

BL O/0341/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK REGISTRATION NO. 800981850

IN THE NAME OF OMNICELL GMBH

IN RESPECT OF THE FOLLOWING TRADE MARK:

easyblist

IN CLASSES 5, 16, 39 AND 44

AND

AN APPLICATION FOR REVOCATION THEREOF

UNDER NUMBER 508100

BY KILBURN & STRODE LLP

BACKGROUND AND PLEADINGS

1. The UK trade mark (“UKTM”) shown on the front page of this decision (UKTM no: 800981850¹) (“the contested mark”) stands registered in the name of Omnicell GmbH (“the proprietor”). It was filed on 16 July 2008 and completed its registration process on 5 October 2009, claiming a priority date of 23 January 2008 (based upon a German mark). The mark stands registered for the following goods/services:

Class 5 - Pharmaceutical and veterinary preparations in push-out packages, especially as composite package for sets of medicaments or in patient-customized sets.

Class 16 – Paper, cardboards and plastic materials for packaging included in this class, and packages made of these materials or of a combination of these materials; medicine-push-out packages of plastic material also in combination with cardboards and/or metal; medicine-outer-packagings of cardboards and/or plastic material.

Class 39 – Packaging and storage of goods; packaging of medicaments, especially in individual or patient-customized sets; patient-customized packaging of prescriptions by pharmacists or in the pharmacies by qualified personnel, especially by means of blisters and push-out packages.

Class 44 – Medical services; veterinary services; hygienic and beauty care for human beings or animals; pharmacy advice; pharmacists' services to make up prescriptions by pharmacists or in pharmacies.

2. On 22 November 2024, Kilburn & Strode LLP (“the cancellation applicant”) applied to revoke the contested mark on grounds of non-use in accordance with sections 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 (“the Act”). Revocation is sought in respect of the specification in its entirety. The periods in respect of which non-use is claimed are 6 October 2009 to 5 October 2014, with an effective date of revocation of

¹ The opponent’s mark is a comparable mark based on an earlier International Registration designating the EU (“IR”). On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with existing IR’s. These comparable marks enjoy the same filing and registration dates as their European counterparts.

6 October 2014 under section 46(1)(a) (“the first relevant period”), and 22 November 2014 to 21 November 2019, with an effective date of revocation of **22 November 2019** (“the second relevant period”), 22 November 2019 to 21 November 2024, with an effective date of revocation of **22 November 2024** (“the third relevant period”) under section 46(1)(b).

3. The proprietor concedes within both its counterstatement and written submissions that it has not made use of the mark for the following services:

Class 39 - Packaging and storage of goods; packaging of medicaments, especially in individual or patient-customized sets;

Class 44 - Medical services; veterinary services; hygienic and beauty care for human beings or animals;

4. Consequently, the contested mark will be revoked in relation to the above terms which are undefended, without further consideration. The proprietor filed a defence and counterstatement in which it denies the applicant’s claims and states that it has made genuine use of the contested mark, for the remaining goods/services covered by the registration, within the relevant periods.

5. The proprietor is represented by POPYRUS IP LTD and the cancellation applicant is self-represented. Only the proprietor filed evidence in these proceedings. No hearing was requested, and only the proprietor filed written submissions in lieu of a hearing.

EVIDENCE

6. The registered proprietor filed evidence in chief in the following form:

- a. A witness statement of Robert Bolmer dated 20 June 2025, accompanied by exhibits RB1 to RB12. Mr Bolmer is a Senior Manager for retail at Omnicell GmbH (the proprietor), which is a subsidiary of Omnicell, Incorporated.

- b. A witness statement of Katy Whymark dated 23 June 2025, accompanied by exhibits KW1 to KW9. Ms Whymark is a professionally qualified translator who is providing translation of the German exhibits contained in the witness statement of Robert Bolmer.
- c. A witness statement of Kathryn Hughes dated 13 August 2025, accompanied by exhibits KH1 to KH19. Ms Hughes is a Senior National Sales Manager at Omnicell Limited, which is a subsidiary of Omnicell, Incorporated.
- d. A witness statement of Michael Spencer dated 13 August 2025, accompanied by exhibits MS1 to MS3. Mr Spencer is a Trade Mark Attorney who is employed by the proprietor's legal representative firm.

7. Written submissions of the registered proprietor dated 23 June 2025.

8. I have given due consideration to all of the documents filed by both parties but will only refer to them as appropriate to the extent that is necessary in my decision.

DECISION

9. Section 46 of the Act is relevant to the revocation proceedings, which states:

“46. - (1) The registration of a trade mark may be revoked on any of the following grounds-

(a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

(c) [...]

(d) [...]

