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Patentanwälte Rechtsanwälte
PartGmbB

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Bremen, DRAFT DATED 29 March 2023

Our ref.: EH 1117-01DE HAF/JK/nsc

Case no.: **not yet allocated**

S T A T E M E N T O F C L A I M

EIS GmbH, represented in law by its Managing Director, Sven Pelka, Am Lenkwerk 3, D-33609 Bielefeld

- the plaintiff -

Legal counsel: Attorneys in the law firm of Eisenführ Speiser Patentanwälte Rechtsanwälte PartGmbB, Am Kaffee-Quartier 3, D-28217 Bremen

Assisting patent attorney: Dipl.-Ing. Jürgen Klinghardt from the law firm of Eisenführ Speiser Patentanwälte Rechtsanwälte PartGmbB, Johannes-Brahms-Platz 1, D-20355 Hamburg

v e r s u s

1. LELO Europe GmbH, Regensburger Strasse 42, D-90478 Nuremberg, represented in law by its Managing Director, Stiv Petrovic, of the same address

- Defendant 1) -

2. LELOi AB, reg. no. 556631-6708, Karlavägen 41, 114 31 Stockholm, represented in law by its Managing Director, of the same address

- Defendant 2) -

in the matter of: patent infringement

In the name and on behalf of the plaintiff we file the following statement of claim.

The matter concerns a large-scale patent dispute that, in the view of the plaintiff, it would seem inappropriate to transfer to a single judge.

The patent asserted and sued upon is DE 50 2016 005 564.5, the German part of EP 3 228 297 (hereinafter: the patent in suit).

Value in litigation (preliminary estimate): EUR 2,500,000.00

The patent in suit relates to a pressure wave massage device for the clitoris.

The statement of claim is structured as follows:

I. Requests

At the hearing, we shall request:

I. That the defendants be ordered

1. to refrain, under penalty of a fine of up to EUR 250,000.00 to be set by the Court for each case of infringement, to be replaced by confinement for up to six months if the fine cannot be collected, or by confinement for up to six months, in the case of multiple infringements for up to two years in total, the persons to be confined being the respective managing directors in the case of the defendants,

   from offering for sale, placing on the market, or using, in the Federal Republic of Germany, and from importing or possessing the same for said purposes:

   pressure wave massage devices for the clitoris, comprising a pressure field generating device which has at least one cavity with a first end and a second end located opposite the first end and distanced from the first end, the cavity being delimited by a side wall joining its two ends to one another and the first end being provided with an opening for placing on the clitoris, and a drive device which is configured to generate a change in volume of the at least one cavity between a minimum volume and a maximum volume such that a stimulating pressure field is generated in the opening,

   in which the cavity is formed by a single continuous chamber, the side wall of the chamber which delimits the cavity and joins its two ends to one another is free of points of discontinuity, the cavity of the chamber is closed at its second end by a flexible membrane which extends substantially over the whole cross-section of the cavity and is moved by the drive device alternately in the direction of the opening and in a direction opposite to the latter, and the ratio of the volume change to the minimum volume is not lower than 1/10 and not greater than 1,

   in particular if

   the cavity of the chamber has the form of a continuous tube.

   (Claim 2)

   and/or

the ratio of the width of the cavity of the chamber defined perpendicular to its longitudinal extension to the length (L) of the cavity of the chamber defined in the direction of its longitudinal extension ranges from 0.1 to 1.0

(Claim 3)

and/or

the value of the relative overpressure, relative to the normal pressure (P0), is below the value of the relative negative pressure, relative to the normal pressure (P0),

(Claim 7)

2. to provide information and to render account regarding acts of the kind referred to in item I.1 above and committed since 17 August 2019, stating

   a) the names and addresses of the manufacturers, suppliers and other previous owners, and of the commercial customers and sales outlets for which the products were destined,

   b) the quantities of any such products that have been supplied, received or ordered, and the prices that were paid for the respective products,

   c) the separate offers, stating quantities quoted, offer dates and prices, as well as the names and addresses of the commercial recipients of said offers,

   d) the advertising deployed, stating advertising medium, circulation, period of circulation and coverage area,

   e) the production costs, detailing the individual cost factors, and the profits thus generated,

   whereby

   the respective purchase vouchers (invoices, or alternatively delivery notes) must be presented, as proof of the details provided in respect of b) above, in the form of copies, whereby any details which need to be kept secret, other than data required to render account, may be blackened out, and the defendants, at their

own discretion, may communicate the names and addresses of non-commercial customers and recipients of offers to a public certified accountant instead of to the plaintiff, said public certified accountant to be named by the defendants and to be committed to secrecy vis-à-vis the plaintiff, subject to the proviso that the defendants bear the costs for the accountant and both authorise and obligate him to inform the plaintiff, in response to a specific inquiry, whether a certain customer or recipient of an offer is included in the list.

II. That the Court rule that the defendants are under an obligation to reimburse the plaintiff for all damages incurred in the past, present or future by the latter as a result of the actions referred to in item I.1 above in the period since 17 August 2019.

