

Act no. 18051/2025

UPC CFI no. 342/2025



ACT. NO. 18051/2025
UPC CFI NO. 342/2025
ORDER NO. 21737/2025

**UNIFIED PATENT COURT
COURT OF FIRST INSTANCE
LOCAL DIVISION OF MILAN**

ORDER FOR THE PROTECTION OF EVIDENCE

issued on 19.5.2025

APPLICANT

3V SIGMA S.P.A. - Milan, via Fatebenefratelli no. 20, 20121, Italy
represented and defended by lawyers Luca Pellicciari and Lorenzo Battarino, with offices in Milan,
Via Brera No. 6, 20121, Italy

DEFENDANT

AZIENDA CHIMICA E FARMACEUTICA S.P.A. - A.C.E.F. S.P.A. - Via Umbria No. 8/14, Fiorenzuola
D'Arda (PC), 29017, Italy DEFENDANT 2

AZIENDA CHIMICA E FARMACEUTICA S.R.L. - A.C.E.F. S.R.L. - Via Umbria No. 8/14, Fiorenzuola
D'Arda (PC), 29017, Italy

PATENTS AT ISSUE

EP 3275872, entitled '*New triazine compounds as photostabilising agents*', owner 3V Sigma s.p.a.
(hereinafter EP'872)

EP 3275426, entitled '*cosmetic compositions of UV filters*', owner 3V Sigma s.p.a. (hereinafter EP'426)

DIVISION

Local Division of Milan

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DECISION-MAKING BODY

This order is adopted by the Court in the following collegiate composition:

- Pierluigi PERROTTI presiding judge and judge rapporteur
- Samuel GRANATA legally qualified judge
- Alima ZANA legally qualified judge

LANGUAGE OF THE PROCEEDINGS

Italian

THE PROCEEDINGS

On 16 April 2025, 3V Sigma s.p.a. filed an appeal pursuant to Article 60.5 UPCA and Rule 192 et seq. RoP for the issuance of an *ex parte* order for the protection of evidence against Azienda Chimica e Farmaceutica s.p.a. - A.C.E.F. s.p.a. and Azienda Chimica e Farmaceutica s.r.l. - A.C.E.F. s.r.l. (hereinafter also referred to collectively as ACEF, unless otherwise specified), prior to the commencement of the proceedings on the merits.

3V Sigma is the owner of patents EP'812 and EP'426. The two patents claim, respectively, (i) new compounds of the s-triazine family characterised by a high capacity to absorb ultraviolet rays and (ii) cosmetic compositions containing the aforementioned compounds for the protection of skin and hair from the harmful effects of exposure to sunlight.

3V Sigma states that one of its competitors, MFCI CO., Ltd., based in Hunagshi, Hubei, China, has recently launched a new UVB filter for the preparation of cosmetic compositions for sun protection, bearing the trade name *MFSorb (513) DBT* (hereinafter *MFSorb 513*). This product is intended for professional operators in the sunscreen cream manufacturing sector.

ACEF distributes MFCI's products and, in particular, the *MFSorb 513* filter. Sales and promotion activities are currently underway, as can be seen from the advertising on the website www.acef.it, which can be traced back to ACEF s.r.l.. With the help of a professional trader, the applicant purchased a 25 kg sample of *MFSorb 513* and had it analysed by an external laboratory, obtaining confirmation of the reproduction of some of the teachings contained in the claims of EP'812 and EP'426.

3V Sigma concluded by requesting the issuance of an order to protect the evidence, justified by the need to (i) prevent any possible exception regarding the actual origin

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from the defendants of the product sample examined and (ii) acquire all technical, accounting and commercial documentation relating to the *MFSorb 513* filter. The final confirmation of the suspected infringement of the patents owned by it and the identification of all those involved in the distribution chain would therefore have enabled it to initiate subsequent proceedings on the merits to ascertain the infringement of the patent.

By order no. 21103/2025 filed on 5 May 2025, the judge rapporteur, acting on behalf of the Panel and exercising the power provided for in rule 194.1(c) of the RoP, without prejudice to any possible assessment of the merits of the application, ordered the applicant to appear at the hearing on 7 May 2025 in order to request the following additions to the appeal:

(i) a list of keywords to be used for the search and subsequent acquisition of copies of potentially relevant documents in digital format; (ii) the names of the representatives and experts authorised to be personally present during the execution of the order; (iii) the precise indication of the places where the requested measures should have been carried out.

In compliance with this request, the applicant filed a supplementary defence note on 8 May 2025 (app. no. 21787/2025).