(2) For the purpose of subsection (1) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) [...]

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

(6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from-

(a) the date of the application for revocation, or

(b) if the registrar or court is satisfied that the grounds for revocation existing at an earlier date, that date.”

10. As the mark is a comparable marks, paragraph 8 of part 1, schedule 2A is relevant. It reads:

“8. Non-use as defence in infringement proceedings and revocation of registration of a comparable trade mark (EU)

(1) Sections 11A and 46 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the period of five years referred to in sections 11A(3)(a) and 46(1)(a) or (b) (the "five-year period") has expired before [IP completion day]—

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in sections 11A and 46 to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before [IP completion day]—

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark, are to be treated as references to the corresponding EUTM ; and

(b) the references in sections 11A and 46 to the United Kingdom include the European Union”.

11. Section 100 is also relevant, which reads:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

12. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK’s withdrawal from the EU.

RELEVANT CASE LAW

13. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 *P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversvereinigung Kamaradschaft 'Feldmarschall Radetsky* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial raison d'être of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].

14. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/404/13, Mr Geoffrey Hobbs QC (as he then was), sitting as the Appointed Person stated that:

“22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not ‘show’ (per Section 100

of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use.”

15. What I take from this case law is that there is no requirement to produce any specific form of evidence, but that I must consider what the evidence as a whole shows me, and whether on this basis I can reasonably be satisfied on the balance of probabilities that there has been genuine use of the contested mark.

EVIDENCE OF USE

16. As the contested mark is a comparable mark, the registered proprietor can rely upon use of the mark in the EU for any and all parts of the relevant periods which fall prior to IP Completion Day, namely, 31 December 2020.²

The Registered Proprietor’s Evidence

Witness statement of Robert Bolmer

17. I note the following from the witness evidence of Mr Robert Bolmer:

- a. The proprietor has been using the mark easyblast continuously within the EU since 2008 for SKU 720-LBLFLAPS-EB repair patches, which Mr Bolmer explains are a type of blister pack repair patch for medication. This is a sticker which is “adhered to medication adherence packs and over labels or repairs open blister packs to reseal them and notify patients of their medication adherence requirements”³. The products are sold to retail pharmacies and pharmacy distributors.⁴

² paragraphs 7 and 8 of Part 1 Schedule 2A of the Act.

³ Witness statement of Robert Bolmer, para 3

⁴ Witness statement of Robert Bolmer, para 14

- b. Mr Bolmer states that in 2010 the proprietor began using the easyblast fill2light system, which is currently advertised on its website and has been since 2019. He states:

“As of the current date, the easyblast mark is used in the European Union in relation to easyblast blister pack repair patches since at least 2008, easyblast cards since at least 2008 to November 2015, easyblast manuals since at least 2010 to now, and the easyblast fill2light system since at least 2010 to the current date as of writing this statement”⁵

The following images are taken from the proprietor’s German website⁶ and are undated:



easyblast® fill2light -
einfach, sicher,
dokumentiert!

Fordern Sie einen Rückruf an [Laden Sie die Broschüre herunter](#)
[Kostenfreies Infopaket anfordern!](#)

Sichere, visuell geführte Befüllung

Ein innovatives System, das Ihr Personal visuell anleitet, um Medikamentenblister präzise zu befüllen. So wird sichergestellt, dass jedes Medikament korrekt im Blistertank landet und das Risiko von Fehlern reduziert wird.

Umfassende Dokumentation

Gewährleisten Sie eine vollständige Rückverfolgbarkeit mit automatischer, umfassender Dokumentation jeder Phase des Befüllprozesses, einschließlich Fotos, die zusätzliche Sicherheit und Compliance garantieren.

Kompatibel mit allen Omnicell 7x4 und 7x5 Blisterkarten

Das easyblast® fill2light-System ist so konzipiert, dass es sich flexibel an die Formate 7x4 und 7x5 anpasst und somit den unterschiedlichen Medikamentenbedarfen der Patienten gerecht wird.

⁵ Witness statement of Robert Bolmer, para 4

⁶ Exhibit RB1

Easyblist® Fill2light in Details



- c. Mr Bolmer has provided the following breakdown in respect of the easyblist fill2light EU turnover⁷:

<u>Year</u>	<u>€</u>	<u>Goods/Services</u>
2018	€104,899.30	easyblist Fill2light system
2019	€126,948.00	easyblist Fill2light system
2020	€177,550.70	easyblist Fill2light system
TOTAL	€409,398	easyblist Fill2light system

A further, more detailed breakdown, has also been provided concerning the specific types of products which have been sold within the EU⁸:

⁷ Witness statement of Robert Bolmer, para 5

⁸ Exhibit RB2

Total of Net Sales Product	2018	2019	2020
fill2light	€72.062,00	€40.675,00	€133.875,00
easyblist fill2light	€72.062,00	€40.675,00	€133.875,00
easyblist fill2light - The digital support for your blister packaging process			
Fill2light			
fill2light Modell 2018	€8.900,00	€16.499,00	
easyblist fill2light 2018	€8.900,00	€16.499,00	
fill2light_alt			€3.500,00
easyblist fill2light			€3.500,00
fill2light-G0		€25.000,00	
easyblist fill2light		€25.000,00	
fill2light-G1		€19.400,00	€11.750,00
easyblist fill2light		€19.400,00	€11.750,00
fill2light-SW-Contribuition -1G	€18.912,30	€21.324,00	€23.616,00
easyblist fill2light Software-Post first device	€18.912,30	€21.324,00	€23.616,00
fill2light-SW-Contribution -MG	€5.025,00	€4.050,00	€4.319,70
easyblist fill2light Software-Post additional devices	€5.025,00	€4.050,00	€4.319,70
SMI-74			
easyblist safety module 7x4			
Safety attachment for SureMed individual 7x4 pegboard			
SMI-75			€490,00
easyblist safety module			€490,00
easyblist safety module 7x5			
Grand Total	€104.899,30	€126.948,00	€177.550,70

- d. The proprietor has advertised the mark throughout the EU via articles published by “the biggest online pharmacy media website in Germany”⁹. 53 articles were published and span from 2008 to 2021.
- e. Mr Bolmer has provided a printout from the German website ‘apotheker.adhoc’ with thumbnails of the 53 articles referred to above. Each of the thumbnails bears the mark and is dated within the dates set out above.¹⁰
- f. Mr Bolmer has provided printouts from the German website ‘apotheker.adhoc’ of a further eight articles which fall within the relevant periods and are dated between August 2010 and December 2020. All of these articles bear the mark.
- g. The proprietor’s easyblist fill2light system won the Red Dot Design award in 2019 and was described as “an intelligent documentation tool,

⁹ Witness statement of Robert Bolmer, para 7

¹⁰ Exhibit RB3

which guides the user reliably through the process of manually filling blister cards”¹¹. Mr Bolmer states that this is an international award.

- h. Mr Bolmer has provided price lists for easyblast products for 2013 and 2015. These appear in German.¹²
- i. I have before me, easyblast flyers which are written in German. Mr Bolmer states that these are from 2019 and 2020 respectively¹³. I have no details of how these were distributed.
- j. The proprietor has exhibited the easyblast fill2light system annually at the Expopharm Trade Show since 2012 and has exhibited the easyblast consumables between 2008 and 2015. Mr Bolmer states that this is the biggest retail pharmacy show in Europe.
- k. Easyblast products have been sold across the EU in Germany, Italy, Austria and the UK from at least 2014 to 2025¹⁴.

Witness statement of Katy Whymark

18. Ms Whymark is a qualified translator and is conversant in both English and German. Ms Whymark has provided English translations of the German exhibits provided by Mr Bolmer, above. I note the following:

- a. There is a translation of an easyblast advertisement from the proprietor’s website. This confirms that the easyblast fill2light system guides staff in the filling of medication blister systems accurately. It is a light-assisted system designed to optimise operating efficiency and reduce the risk of errors¹⁵.
- b. Ms Whymark has translated the articles from the German website ‘apotheker adhoc’¹⁶. I take the following from the articles:

¹¹ Exhibit RB5

¹² Exhibits RB6-7

¹³ Exhibit RB8-10

¹⁴ Witness statement of Robert Bolmer, para 11

¹⁵ Exhibit KW1, a translation of RB1

¹⁶ Exhibit KW2, a translation of RB3

- i. 100 pharmacies in Germany rely on the easyblast fill2light system, which uses light signals to indicate where and how many tablets have been filled.¹⁷
- ii. It is a semi-automatic blistering system in which all filling steps are documented with photographs¹⁸.
- iii. The blister card machine and perforated board, which can be extended, if required, with the easyblast fill2light light-assisted blistering and documentation aid¹⁹.
- iv. The following information is taken from the exhibition at Expopharm Hall dated 9 October 2012:

“The manual process of filling blister cards is supported visually and by the software.

