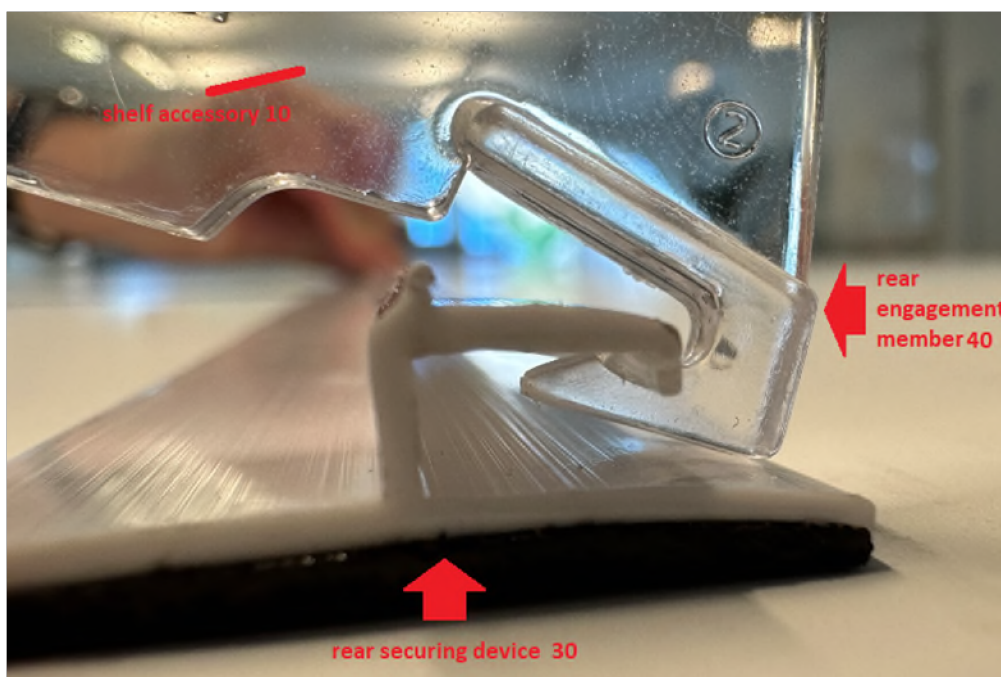
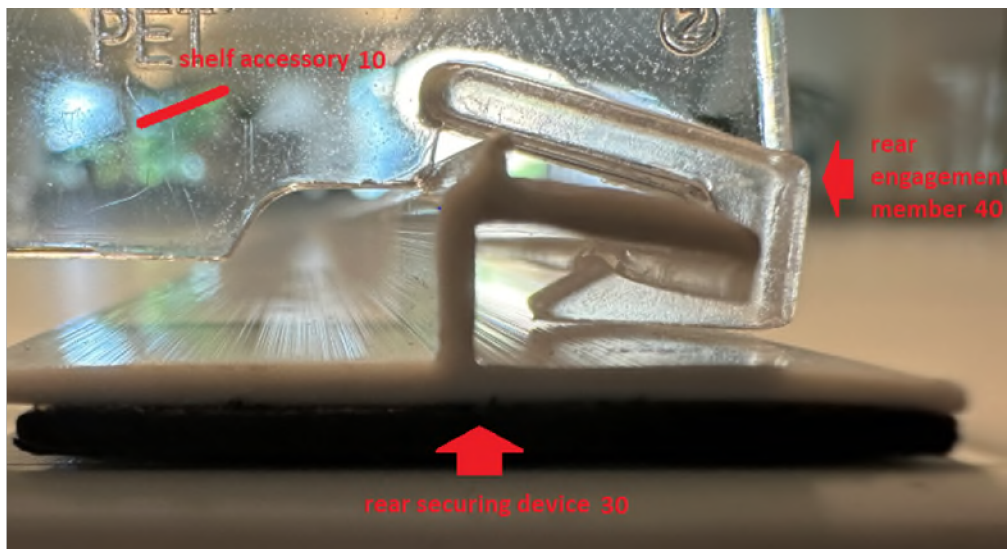
11.3. Feature 1.5