III. That the defendants be ordered to bear the costs of the dispute;

IV. That the judgment be declared provisionally enforceable, against provision of security if necessary.

V. That the plaintiff be issued an enforceable copy of the judgment, including a writ of execution, pursuant to Sections 724, 725 ZPO [Code of Civil Procedure].

In the event that the Court orders written preliminary proceedings under Section 276 ZPO and the defendants fail to indicate in a timely manner that they wish to defend themselves against the lawsuit, we hereby request under Section 331 (3) Sentence 1 ZPO

that a **judgment by default** in respect of the requests in items 1 to 3 above be passed on the defendants without a hearing.

II. The parties

1. The plaintiff and the defendants are competitors in the field of manufacturing and selling sex toys, *inter alia*. We submit printouts of the plaintiff's www.eis.de website as **Exhibit K1** and printouts of the www.lelo.com website operated by defendant 2 as **Exhibit K2/1**, as well as printouts, as **Exhibit K2/2**, of the list of exhibitors at the eroFame 2022 exhibition (5th to 7th October 2022), at which defendant 1 had a stand and presented the accused products.

2. The plaintiff is the proprietor of European patent EP 3 228 297. The parties are in dispute over infringement of the patent in suit DE 50 2016 005 564.5 by a "Sona Cruise" pressure wave vibrator sold by the defendants.

   We submit as **Exhibit K3** photos of the Sona Cruise pressure wave massage devices, and as **Exhibit K4** offers from the defendants' web shop.

   The plaintiff made a test purchase. An original Sona Cruise pressure wave massage device is submitted as **Exhibit K5** (for the Court only). Originals of the other, technically identical, pressure wave massage devices Enigma, Enigma Cruise and Sila are submitted as **Exhibit K6** (for the Court only).

3. In order to brief the Court fully, we wish to inform it that the plaintiff has brought an action against defendant 2 (LELOi AB) before the Patent and Trademark Court in Stockholm ("Patent- och marknadsdomstolen") for infringement of the Swedish part of the patent in suit, by filing a statement of claim bearing today's date. Court actions are being prepared in other countries where the patent is in force.

III. The patent in suit

The patent in suit is the German part DE 50 2016 005 564.5 of European patent EP 3 228 297. The patent in suit claims the priorities of patent applications DE 10 2016 106 120 dated 4 April 2016 and EP 16169444 dated 12 May 2016 and is derived from European patent application no. 16192449.3, which was published on 11 October 2017. Mention of the grant of the patent was published on 17 July 2019. The patent in suit is in force, and the plaintiff is the registered proprietor. We submit EP 3 228 297 B1, the patent specification in suit, as **Exhibit K5**. We present a current extract from the Patent Register at the German Patent and Trademark Office (GPTO) as **Exhibit K6**.

1. Technical background and object of the invention

The patent in suit relates to a pressure wave massage device for the clitoris, comprising a pressure field generating device which has at least one cavity with a first end and a second end located opposite the first end and distanced from the first end, the cavity being delimited by a side wall joining its two ends to one another and the first end being provided with an opening for placing on the clitoris, and a drive device which is configured to generate a change in volume of the at least one cavity between a minimum volume and a maximum volume such that a stimulating pressure field is generated in the opening.

A device of the kind initially specified is known, for example, from DE 10 2013 110 501 A1, attached as **Exhibit K7**, and from the parallel WO 2015/039787 A1 application. In the latter prior art device, the cavity is formed by a first chamber and a second chamber. The second chamber has an opening for placing on a body part or erogenous zone. The two chambers are connected to each other via a narrow connecting channel. The drive device is designed in such a way that it only changes the volume of the first chamber, namely in such a way that a stimulating pressure field is generated in the second chamber via the connecting channel. However, this well-known design has major disadvantages. It is not possible to use it with a lubricant or under water, because the lubricant or the water in the narrow connection channel increases its throttle effect to such an extent that the drive device can be “stalled”. Furthermore, the prior art device does not meet the strict requirements regarding the necessary hygiene. Due to its very small cross-section, the connecting

channel prevents any cleaning of the inner first chamber, where dirt and bacteria can then accumulate and cannot be removed again.

With that as background, the object of the patent in suit is to proposed an improved pressure wave massage device having a simple and at the same time effective construction that also meets strict hygiene standards.[1]

To achieve that object, claim 1 of the patent in suit has the following features:

a pressure wave massage device for the clitoris,

1. comprising a pressure field generating device (10) which has at least one cavity (12) with a first end (12a) and a second end (12b) located opposite the first end (12a) and distanced from the first end (12a),
2. the cavity (12) being delimited by a side wall (12c) joining its two ends (12a, 12b) to one another and
3. the first end (12a) being provided with an opening (8) for placing on the clitoris, and
4. further comprising a drive device (20, 22) configured to generate a change in volume of the at least one cavity (12) between a minimum volume and a maximum volume such that a stimulating pressure field is generated in the opening (8),
5. wherein the cavity (12) is formed by a single continuous chamber (14),
6. wherein the side wall (12c) of the chamber (14) which delimits the cavity (12) and joins its two ends (12a, 12b) to one another is free of points of discontinuity,
7. the cavity (12) of the chamber (14) is closed at its second end (12b) by a flexible membrane (18) which extends substantially over the whole cross-section of the cavity (12) and is moved by the drive device (20, 22) alternately in the direction of the opening (8) and in a direction opposite to the latter, and
8. the ratio of the volume change to the minimum volume is not lower than 1/10 and not greater than 1.