After the staff have selected the patient and scanned and identified the medication pack, the corresponding administration times are illuminated by the easyblast fill2light. The medication can now be easily placed in the illuminated blister system. This visual aid relieves the load on the staff enormously and helps to support their concentration. They then use an integrated camera to take a documentary photo of the blister card after each medication so that the correct filling can be documented and traced at any time. Label printing and batch management are integrated into the system.”²⁰

- v. Ms Whymark has translated the price list provided by Mr Bolmer which indicates that a number of items are for sale under the easyblast mark, including blister inserts (of varying sizes), detachable weekly blister cards, flexible blister inserts, perforated

¹⁷ Taken from an article dated 6 January 2021

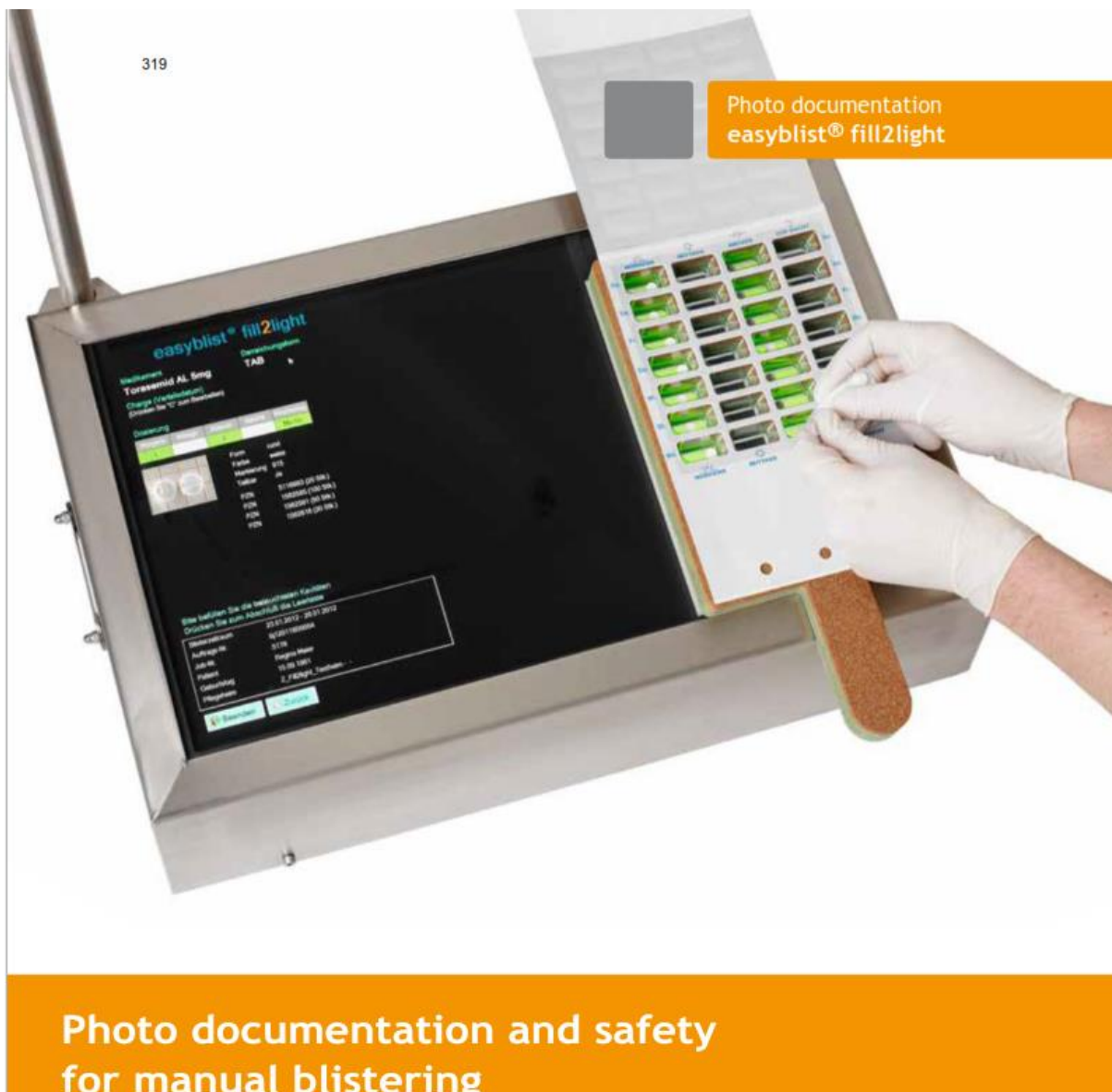
¹⁸ Taken from an article dated 3 December 2020

¹⁹ Taken from an article dated 30 April 2019

²⁰ Exhibit KW3, a translation of RB4

boards which are suitable for filling the respective blister cards, made of both polystyrene and cork, labels, thermal colour ribbons for SATO printers, adhesive devices and filling aids. Prices range from €19 to €179. The easyblast fill2light housing, software, computer, screen, scanner, camera, mouse and keyboard retails at €7,000²¹.