11.3.1. Feature 1.5 reads as follows:

“the rear securing device (30) and the rear engagement member (40) are configured to allow rotation of the shelf accessory (10) about an axis which is substantially parallel with the longitudinal direction of the profiled element when the rear engagement member (40) is in engagement with the rear securing device (30)”

Feature 1.5 thus specifies that the rear securing device (30) and the rear engagement member (40) are configured to allow rotation of the shelf accessory (10) about an axis which is substantially parallel with the longitudinal direction of the profiled element when the rear engagement member (40) is in engagement with the rear securing device (30).

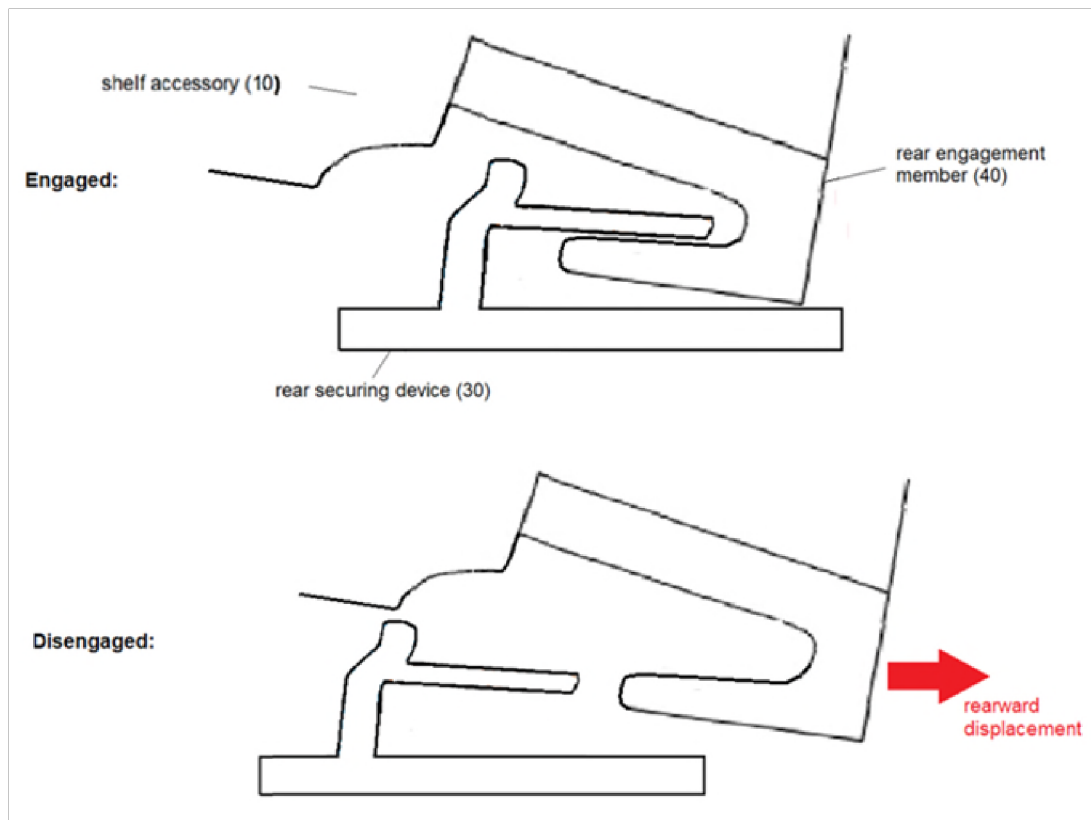
11.3.2. The BSRP Product fulfils feature 1.5. As is clear from the pictures shown by HL Display (see below), the BSRP Product has a rear engagement member (40) which engages with a rear securing device (30), and rear engagement member (40) and rear securing device (30) are configured to allow rotation of the shelf accessory (10) about an axis which is substantially parallel with the longitudinal direction of the profiled element when the rear engagement member (40) is in engagement with the rear securing device (30).