We submit the above list of features as **Exhibit K8**.

2. Interpretation of the patent in suit

Claim 1 of the patent in suit protects a pressure wave massage device for the clitoris, as illustrated by way of example in Fig. 3. The core components of such a pressure wave massage device are a pressure field generating device and a drive device, as shown below:

[1] Cf. the patent specification in suit, paragraph [0003]

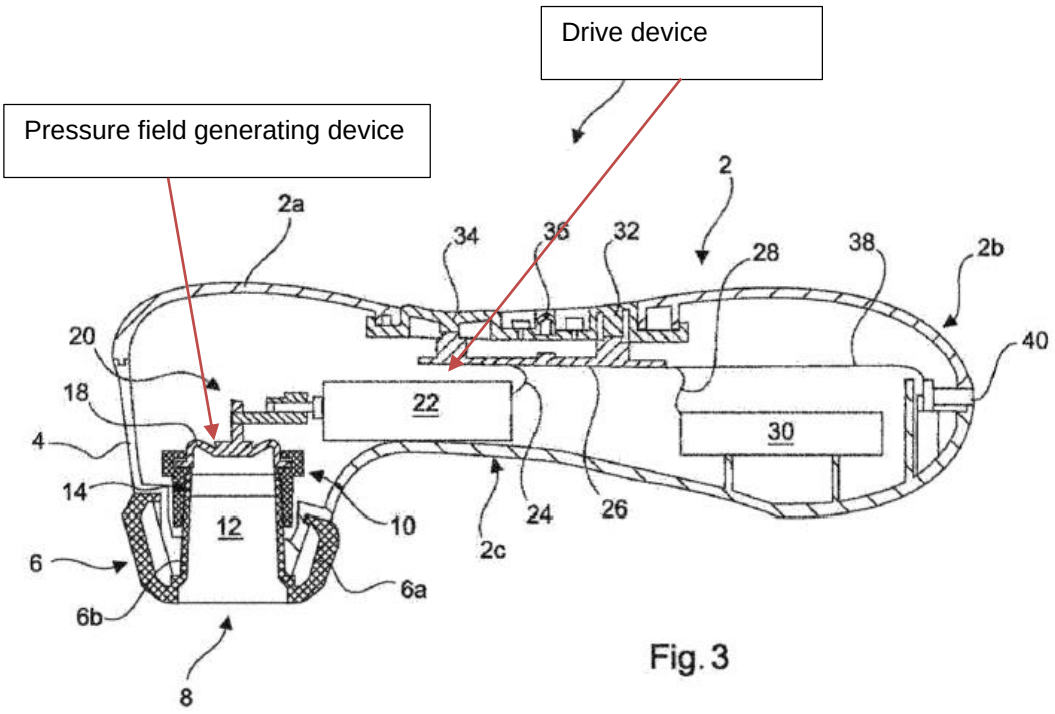

Fig. 3

a) Features 1 to 3

comprising a pressure field generating device (10) which has at least one cavity (12) with a first end (12a) and a second end (12b) located opposite the first end (12a) and distanced from the first end (12a),

the cavity (12) being delimited by a side wall (12c) joining its two ends (12a, 12b) to one another and

the first end (12a) being provided with an opening (8) for placing on the clitoris

This means that a cavity (12) forms one component of a pressure field generating device. The cavity (12) has a first end (12a), namely the outer end[2]. This can also be seen from feature 3, according to which the first end (12a) is provided with an opening for placing on the clitoris. In the embodiment illustrated in Fig. 4 of the patent specification in suit, the opening is in the form of a socket:

[2] On this point, see, for example, the patent specification in suit, column 5, line 34

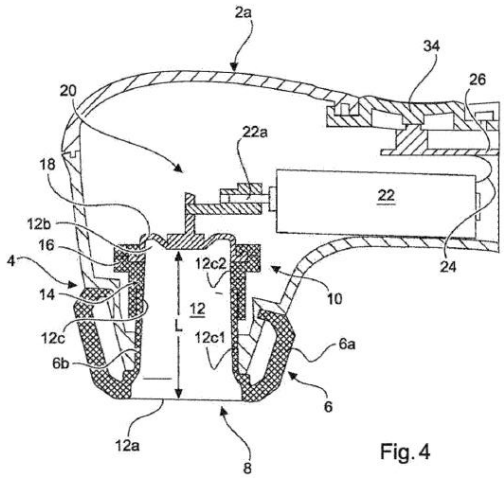

Fig. 4

The opening is used for placing on the clitoris, so the first end of the cavity also forms the opening at the same time[3].

A person skilled in the art will also realise from the expression “pressure field generating device” that the function of said device is to generate a stimulating pressure field in the opening, as is also required by feature 4 (“..., such that a stimulating pressure field is generated in the opening (8), ...”)[4].

