

UPC_CFI_513/2024
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 15/05/2025

Headnotes: Article 53(f) of the UPCA allows the Court to perceive the functionality of the embodiments (patented and attacked) and comprises all activities detailed in Articles 170(1)(c) and 170(2)(f) and (g) of the Rules of Procedure, and therefore, not only inspections. According to Article 53(f) UPCA, the Court may compare the objects of the proceedings (i.e., the patented and attacked objects) by viewing their dynamic functionality. If a party offers to exhibit the object in accordance with Rule 170.1(c) and submits a video of its operation to the court in accordance with Rule 170.1(d), the court may also order dynamic experiments and comparative tests based on the principle established in Article 53(f) UPCA.

CLAIMANT/S

Maschio Gaspardo S.p.A.
(Claimant) - Via Marcello, 73 - 35011 -
Campodarsego (PD) - IT

Represented by Davide
Locas

DEFENDANT/S

Spiridonakis Bros GP
(Defendant) - 11th km Thessaloniki Katerini -
54700 - Sindos – GR (In absentia)

PATENT AT ISSUE

Patent no.

Proprietor/s

EP1998604

Maschio Gaspardo S.p.A.

DECIDING JUDGE: judge rapporteur

LANGUAGE OF PROCEEDINGS: English

ORDER

With procedural Order of May 12 this Court pursuant to Rules 170.1 c) 170.2 f) and Art. 53 f) UPCA ordered the view of the patented device together with the attacked embodiment (Bellota tool) for the oral hearing scheduled for June 4th, 2025 at 3:30 p.m. in order to better understand the characteristics of the patented embodiment and of the allegedly infringing one.

The technical problem with the patent in question is the difficulty of reversal and exchange of the tool due to wear on the fixing bolt heads. This wear is caused by the bolt heads' proximity to the tool's working surfaces and their continuous contact with the soil being worked. Therefore, as affirmed by the claimant, the reversibility of the tool and the design of its fastening system could be more effectively evaluated when mounted on an agricultural machine, specifically a subsoiler. Claimant was therefore requested (following an offer made in the statement of claim under Rule 170.1 c) and d) to present the device to the Court or to indicate the reasons why this inspection was not feasible and why the device should/might be preferably inspected on site.

A deadline of two days was granted for comments, response and proposals.

On 14 May 2025 the claimant replied that transporting the agricultural machine to the Court for the hearing on 4 June 2025 would be impossible. The anchor member alone weighs approximately 200 kg, and the complete machine weighs around 2 tons.

In view of the above, the Claimant proposes that the Court considers conducting the inspection at the nearest premises of Maschio Gaspardo.

Given the location of the Milan UPC Central Division, a convenient site was indicated in Maschio Gaspardo's facility at Strada Bredina 6, Cremona.

Claimant offered to prepare the machine equipped with the patented tool in order to make it inspectable on the morning of the oral hearing. The Claimant is also willing to handle all logistic arrangements, including the transportation of the Panel from Milan to the Cremona site, if required.

The Court notes that the activity pursuant to Rule 170 c RoP (and Art. 53 f) UPCA as will be clarified below) appears to be necessary and cannot be carried out in the Courtroom and therefore the panel must necessarily go to the place indicated by the claimant.

The Claimant is responsible of the necessary preparation he offered voluntarily.

For the sake of clarity, the Court also maintains that an experiment may be conducted on site, which may fall under Rule 170(g) of the Rules of Procedure (RoP), provided that both tools are mounted on the agricultural machine and their functionality is verified.

Regardless of whether such activity is classified as an inspection under Rule 170(f), an experiment under Rule 170(g), or the acquisition of physical objects under Rule 170(c), the Court will view the objects inside the machinery and in action as requested in the statute of claim.

All these activities might be considered part of the same evidence gathering procedure insofar they derive from a common background: Article 53 f) of the UPCA, which is not strictly related only to inspections despite its wording.

Article 53 f) UPCA has a scope of application that covers a series of activities detailed in the rules of procedure but extends beyond them in a broader and more comprehensive manner.

This is even clearer when one considers that, in contrast to the English version of the Rules and the UPCA, where both Art. 53 f) UPCA and Rule 170.2 f) use the same terminology "inspection" for what is provided for in Rule 170(f) and Art. 53 f) UPCA, the German text of Rule 170.2 f) provides

for two different wording: an "Inspection in Bezug auf einen Ort oder einen physischen Gegenstand" in Rule 170 f), whereas Art. 53 f) UPCA uses the general term "Augenschein".

The term "Augenschein" in German procedural law (§ 144, §§ 371 et sequi ZPO) refers furthermore to a general assessing power of the court, which, by the way, may also be exercised beyond the limits of the burden of proof with regard to the inspection of the objects by the judges themselves, § 144 ZPO) being related to the possibility for the judge to 'view' the case.

The scope of application of Art. 53 f) UPCA is therefore broader and comprises to some extent those of Rules 170.2 f), 170.2 g) and 170.1 c) RoP.

If a party offers to exhibit the object in accordance with Rule 170.1(c) and submits a video of its operation to the court in accordance with Rule 170.1(d), the court may also order dynamic experiments and comparative tests based on the principle established in Article 53(f) UPCA.

The court therefore orders as follows:

- An inspection pursuant Art. 53 UPCA is set.
- The inspection will regard the patented device and the challenged embodiment (Bellota tool), and it will take place at 10:30 a.m. on June 4, 2025, at Strada Bredina 6, Cremona.
- The inspection will be conducted by the presiding judge (Rule 112 RoP) in front of the panel, with a member of the registrar present.
- The inspection is considered part of the oral hearing and will be recorded (video or audio) by a member of the registrar. The recording will be made available to the parties or their representatives at the court's premises after the hearing.
- Anyone wishing to attend the inspection must inform the registrar via email (contact_milan.ctl@unifiedpatentcourt.org) at least seven days before the date of the oral hearing in order to allow the court to arrange access. Physical objects are on private property, so access cannot be guaranteed otherwise.
- The case will be heard in court at 3:30 p.m. on June 4th, 2024, or at a time compatible with the performance of the activity. Anyone may attend the hearing in the Milan CD courtroom.

The Court notes that the plaintiff offers to bear the costs of transport and of the inspection so there will be no costs for the Court and the Registrar whatsoever.

Milan 15 May 2025

Judge rapporteur
Andrea Postiglione

ORDER DETAILS

Order no. ORD_22310/2025 in ACTION NUMBER: ACT_50468/2024

UPC number: UPC_CFI_513/2024

Action type: Infringement Action