11.3.3. BSRP however asserts that the BSRP Product would not fulfil feature 1.5 of claim 1. BSRP bases this on two arguments. As a first argument, BSRP asserts that it would follow from embodiments in the description that the rotation as claimed in feature 1.5 would rest on a friction member, more in particular a friction member projecting upwards from the bottom plate of the rear securing device. As the Court does not follow BSRP's claim interpretation to include such friction member/rail, this argument does not hold.

11.3.4. As a second argument, BSRP asserts that HL Display would not have shown that the shelf accessory of the BSRP Product rotates as claimed while it is 'engaged'. This is incorrect as it relies on an incorrect interpretation of "in engagement". (see before 9.4) The difference between the engaged and disengaged states in the attacked embodiment is illustrated below. In both figures the front end of the shelf accessory has already been lifted (i.e. rotated about an axis which is substantially parallel with the longitudinal direction of the profiled element (feature 1.5)) to such an extent that the first and second stop faces are brought out of mutually overlapping relation in the vertical direction (feature 1.8). In the first figure there is still engagement (the forward projecting third arm (43) of the rear engagement member (40) continues to be received between the base plate (31) and the second arm (33) of the profiled

element of the rear securing device (30)), while in the second picture the rear securing device is disengaged following displacement of the shelf accessory in the rearward direction:



11.3.5. The BSRP Product thus meets the requirements of feature 1.5 of claim 1 in the correct interpretation.

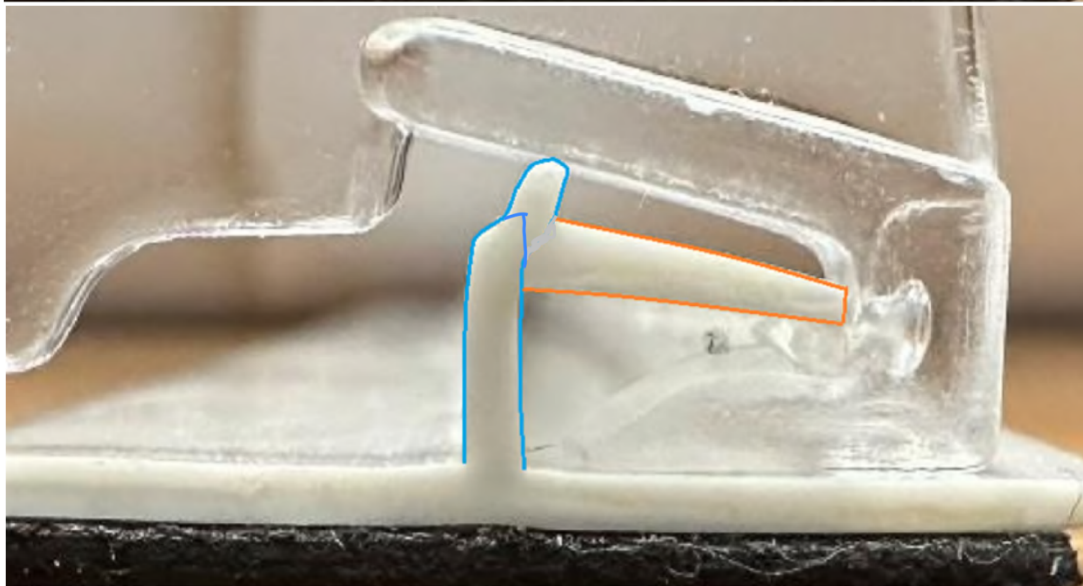
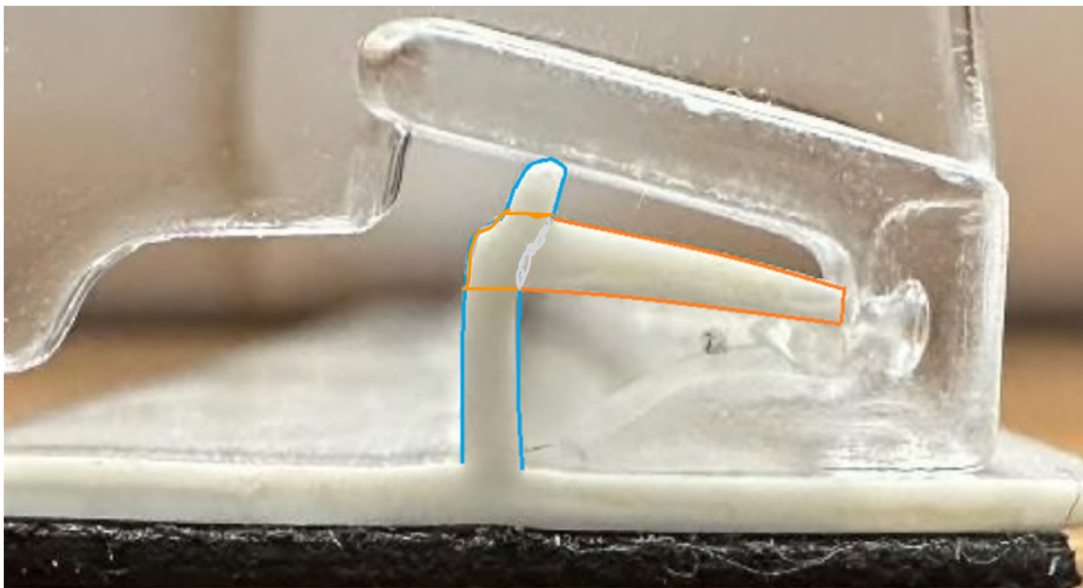
11.4. Feature 1.6