According to feature 1, the second end (12b) of the cavity (12) is located opposite the first end (12a) and is distanced from it, so a person skilled in the art will understand the claimed arrangement in such a way that the second end is one located inside the housing of the pressure wave massage device and is thus an inner end.

The cavity forming part of the pressure field generating device is thus delimited by an outer first end having the opening, an inner second end located opposite and distanced from the outer first end, and a side wall joining these two ends to one another.

b) Feature 4

further comprising a drive device (20, 22) configured to generate a change in volume of the at least one cavity (12) between a minimum volume and a maximum volume such that a stimulating pressure field is generated in the opening (8)

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[3] Patent specification in suit, column 5, lines 37–38. Due to a printing error, reference signs “12a” and “12b” for the first and second ends are erroneously replaced by “4a” and “4b”.

[4] See also the patent specification in suit, column 5, lines 30–32

Feature 4 describes the drive device (20, 22), which is illustrated in Fig. 4, for example:

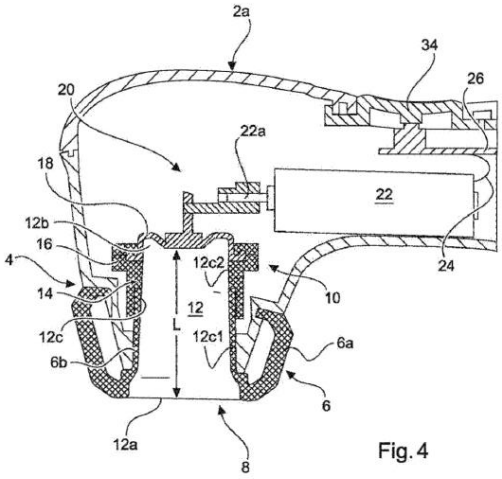


Fig. 4

As Fig. 4 also shows, cavity 12 is closed at its inner second end 12b by a flexible membrane 18 which extends over the whole cross-section of the cavity and which is drive via a mechanism 20 by a drive motor 22. The mechanism is designed in such a way that the rotational movement of the output shaft 22a of the drive motor is converted into a reciprocal longitudinal movement, as a result of which the membrane is made to move transversely to its plane in the direction towards it and in the opposite direction[5].

In this way, the volume of the cavity of the chamber is changed according to the rotation of the output shaft of the drive motor, namely between a minimum volume and a maximum volume, which is produced in the pressure field generating device of Fig. 4 by the membrane being moved to its maximum deflection points.

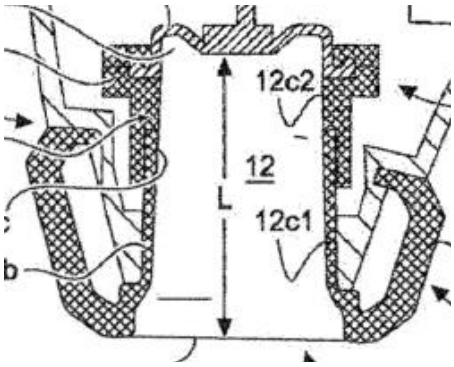
Due to the change in volume of the cavity between a minimum volume and a maximum volume, a stimulating pressure field is created in the opening, i.e. in the region of the pressure wave massage device that is placed on the clitoris.

[5] Patent specification in suit, paragraph [0028]

c) Feature 5

wherein the cavity (12) is formed by a single continuous chamber (14),

A cavity (12) having a single continuous chamber is shown by way of example in Fig. 4:



The single chamber is defined by feature 5. This feature distinguishes claim 1 of the patent in suit from the prior art device described in paragraph [0002], the cavity of which is formed by a first chamber and a second chamber, the second chamber having the opening for placement on a body part or on an erogenous zone, and the two chambers being connected to each other by a narrow connecting channel. In other words, the cavity in that prior art device is divided into two separate chambers that only communicate with each other via a narrow connecting channel.

In contrast to that, feature 5 leads to a solution in which the cavity is not divided into two (or more) chambers that are separate from each other and which are connected to each other only by a narrow connecting channel, but is formed by a single continuous chamber.

The function of this feature consists in “a simpler construction, improved hygiene, particularly due to the easier rinsing of the cavity formed by only a single chamber according to the invention, and the easy handling with lubricant or under water”[6].

d) Feature 6

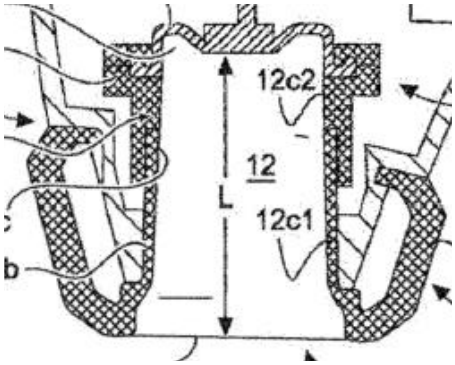
wherein the side wall (12c) of the chamber (14) which delimits the cavity (12) and joins its two ends (12a, 12b) to one another is free of points of discontinuity

[6] Patent in suit, paragraph [0005]

According to feature 6, the cavity formed by a single continuous chamber is characterised by the absence of any points of discontinuity in the side wall.