- vi. The easyblast fill2light machine is illustrated as follows²² (the image is undated):



²¹ Exhibit KW5, a translation of RB7

²² Exhibit KW6, a translation of RB8

Witness statement of Kathryn Hughes

19. I note the following from the witness evidence of Ms Kathryn Hughes:

- a. Ms Hughes is a Senior National Sales Manager for retail at Omnicell Limited within the UK and has held this position since 2016.
- b. The proprietor has been using the easyblast mark continuously within the UK since 2014 when the proprietor acquired Medpack Holdings Inc. and its subsidiary MTS Medication Technologies, however, MTS UK Limited were using the mark prior to this within the UK, from 2012²³.
- c. Easyblast has been used in the UK:

“in relation to easyblast blister pack repair patches since at least 2014 through to the current date, easyblast cards from at least 2014 to November 2015, easyblast blister packs since at least 2014 to November 2015, easyblast manuals since at least 2014 to November 2015, the easyblast autogenous hot-melt device since at least 2015 to November 2017 and scoping the easyblast fill2light system for the United Kingdom since at least 2018 through to the current date”²⁴.
- d. The proprietor has a UK turnover from 2014 to 2025 of \$93,633.56 in respect of its blister pack repair patches, with 438,800 items being sold. It has a UK turnover from 2014 to 2017 in respect of its blister cards of \$30,921.57 with 37,400 being sold²⁵.
- e. 110 invoices have been provided dated between 2014 and 2024. Ms Hughes states that these represent a sample of the invoices available. I note that the names and addresses of the customers have been redacted, however, the towns/cities remain visible, and all are spread throughout the UK. The proprietor’s name is in the invoice header²⁶.

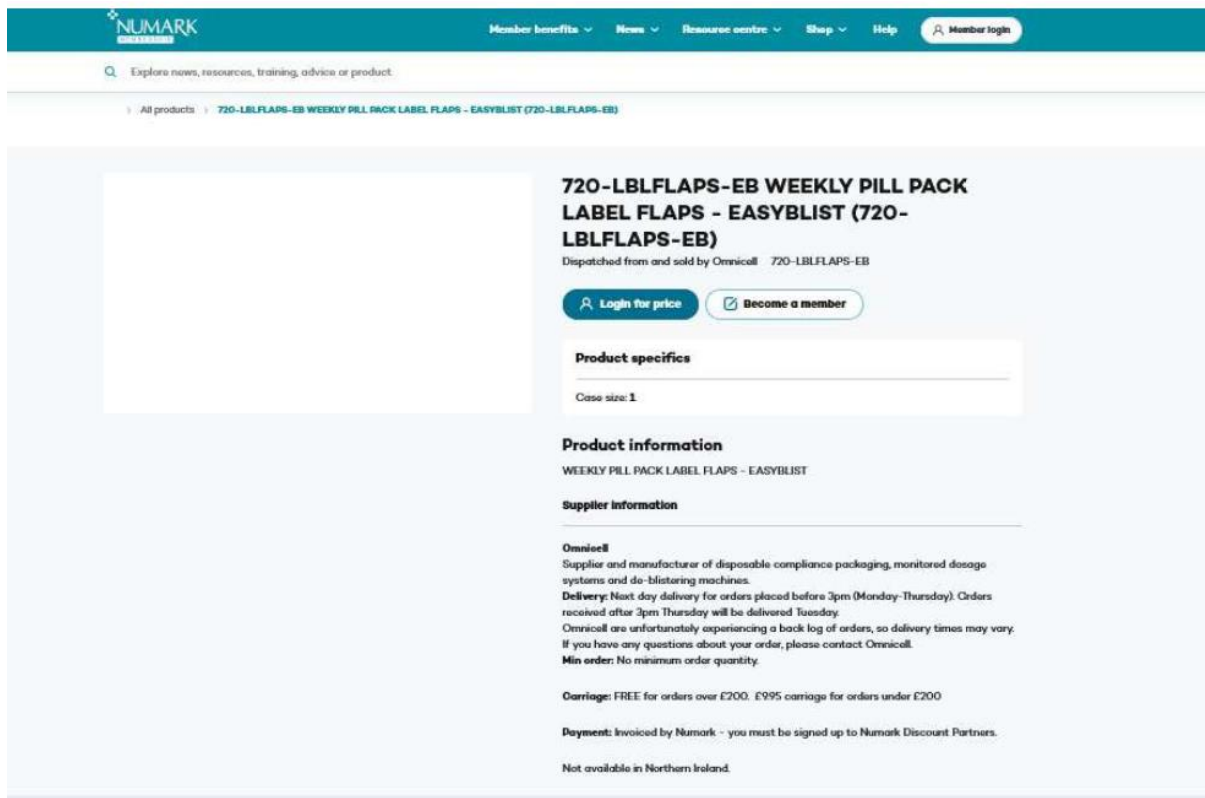
²³ Witness statement of Kathryn Hughes, para 3