11.4.1. Feature 1.6 reads as follows:

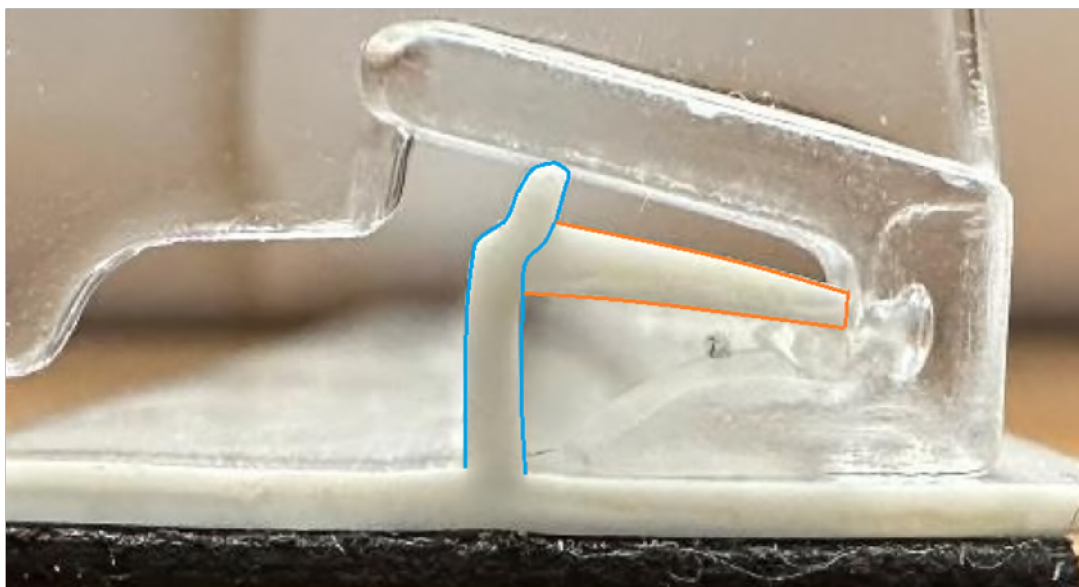
“the rear securing device (30) comprises a first stop face (32a) which is constituted by a forward-facing surface of the first arm (32)”

11.4.2. BSRP asserts that an additional element from an embodiment in the description and drawings should be read into feature 1.6, namely that the first stop face (32a) is on the first arm 32 at an end portion distal to the bottom plate, as illustrated in Fig 3 of the patent. This cannot be followed as indicated in the chapter on claim interpretation (see 9.5 and 10.1.13 to 10.1.15 above). In any case, the protrusion/additional surface, is located at the distal end of the first arm.