The expression “point of discontinuity” is borrowed from the field of mathematical analysis, in which a function is referred to as discontinuous within its definition range wherever it is not continuous. A point at which a function is discontinuous is also referred to for that reason as a point of discontinuity or as a discontinuity[7].

In the context of the patent in suit, a person skilled in the art will understand a “point of discontinuity”, as can be seen from Fig. 4, for example, to mean that the side walls must not have any (sharp) edges. Any changes in the cross-section of the cavity should be “continuous”, i.e. without jumps or edges.



Changes in the cross-section of the cavity do not prevent the realisation of feature 6, provided that the additional criterion of the “continuity” of the change in cross-section is satisfied. The advantage achieved with feature 6 is explained in paragraph [0009], according to which this feature is provided in order to achieve a uniform, unobstructed and therefore effective air flow. Paragraph [0009] thus explains to a person skilled in the art the design of the side wall, according to which the side latter must be free of points of discontinuity in the fluid engineering sense.

e) Feature 7

the cavity (12) of the chamber (14) is closed at its second end (12b) by a flexible membrane (18) which extends substantially over the whole cross-section of the cavity (12) and is moved by the drive device (20, 22) alternately in the direction of the opening (8) and in a direction opposite to the latter

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Feature 7 describes how the pressure field is generated, by specifying how the change in the volume of the cavity is to be implemented by means of the drive device.

A flexible membrane is provided which closes the cavity at its second end and which extends substantially over the whole cross-section of the cavity. Since the flexible membrane is arranged at the inner second end of the cavity, it is therefore located at the inner end of the cavity.

Feature 7 also requires that the flexible membrane be moved by the drive device alternately in the direction of the opening and in the opposite direction. Applying such a movement to the membrane is only possible because it is flexible in design, as required by feature 7. A person skilled in the art will realise here that the application of a movement to the flexible membrane by the drive device, alternately in the direction of the opening and in a direction opposite thereto, will result in a reciprocal movement of the flexible membrane. A reciprocal movement of the flexible membrane that closes the cavity at its inner first end causes the volume of the cavity to change and results in the alternating generation of negative pressures and overpressures. The alternating generation of negative and overpressures (relative to a normal pressure P0) in turn produces the stimulating pressure field in the opening .

The function of using and forming a flexible membrane, according to feature 7, is that the stimulating pressure field (alternating negative pressures and overpressures) is generated in the opening of the single chamber in a particularly simple and at the same time effective manner[8].

f) Feature 8

the ratio of the volume change to the minimum volume is not lower than 1/10 and not greater than 1.

Paragraph [0006] contains the following definition of the “volume change” and “minimum volume” features:

[8] Paragraph [0010]

> "Here, the volume change is the difference between the maximum volume and the minimum volume. The volume of the cavity is defined as the volume of the chamber which ends in the region of the opening in a virtually planar area which notionally closes the opening."

The change in volume of the cavity is the difference between maximum and minimum volume. As stated in paragraph [0008], the minimum volume of the cavity is defined as the volume when the membrane is in an operating condition or position with the smallest distance to the opening, and the maximum volume of the cavity of the chamber is defined as the volume when the membrane is in an operating condition or position with the greatest distance to the opening.

Feature 8 further requires that the ratio of the volume change to the minimum volume is not lower than 1/10 and not greater than 1, which can be expressed with the following "equation":

$$1 \geq \frac{Volume\ change}{Minimum\ volume} \geq 0.1$$

The function of this feature is to specify the ratio of the volume change to the minimum volume, according to the invention. The ratio should not be lower than 1/10 or 0.1, because it was found that the suction effect is too low otherwise. The ratio of the volume change to the minimum volume should also be no greater than 1, because according to the invention it was found that the power requirement of the drive device becomes too great otherwise and that a negative pressure that is too strong or painful is otherwise produced at the opening[9].

[9] Paragraph [0007]