²⁴ Witness statement of Kathryn Hughes, para 4

²⁵ Witness statement of Kathryn Hughes, paras 5 and 6

²⁶ Exhibits KH1 to KH11

- f. Ms Hughes states that the proprietor has attended the Pharmacy Trade Shows at the Birmingham NEC in the UK to advertise its products, including the easyblast fill2light, between 2012 and 2014²⁷.
- g. The proprietor has advertised its 720-LBLFLAPS-EB repair patches, online within the UK at numarket.com since 2020. This listing is still available, and a screenshot has been provided²⁸, although I note that this is undated:



- h. The 720-LBLFLAPS-EB repair patches are also sold online in the UK via the proprietor's website, www.omnicell.co.uk. I note that the product code has been shortened to 'EB'. I have before me copies of the 2016/17 catalogue²⁹ and also the 2024 catalogue³⁰.

²⁷ Witness statement of Kathryn Hughes, para 8

²⁸ Exhibit KH15

²⁹ Exhibit KH16

³⁰ Exhibit KH17

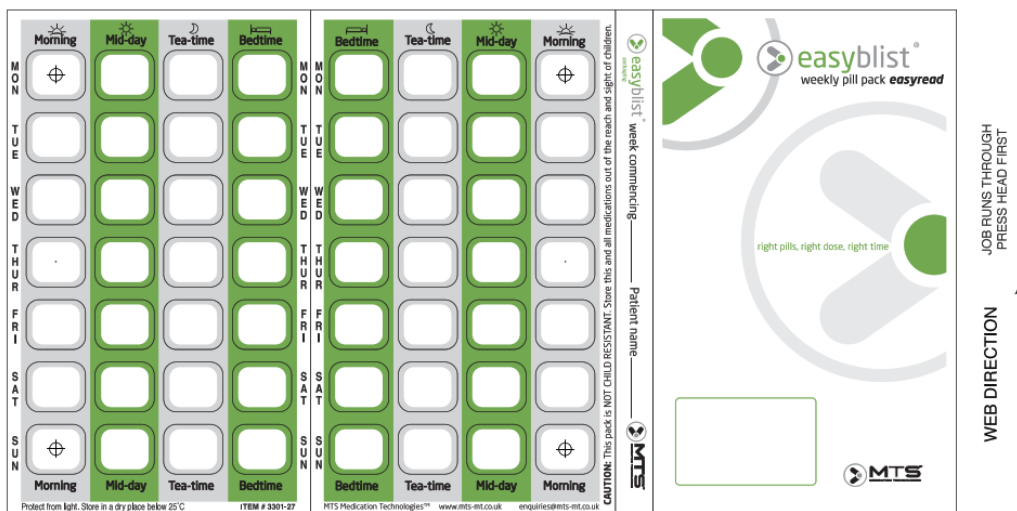
- i. Ms Hughes explains that in 2012, the proprietor acquired Medpack Holdings Inc. which was the parent company of MTS Medication Technologies Inc. which owned MTS Limited and MTS Medication Technologie GmbH. The Office of Fair Trading published a decision regarding this acquisition on 20 May 2014, and within the decision it was stated that the products are:

“card-based and sold under the brand name, Easyblist. They include disposable weekly pill packs and monthly care packs, which can be either heat-seal or pressure-seal. Weekly pill packs are split into four doses per day, with seven days in total. Monthly care packs are split into seven days of single doses, over a four-week period”

- j. The easyblist figurative mark is applied to cards, product boxes and labelling, blister packs and repair patches and has been since 2014. An example of this packaging is shown below. I understand that this was used from 2014 to 2017³¹:

28 DAY TRIFOLD DIE
10" REPEAT

MTS #3301-27 REV. 4
FRONT - PS
easyread
pms 7489 & black



PROOF TO L. TONKINSON/J. HARTLEY
JAN. 16, 2012

**Louise
Tonkinson**

Digitally signed by Louise
Tonkinson
DN: cn=Louise Tonkinson,
o=MTS, ou, email=louise.
tonkinson@mts-mt.com, c=GB
Date: 2013.01.16 16:13:04 Z

Witness statement of Michael Spencer

20. Mr Spencer is a Chartered Trade Mark Attorney, who is employed by the proprietor's representatives. Within his witness statement he states that Kilburn & Strode LLP are a firm of Patent and Trade Mark Attorneys, and he has provided extracts from the Intellectual Property Regulation Board, the Chartered Institute of Patent Attorneys and the Chartered Institute of Trade Mark Attorneys in support of the same. I also note that within the proprietor's written submissions it states:

“The Proprietor also questions how the Applicant, as a firm of Trade Mark Attorneys, has the appropriate knowledge of the Proprietor's trade in their field to make an application for evocation for non-use against the Proprietor's United Kingdom Trade Mark Registration No. UK00800981850 for “easyblast””.