11.4.3. BSRP’s assertion that the ‘additional surface’/protrusion of (the first stop face of) the BSRP Product, see the picture below that was submitted by BSRP but more clearly the below pictures made by the Court (using HL Display’s further below figure), is situated on the second arm (33, orange) and not on the first arm (blue) as required by 1.6, is dismissed.



11.4.4. Contrary to what BSRP implies, claim 1 does not require that the first arm (32) is a completely 'straight'/vertical arm (see claim construction 9.5), or that it has a constant thickness over its whole length. Equally contrary to what BSRP implies, claim 1 (specifically: feature 1.3) does not specify that the second arm projects rearwards from *the top of* the first arm. It merely specifies that it projects rearwards from the first arm (32). Therefore, the facts that the arm projecting upwards from the base plate in the BSRP Product is not formed by a completely straight arm with an equal thickness and that the second arm does not project rearwards from the very end of such arm, do not mean that the part above the second arm is not part of the first arm (32) in the sense of claim 1. The part of the rear securing device of the BSRP Product which is indicated by BSRP as an 'additional surface' is therefore to be viewed as a forward-facing surface of the first arm (32) that acts as a stop face. This is clear from the below illustrative figures HL Display made of a rear securing device wherein the first (32) and second (33) arms have been roughly outlined in blue and orange respectively:



11.4.5. BSRP further asserts that the skilled person would conclude that the 'additional surface' of the BSRP product is 'more rearward' facing and thus not forward-facing. As indicated in the part before of claim interpretation, it is not necessary that the stop face is completely vertical/straight. The surface of the first stop face (32a) in the BSRP Product is forward-facing as it is made up/consists of/has a surface which is forward facing, i.e. it has a surface which faces towards a person during normal use of the shelf system. That (part(s) of) the first arm in the BSRP Product is (are) slightly slanted in the rearward direction does not make that a surface thereof (including the surface which constitutes the first stop face) cannot be forward-facing. In addition, the additional surface performs the function ascribed to the stop face of the claimed invention. The Court thus finds that the protrusion/additional surface is connected to the top of what at the very least would be considered the first arm by a skilled person, so that this same person would consider it a forward-facing surface of the first arm and feature 1.6 is therefore met in the BSRP product.

11.4.6. At any rate, also in case BSRP were followed and one would draw the borderline between the first and second arm differently so that the protrusion/rail that contains a stop

surface in the BSRP Product is considered to be located on the second arm (see the Court's drawings in 11.4.3), as BSRP maintains, this would amount to infringement by equivalence as the protrusion is technically equivalent.

11.4.7. Thus, BSRP's arguments cannot be followed. Feature 1.6 is met in the BSRP Product.

11.5. Feature 1.8

11.5.1. Feature 1.8 reads as follows:

1.8.1 "said first (32a) and second (47) stop faces are configured to be brought into and out of mutually overlapping relation in the vertical direction by rotating the shelf accessory (10) about said axis,"

1.8.2 "such that the first (32a) and second (47) stop faces, in mutual contact, prevent the rear engagement member (40) from being disengaged from the rear securing device (30) when the shelf accessory (10) is held substantially parallel with the top side of the shelf and the first and second stop faces thereby are vertically overlapping,"

1.8.3 "and to allow the rear engagement member (40) to be released from the rear securing device (30) when the front end of the shelf accessory has been lifted such that the shelf accessory has assumed an angle to the top side of the shelf and the first and second stop surfaces thereby are vertically non-overlapping."

11.5.2. Regarding feature 1.8, BSRP repeats its assertion that the BSRP Product would not have a first stop face (32a) in the sense of feature 1.6. For brevity, the Court refers to its reasoning above why this feature is met. The same applies to BSRP's contention that there would not be "rotational movement in the BSRP Product as claimed in feature 1.5 that would result in the elements required in feature 1.8.1-1.8.3". Finally, as indicated above in the chapter on claim interpretation, there is no need for a disengagement.