IV. The patent infringement

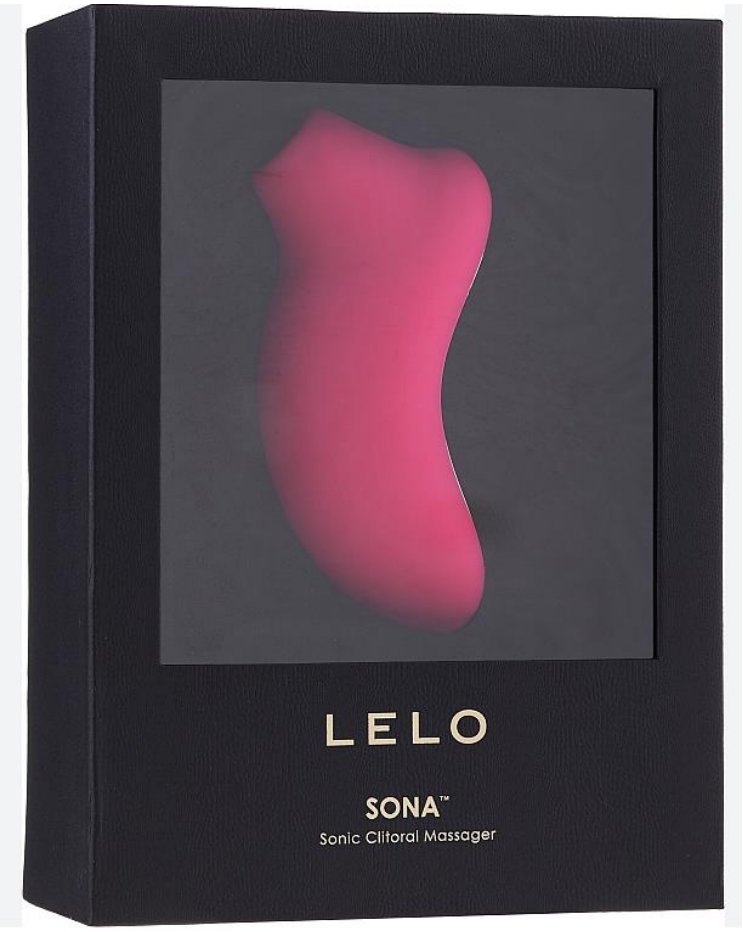
The defendants sell pressure wave massage devices which directly infringe the teaching of the patent in suit within the meaning of Section 9 PatG [German Patent Act].

1. Patent-infringing activity

Defendant 2 manufactures and the defendants sell the “Sona Cruise” pressure wave massage device, among others:

LELO Sona Cruise:

LELO Sona:



The “Sona Cruise” pressure wave vibrator has the following characteristics:

Erleben Sie ein ganz neues Gefühl der Stimulation durch ein luxuriöses Spielzeug.

Wenn Sie denken, dass Ihr Höhepunkt noch intensiver sein könnte, dann probieren Sie die Klitoris-Stimulation ohne eine einzige Berührung aus. Der Klitoris-Stimulator Lelo Clit Stimulating Sona 2 stimuliert die Klitoris mehr als je zuvor.

Das weichere, tiefere und größere Mundstück sorgt für eine absolute Befriedigung innen und außen. Das Silikon des Stimulators ist so konzipiert, dass es Schallwellen absorbiert und zurück auf die Klitoris überträgt, was ein noch intensiveres Erlebnis garantiert. Wenn Sie das Mundstück fest gegen den Körper drücken, verringern Sie automatisch die Leistung. Geben Sie sich Gefühlen hin, die Sie verschlingen.

Eigenschaften:

- Stimulation mittels Schallwellen ohne direkten Kontakt
- das abgeschrägte Mundstück passt perfekt um die Klitoris und passt sich an
- einfache Bedienung und mühelose Pflege
- ideal als Geschenk, elegantes Design
- Teil des Pakets ist eine Gleitgel-Probe und eine Tasche aus Satin

Technische Spezifikation:

[Translation into English:

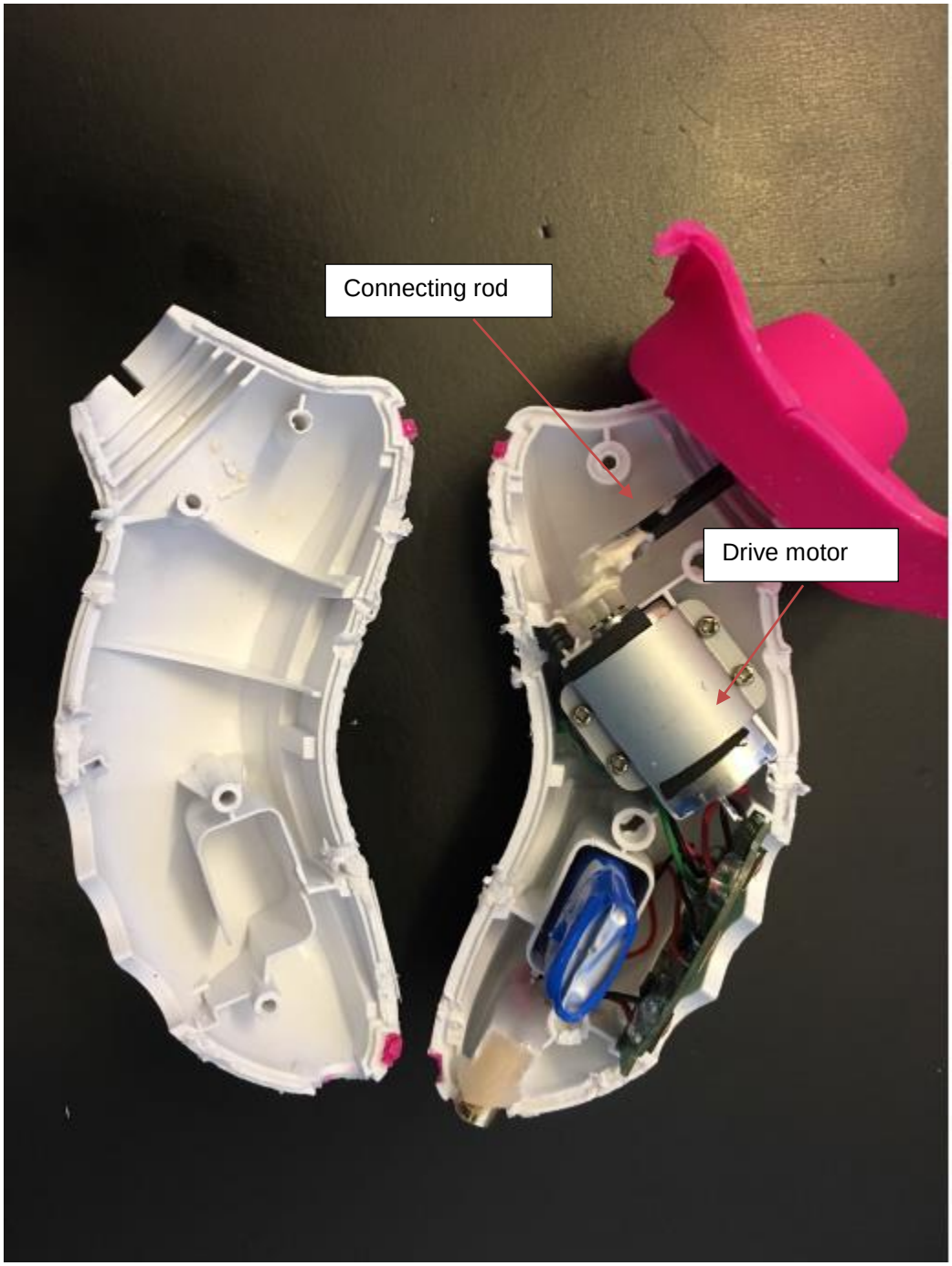
Experience a totally new feeling of stimulation by a luxury toy