21. I am aware that Kilburn & Strode LLP are a firm of Patent and Trade Mark Attorneys, however, this does not mean that they are not entitled to bring these proceedings. I do not consider that Mr Spencer's evidence assists me with my decision in respect of this matter and I will not reference this further.

FORM OF THE MARK IN USE

22. Before I move on to assess the sufficiency of the evidence, I shall begin by addressing the way in which the contested mark has been displayed in relation to the relevant goods and services in evidence.

23. The contested mark is a word only mark presented in lower case. Given that normal and fair use of the registration will cover use in any colour, standard typeface or font, where the mark is used in a mixture of upper and lower case, this is use of the mark as registered and is use upon which the registered proprietor may rely³². The mark is also shown as follows throughout the evidence:

³² *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17



easyblist® fill2light

easyblist fill2light

24. With regards to the above marks, I acknowledge that where a registered mark is used with additional matter, this may still constitute acceptable use of the mark as registered, where this element continues to act independently as an indicator of origin³³. I consider that the words 'easyblist' remain the dominant element of the above marks, and that the above figurative forms are therefore acceptable variations of the mark and is use upon which the proprietor can rely.

GENUINE USE

Assessment of Evidence

25. With regard to the evidence of use submitted, I must now consider if it sufficiently demonstrates genuine use, whilst reminding myself that use does not have to be quantitatively significant to be genuine. The burden is on the registered proprietor to prove that it has used its mark within the relevant period. Therefore, it was the registered proprietor's responsibility to provide proof that the mark was used within the UK during the relevant periods.

26. Whether the evidence is sufficient for this purpose will depend on whether it demonstrates that there has been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods and services at

³³ *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12

issue in the relevant territory during the relevant five-year period. In making this assessment, I am required to consider all relevant factors, including:

- The scale and frequency of the use shown;
- The nature of the use shown;
- The goods for which use has been shown;
- The nature of those goods/services and the market(s) for them; and
- The geographical extent of the use shown.

27. I have carefully considered the evidence provided by the registered proprietor and whether this meets the requirements for genuine use as per *easyGroup*, set out earlier in this decision. I am also mindful of the guidance from the *Dosenbach-Ochsner* case³⁴.

28. The evidence before me does have its limitations. There are no details in relation to the size of the relevant market or the share of that market held by goods bearing the proprietor's marks, and neither do I have information of the proprietor's spend on marketing activities. The cancellation applicant submits that the proprietor's marks should be revoked due to non-use.

29. The turnover evidence that I do have before me is piecemeal, with the turnover broken up to cover different periods and broader jurisdictions. However, while the turnover periods provided overlap to a degree, they are all described as covering different products/sub-brands, and therefore it is clear that the turnover does not overlap, even when timeframes are the same. I also note, that whilst there is evidence of larger machines being sold, the blister packaging itself is likely to be relatively low in price and purchased in bulk. Therefore, there will likely be a high volume of sales despite the lower turnover. For example, there is evidence that 438,800 goods were sold for \$93,633.56.

³⁴ Along with *Awareness Limited v Plymouth City Council*, Case BL O/236/13, emphasising the need to consider what the evidence fails to "show", and what might reasonably have been conclusively shown.

30. The registered proprietor has provided evidence of the mark on sale and being used as part of their marketing strategy via catalogues and articles written for pharmaceutical media websites. I have evidence before me that the mark has been advertised throughout the EU via articles published by “the biggest online pharmacy media website in Germany”³⁵. I note that 53 articles were published between 2008 and 2021. However, the mere existence of these articles in isolation, are of little evidentiary value without any supporting information such as an indication as to how many people viewed this material, over what period, the volume of custom generated as a result, or the extent that the relevant consumer had been exposed to the mark by viewing this material. These details have not been provided. I understand that the mark has also been advertised at trade exhibitions and the easyblist fill2light system also won the Red Dot Design award (which is international) in 2019.

31. The registered proprietor’s evidence indicates that it has traded in goods bearing the “easyblist” mark in both its figurative form and its word only mark, and that goods were first available to purchase in 2008. Despite the fact that the turnover figures before me are piecemeal and I do not have much in the way of marketing information, I am of the view that the evidence of use, when taken as a whole (and particularly considering continuity of use, length of use and geographical spread), is sufficient to show genuine use of the marks, both in the UK and the EU, prior to IP Completion Day, after the revocation periods claimed by the applicant.