11.6. (In)direct infringement

11.6.1. In view of the above, it is established that BSRP's contested shelf accessories meets all features of claim 1 of the patent. The Court finds that when the shelf accessory and rear device are sold together this constitutes direct infringement. The fact that they are not sold in an assembled state, does not alter this view as they are nonetheless sold together as the system of claim 1. As to the shelf accessory or rear securing device sold separately, the Court opines that HL Display has sufficiently substantiated that both the shelf accessory and the rear securing device of the BSRP Product are means relating to essential elements of the invention. BSRP also does not deny that it knew or should have known that those means are suitable and intended for putting the invention of EP 351 into effect.

11.7. Infringing acts

11.7.1. BSRP states that HL Display would not have sufficiently demonstrated that BSRP has performed or performs infringing acts. However, before going to the question of evidence, a statement of fact should first be (sufficiently) denied. This was not done by BSRP. It has not denied that it has performed infringing acts (up to the moment it transferred to Product 2, end of July 2025).

11.7.2. Furthermore, as in fact BSRP conceded in Chapter 1.2 of its Statement of Defence, the infringing BSRP Products have been on the market within the territory for which EP 351 is valid since at least 2019 (see notably para 7 of the Statement of Defence). It can be left undecided therefore whether the products were/are also offered on its website bsrp.eu.

11.8. Conclusion on infringement

11.8.1. As the BSRP product applies all features of claim 1 of the patent, the Court therefore need not look at the other asserted dependent claims. It is sufficiently clear that BSRP performed (directly and indirectly) infringing acts with its product.

12. OUTCOME, RELIEF AND COSTS

In the main action:

12.1. It follows from the above that BSRP until at least recently has infringed the patent indirectly and directly. This means an injunction is in order. For the sake of clarity, the injunction or any other order do not extend to BSRP Product 2 (i.e. the rear securing device sold together with the new accessory or the new accessory alone) as the Court did not evaluate whether Product 2 infringes (and BSRP pointed to several differences between Product 1 and 2 that could be material to the infringement question). The order is directed to the “old” BSRP Product, termed “BSRP Product 1”. The fact that on 19 February 2025 BSRP gave an undertaking to cease and desist from making, offering, etc... its “BSRP Shelf Divider 1” as of 1 July 2025, and to surrender such products on that same date, does not mean HL Display lacks an interest in an injunction. Even if BSRP is complying with its undertaking, legitimate interest in an injunction should be assumed, given that BSRP only very recently ended its infringement and that at the time the statement of claim was submitted, and even at the time of BSRP’s defence, infringement was ongoing. Equally, HL Display is deemed to have a sufficient interest in a declaration of infringement and liability for compensation of damages.

12.2. In view of its self-imposed cessation of the infringement with “BSRP Shelf Divider 1”, the Court fails to see why such injunction cannot be immediately enforceable or that a security should be imposed, as requested by BSRP.

12.3. The recall and destruction sought of the shelf accessory of the “BSRP Shelf Divider 1” are proportionate corrective measures to stop further infringement. The Court finds that a request for recall and destruction normally shall be granted, in order to effectively avoid further acts of infringement. It is for the infringer to present facts and proof of any circumstances, e.g. based on proportionality, justifying that the Court dismiss the request or concludes that it is sufficient to amend the infringing goods (cf. CoA 3.10.2025 UPC_CoA_534/2024, UPC_CoA_683/2024 and UPC_CoA_19/2025), *Belkin/Philips*, and e.g. Local Division Mannheim, 11.03.2023, UPC_CFI_159/2024, paragraph 125 and Northern Baltic Regional Division 31.7.2025, UPC_CFI_9/2024, *Texport v. Sloen*, paragraph 107). BSRP has failed to do so. BSRP should request its customers to return the shelf accessory of the “BSRP Shelf Divider 1” as indicated above. The fact that its customers (notably: Kruidvat) may not be amenable to comply with this request in view of the costs involved, does not mean BSRP should not be ordered to at least request this. It is up to the customers whether they wish to comply. The Court also fails to see that polluting destruction of plastic materials should mean the order is disproportionate. HL Display rightly indicates that if BSRP’s customers indeed return the infringing products, it would mean HL Display does not need to institute proceedings against them. Also, BSRP has not contended it can

repurpose the shelf accessory of the “BSRP Shelf Divider 1” to not infringe. Since the rear securing device, together with the new shelf accessory of BSRP’s Product 2, fall outside the scope of this decision, HL Display has not explained sufficiently why recalling and destructing the rear devices is necessary or proportionate. Finally and again, given BSRP’s cease and desist declaration, the Court fails to see why this order should not be immediately enforceable or subject to a security.