If you think your climax could be even more intense, then try clitoral stimulation without a single touch. The 'Lelo Clit Stimulating Sona 2' clitoris stimulator stimulates the clitoris more than ever before.
The softer, deeper and larger mouthpiece ensures absolute satisfaction inside and out. The silicone of the stimulator is designed to absorb sound waves and to transmit them back to the clitoris, thus guaranteeing an experience that is even more intense. When you press the mouthpiece firmly against the body, you automatically reduce the power. Surrender to feelings that engulf you.
Features:

- *Stimulation by sound waves, without direct contact*
- *the bevelled mouthpiece fits perfectly around the clitoris and accommodates it*
- *easy to use and effortless to maintain*
- *ideal as a present, elegant design*
- *the package includes a lube sample and a satin pouch*

Technical specifications:]

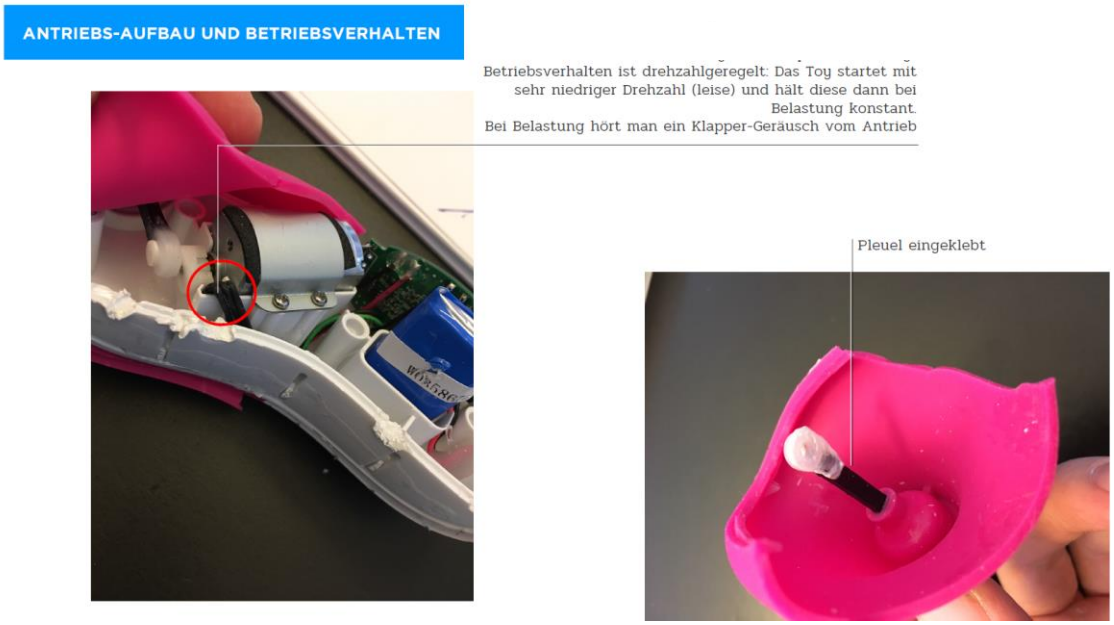
The “Sona Cruise” is a pressure wave vibrator whose drive motor acts via the connecting rod on the membrane of the cavity, which is deflected in the direction of the opening and back again.



Membrane at the inner end of the cavity, the wall of which is smooth and therefore has no points of discontinuity

The chamber itself is smooth and has no points of discontinuity.