FAIR SPECIFICATION

32. I must now consider whether, or the extent to which, the evidence shows use of the marks at issue in relation to the goods relied upon. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*,³⁶ Mr Geoffrey Hobbs Q.C. (as he then was) as the Appointed Person summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose

³⁵ Witness statement of Robert Bolmer, para 7

³⁶ BL O/345/10

the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

33. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 the Court of Appeal set out the proper approach to partial revocation, as follows:

“245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.

246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.

247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So, care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.

249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not used, be subject to revocation. [...] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those which are sufficiently distinct to constitute coherent categories or

subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered.”

34. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch) at [47], the late Carr J pointed out that it is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do; for example, in *Pan World Brands v Tripp Ltd (Extreme Trade Mark)* [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally.

35. I note the opponent’s specification is as follows:

Class 5 - Pharmaceutical and veterinary preparations in push-out packages, especially as composite package for sets of medicaments or in patient-customized sets.

Class 16 – Paper, cardboards and plastic materials for packaging included in this class, and packages made of these materials or of a combination of these materials; medicine-push-out packages of plastic material also in combination with cardboards and/or metal; medicine-outer-packagings of cardboards and/or plastic material.

Class 39 – Patient-customized packaging of prescriptions by pharmacists or in the pharmacies by qualified personnel, especially by means of blisters and push-out packages.

Class 44 – Pharmacy advice; pharmacists' services to make up prescriptions by pharmacists or in pharmacies.

36. From the evidence it is clear that the proprietor provides goods including medication packs, made of both card and plastic, and blister packs / repair patches as well as a semi-automatic blistering system which is provided via the fill2light products, and this is reiterated throughout the evidence. However, the evidence does not extend

to some of the specific goods/services that they have within their specification. For example, I do not have any evidence before me that the proprietor's class 5 packages are for veterinary purposes, the only evidence that I do have relates to the preparation of medication for humans. Neither do I have any evidence before me that the proprietor makes the paper, cardboard or plastics themselves, albeit I accept that they use these goods to create their packaging. Similarly, I do not consider that the evidence before me shows that the proprietor has used the mark in relation to pharmaceutical advice/services, which I consider to be wide-ranging terms.

37. Having considered the specification and the use before me, I consider that the below is a fair specification of the goods upon which the proprietor may rely:

Class 5 - Pharmaceutical preparations in push-out packages, especially as composite package for sets of medicaments or in patient-customized sets.

Class 16 – Medicine-push-out packages of plastic material also in combination with cardboards and/or metal; medicine-outer-packagings of cardboards and/or plastic material.

Class 39 – Patient-customized packaging of prescriptions by pharmacists or in the pharmacies by qualified personnel, especially by means of blisters and push-out packages.

CONCLUSION

38. This application was brought under section 46(1)(a) and (b) of the Act. I am satisfied that the proprietor has provided evidence sufficient to maintain the registration for those aforementioned goods/services in accordance with the provisions of the Act. The proprietor did not defend some of the goods/services in its registration, which are to be revoked from the earliest date from which revocation can take effect, which is the day following the fifth anniversary of completion of the registration procedure of the mark.

39. With effect from **6 October 2014**, UKTM no. 800981850 is partially revoked for the following goods/services:

Class 5 – Veterinary preparations in push-out packages, especially as composite package for sets of medicaments or in patient-customized sets.

Class 16 - Paper, cardboards and plastic materials for packaging included in this class, and packages made of these materials or of a combination of these materials;

Class 39 - Packaging and storage of goods; packaging of medicaments, especially in individual or patient-customized sets;

Class 44 - Medical services; veterinary services; hygienic and beauty care for human beings or animals; pharmacy advice; pharmacists' services to make up prescriptions by pharmacists or in pharmacies.

40. UKTM no. 800981850 shall remain registered for the following terms:

Class 5 - Pharmaceutical preparations in push-out packages, especially as composite package for sets of medicaments or in patient-customized sets.

Class 16 – Medicine-push-out packages of plastic material also in combination with cardboards and/or metal; medicine-outer-packagings of cardboards and/or plastic material.

Class 39 – Patient-customized packaging of prescriptions by pharmacists or in the pharmacies by qualified personnel, especially by means of blisters and push-out packages.

COSTS

41. Both parties have achieved a degree of success, and I therefore find that each party should bear its own costs.

Dated this 23rd day of April 2026

LA Bailey

For the Registrar