12.4. According to Article 67 UPCA and Rule 191 RoP, the Court may order an infringer to inform the claimant of: a) the origin and distribution channels of the infringing products or processes, b) the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the infringing products, c) the identity of any third person involved in the production or distribution of the infringing products or in the use of the infringing process, and d) such other information as is reasonably necessary for the purpose of advancing that party’s case. This means *inter alia* that the claimant also has a right to information needed to verify the information and to calculate the damage (see e.g. Local Division Mannheim, decision of 11.03.2025, UPC_CFI_159/2024, paragraph 103 and Nordic Baltic Regional Division 31.7.2025, UPC_CFI_9/2024, *Texport v. Sloen*, paragraph 90-91).

12.5. HL Display has requested that the Court shall declare that the decision is immediately enforceable. It follows from Article 82.1 UPCA and Rule 354.1 RoP that decisions and orders of the Court shall, subject to Rule 118.8 and 352 RoP, be directly enforceable from their date of service in each contracting member state. Even if the UPCA as said provides for immediate enforceability, the Court will order so out of an abundance of caution should national law of a Contracting Member-State require this and/or to avoid any unnecessary enforcement dispute about it (cf. Court of Appeal, order of 30.05.2025, UPC_CoA_845/2024 and UPC_CoA_50/2025). This means *inter alia* that HL Display needs to notify the Court of its intention to enforce any orders in the decision, before the Court will issue an order for the enforcement.

In the counterclaim:

12.6. The counterclaim for revocation is dismissed and the counterclaim for a declaration of non-infringement is inadmissible.

In both actions:

12.7. As parties have indicated they agree on the recoverable costs for the main action and the counterclaim each at € 56,000 (the maximum of the cost ceiling), the Court will award the final costs in this decision (including the court fee). As to the counterclaim for a declaration of non-infringement, HL Display requested a separate cost reimbursement of € 7.900,98 (annex 1 in App_34902/2025). However, since the value of the counterclaim (as a whole) was set in the interim conference at € 500,000 by agreement of the parties, no further costs may be awarded above the ceiling. HL Display did not apply to raise the ceiling as envisaged in Art. 2 of the Decision of the Administrative Committee of 24 April 2023 on the scale of recoverable cost ceilings.

ORDER

The Court:

In the 333-applications (outcome already given at the hearing):

- revises ORD_35239/2025 of 21 August 2025 so as to allow for deposit of the old and new BSRP Product (as BB38);
- refuses to revise ORD_28264/2025 of 21 August 2025 and therefore refuses submission of three further physical objects (as BB40A-C);

In the main action:

I. orders BSRP, immediately from the date of service of the judgment, to cease and desist from making, offering, placing on the market, using, and importing and storing for those purposes, in territories where EP 2 432 351 B1 is in force:

A system for securing shelf accessories to a shelf, comprising a front securing device (20), which is configured for fixing to the front edge of a shelf, a rear securing device (30) comprising an elongated profiled element having a cross-sectional profile, with a lower base plate (31) a first arm (32) projecting upwards from the base plate, and a second arm (33), with a rear end (33a), projecting rearwards from the first arm and being configured for fixing on top of a shelf substantially parallel with the longitudinal direction of the shelf, and a shelf accessory (10) having a front engagement member (11) configured for engagement with the front securing device, as well as a rear engagement member (40) comprising a forward projecting third arm (43) configured for engagement with the rear securing device and comprising a front end (44), which third arm (43) is configured to, in mounted position, be received between the base plate (31) and the second arm (33) of the profiled element of the rear securing device (30), wherein the rear securing device (30) and the rear engagement member (40) are configured to allow rotation of the shelf accessory (10) about an axis which is substantially parallel with the longitudinal direction of the profiled element when the rear engagement member (40) is in engagement with the rear securing device (30) characterized in that the rear securing device (30) comprises a first stop face (32a) which is constituted by a forward facing surface of the first arm (32), the rear engagement member (40) comprises a second stop face (47) which is constituted by a rearward-facing surface disposed in front of the front end (44) of the third arm, wherein the distance (B) between the second stop face (47) and the front end (44) of the third arm is less than the distance (A) between the first stop face (32a) and the rear end (33a) of the second arm and in that said first (32a) and second (47) stop faces are configured to be brought into and out of mutually overlapping relation in the vertical direction by rotating the shelf accessory (10) about said axis, such that the first (32a) and second (47) stop faces, in mutual contact, prevent the rear engagement member (40) from being disengaged from the rear securing device (30) when the shelf accessory (10) is held substantially parallel with the top side of the shelf and the first and second stop faces thereby are vertically overlapping, and to allow the rear engagement member (40) to be released from the rear securing device (30) when the front end of the shelf accessory has been lifted such that the shelf accessory has assumed an angle to the top side of the shelf and the first and second stop surfaces thereby are vertically non-overlapping;

in effect: the BSRP Product 1 or similar;

and to cease and desist from supplying and offering to supply means relating to an essential element of the invention (as set out above), for putting it into effect, in effect: a shelf accessory (10) of the BRSP Product 1 (or similar) and a rear securing device (30) for use together with the shelf accessory of the BRSP Product 1 (or similar);

II. declares that BSRP has infringed the patent EP 2 432 351 B1 by committing the acts as specified in I. above;

III. orders BSRP at its own expense, within one week after service of the judgment to:

- a) recall and definitively remove the **shelf accessories** as specified in the injunction order from all channels of commerce; and
- b) destroy the **shelf accessories** as specified in the injunction order and which are in the custody or control of BSRP;

IV. orders BSRP, within three weeks after service of the judgment, to inform HL Display of:

- a) the origin and distribution channels of the infringing products;
- b) the quantities produced, manufactured, delivered, received or ordered, as well as the prices paid for the infringing products; and
- c) the identity of any third person involved in the production or distribution of the infringing products;
- d) the number and dates of the products offered;
- e) the advertising carried out, broken down by advertising medium, its distribution, the distribution period and the distribution area, including evidence of these advertising activities;
- f) the costs, broken down by individual cost factors and the profits realised;

all substantiated by means of all relevant supporting documents, including but not limited to legible orders, order confirmations, invoices and copies of other purchase and sales documents;

V. orders BSRP to pay a recurring penalty payment of up to a maximum of EUR 25,000 imposed by the Court for every day, part of a day counting as a full day, that the order specified under I, III and IV is breached, or a penalty of up to a maximum of EUR 250 for each individual product or part thereof with which the order specified under I, III and IV is breached, in all up to a maximum of EUR 2,000,000;

VI. declares that BSRP is liable to compensate HL Display for all damages that are incurred and will incur due to the acts specified at I. above as to be specified separate damage proceedings;

VII. orders BSRP to pay to HL Display the reasonable and proportionate legal costs of these proceedings and other expenses in the amount of EUR 56,000 plus EUR 11,000 court fee;

VIII. declares that the orders according to items I, III, IV and VII are immediately enforceable notwithstanding any appeal, subject to the requirements that follow from Rule 118.8 RoP;

IX. dismisses all other orders sought;

In the counterclaim:

- declares the counterclaim for a declaration of non-infringement inadmissible;
- dismisses the counterclaim for revocation;
- orders BSRP to pay to HL Display the reasonable and proportionate legal costs of these proceedings and other expenses in the amount of EUR 56,000;
- declares the cost order immediately enforceable.

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 will be issued by the Deputy-Registrar upon request of the enforcing party, R. 69 RegR.

Brinkman	
Kokke	
Bessaud	
Callewaert	
On behalf of the registry	