The membrane is deflected by the motor and the connecting rod, depending on the rotational speed:



[English translation:
Drive structure and operating behaviour
Operating behaviour is speed-controlled. The toy starts at a very low speed (quiet) and then keeps it constant under load.
A rattling noise is heard from the drive when it is under load
Connecting rod glued in]

Indeed Innovation GmbH, Schopenstehl 15, D-20095 Hamburg, the firm of engineering consultants commissioned by the plaintiff, also measured the volume of the cavity in different operating situations and calculated the "volume change" and the "minimum volume" of the cavity of the "Sona Cruise". Measurement of the volumes was based on the definition in paragraph [0006] of the patent in suit:

> "Here, the volume change is the difference between the maximum volume and the minimum volume. The volume of the cavity is defined as the volume of the chamber which ends in the region of the opening in a virtually planar area which notionally closes the opening."

The following results were obtained:

[English translation:
Min. volume (bottom dead point) 1.0 ml
Max. volume (top dead point) 1.8 ml
> Volume change 0.8 ml]

The ratio of the volume change to the minimum volume must therefore be stated as follows.

$$\frac{Volume\ change\ 0.8}{Minimum\ volume\ 1.0} = 0.8$$

As **evidence** for the facts presented above with regard to the “Sona Cruise”, we offer by way of precaution

the commissioning of an expertise.

In addition to the **Sona, Sona Cruise, Sona 2 and Sona 2 Cruise** pressure wave massage devices, defendant 2 manufactures and the defendants sell the technically identical **Enigma, Enigma Cruise and Sila** pressure wave massage devices (Exhibit K6):


LELO


LELO

2. Realisation of the features of claim 1

The Sona Cruise pressure wave massage devices offered and sold by the defendants meet the requirements of literal patent infringement within the meaning of Section 9 PatG.

The accused device is a pressure wave massage device for the clitoris, in accordance with features 1 to 3, as can be seen immediately from the photographs. The "Sona Cruise" pressure wave massage device for the clitoris comprises a pressure field generating device having a cavity with a first end and a second end located opposite the first end and distanced from the first end, the cavity being delimited by a side wall joining its two ends to one another, and the opening for placing on the clitoris is provided.

In accordance with feature 4, the "Sona Cruise" pressure wave massage device has a drive device which produces, via the connecting rod that acts on the membrane of the chamber, a change in volume of the cavity between a minimum volume and a maximum volume such that a stimulating pressure field is generated in the opening.

The cavity is formed by a single continuous chamber, in accordance with feature 5.

The side wall of the chamber is smooth and thus free of points of discontinuity, in accordance with feature 6.

In accordance with feature 7, the cavity of the chamber is closed at its second end by a flexible membrane which extends substantially over the whole cross-section of the cavity and is moved by the drive device alternately in the direction of the opening and in a direction opposite to the latter.

Finally, the ratio of the volume change to the minimum volume of the cavity of the Sona Cruise is 0.8 and therefore is not lower than 1/10 and not greater than 1 (feature 8).

The "Sona Cruise" pressure wave vibrator thus realises all the features of claim 1 of the patent in suit.

The technically identical "Enigma", "Enigma Cruise" and "Sila" pressure wave massage devices (Exhibit K6) also realise claim 1 of the patent in suit.

V. Legal aspects

In view of the foregoing, it is established fact that the patent in suit is infringed by the Sona Cruise pressure wave massage devices offered and sold by the defendants. The plaintiff is therefore entitled to the claims asserted in the requests:

1. The claim to injunctive relief in **item I.1** is based on Article 64 EPC, and on Section 139 (1) in conjunction with Section 9 PatG.

2. The claim to declaratory judgement in respect of damages asserted in **item I.3** is basically derived from Article 64 EPC and Section 139 (2) PatG. The defendant has deliberately infringed the patent in suit, or in any case has infringed it in a grossly negligent manner, so it is obligated to compensate the plaintiff for damages, the amount of which cannot be quantified at present.

3. The plaintiff cannot quantify the amount of damages it has incurred, or what the defendants have acquired at its expense, before the defendant has provided information and rendered account in accordance with the request in **item I.2**. The legal basis for those claims is Section 140b PatG. For the period since said Act entered into force, the asserted claim to information and disclosure of accounts is based on Sections 242, 259 BGB [German Civil Code] and on the principles of negotiorum gestio.

4. The jurisdiction of the seised court derives from the fact that the defendants operate throughout Germany.

(Harald Förster)
Attorney-at-law

Enclosures
Exhibits K1 – K9
1 certified copy
1 uncertified copy

Please complete and sign the following acknowledgement of receipt and return it (in the stamped envelope enclosed) to:

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Case no.: **(please complete)** _____

Landgericht Düsseldorf
[Düsseldorf Regional Court]
- Patent litigation division -
Werdener Strasse 1
D-40227 Düsseldorf

ACKNOWLEDGEMENT OF RECEIPT

In the action

EIS GmbH v LELO Europe GmbH

s.

Attorneys and Patent Attorneys Eisenführ Speiser PartGmbB

the **statement of claim** by Eisenführ Speiser, dated 6 February 2023

was received in the original on _____ .

Date, signature

2019727781