ORDER REQUESTED BY 3V SIGMA

The applicant requested that the Milan Local Division of the Unified Patent Court issue an order *inaudita altera parte* for the protection of evidence against the defendants ACEF, ordering:

1. the description and sampling of the product *MFSorb 513* imported, promoted and marketed or distributed by the defendants. The taking and storage of product samples must be carried out in any manner appropriate to preserve their characteristics, also in view of the laboratory analyses that 3V Sigma reserves the right to request in the subsequent proceedings on the merits *pursuant* to Article 53.1(g) UPCA, rules 170.2(g) and/or 201 RoP;

2. the description and collection of copies of all technical documentation (including, without limitation: technical data sheets, user manuals, product specifications, warehouse documentation, production and quality control certificates, analysis reports, etc.) and commercial documentation (including, without limitation: correspondence, supply contracts, sales contracts, etc.) relating to the *MFSorb 513* product imported, promoted and marketed or distributed by the defendants, which allows the relevant characteristics to be identified in order to assess whether they infringe EP'872 and EP'426;

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3. the description and removal of copies of all accounting and commercial documentation relating to the import, promotion, distribution and marketing of the *MFSorb 513* product by the defendants and any other third party, and in particular (but not limited to) commercial correspondence, VAT registers, orders, transport documents, and invoices received for the purchase of *MFSorb 513* and invoices issued for the subsequent resale of the same, in order to identify all parties other than the defendants involved in any capacity in the production/distribution chain of *the MFSorb 513* product.

The *preservation of evidence* measure requested must be carried out:

- a) at any premises, secondary premises or local units, appurtenances, warehouses, offices, factories, plants and other sites, including those belonging to third parties, which are available to and/or are in any way used by the defendants for their business activities, as well as at the premises or offices of the professionals where the documentation subject to the order is kept;
- b) by appointing, in accordance with Rule 196.4 RoP, a technical expert selected from among patent attorneys specialising in chemical and pharmaceutical matters, and a technical IT expert to allow access to technical documentation and IT tools, as well as to digital media of any kind, authorising them to carry out any activity necessary to fulfil the purpose of the measure and to have access to any type of premises, warehouse, laboratory, office or other relevant site, authorising the search for any and all objects or documents relevant to the description, as well as access to IT devices, online accounts and/or paper and electronic documentation containing information relating to the offence described above, authorising them to make copies of the relevant documentation in the manner deemed most appropriate, including forensic copies, and with the right to be assisted by their respective assistants if necessary, including in the event of the need to carry out the description operations simultaneously at several locations available to the defendants;
- c) authorising the presence of representatives of the applicant during the execution of the order, in the persons of the undersigned legal representatives of the applicant, as well as one or more technical and IT consultants appointed by them, in accordance with rule 196.3 RoP.

The appellant also requested authorisation to access the report of the expert appointed by the Court and all the material gathered during the implementation of the order for the protection of evidence, immediately after their filing, in order to exercise her right of defence in view of the establishment of the proceedings on the merits within the time limits

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set out in the forthcoming order and starting from the date of access to the aforementioned report and information.

GROUNDS FOR THE ORDER

1. Jurisdiction and competence.

The Unified Patent Court has jurisdiction over the application filed by 3V Sigma, in accordance with the provisions of Articles 32.1(c) and 60.1 UPCA, considering that:

a) the two titles invoked by the applicant are European patents for which, on 14 April 2025, the proprietor revoked its opt-out declaration, pursuant to Article 83(4) UPCA and Rule 5.7 RoP (see documents TC14a and TC14b);

b) the claim made here is included among those falling within the disputes referred to in Article 32.1 (c) UPCA (actions for provisional and precautionary measures and injunctions).

The two patents are in force, *inter alia*, in Italy, as shown in the extract from the register of the Italian Patent and Trademark Office (see doc. TC13).

The Milan Local Division has jurisdiction pursuant to Articles 32.1(c) and 33.1(b) UPCA, since the ACEF companies have their registered office in Italy - in Fiorenzuola D'Arda (PC), via Umbria

n. 8/14 (see docs. TC02 and TC03) - and carry out their business activities here, pursuant to Articles 4 and 71a of EU Regulation No. 1215/2012.

Finally, the appeal was filed with the Local Division of Milan, where 3V Sigma intends to commence proceedings on the merits pursuant to Articles 32.1(a) and 33.1(b) UPCA, in accordance with the provisions of Rule 192.1 RoP.

2. Existence of the requirements set out in Rule 192.2 RoP

2.1. Content of the application

The appeal for protection of evidence contains:

(a) all the details required by Rule 13.1, letters (a) to (i), RoP;

(b) a clear indication of the measures requested, including the exact location - as known or reasonably suspected - of the evidence to be preserved (offices and warehouses, as per the supplementary note filed on 8 May 2025);

(c) the reasons why the proposed measures are necessary to preserve relevant evidence;

(d) the facts and evidence in support of the request.

2.2. Concise description of the future judgment on the merits

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Based on the evidence obtained at the end of these proceedings, 3V Sigma has made it clear that it intends to bring subsequent proceedings on the merits before the Local Division of Milan against the defendants ACEF and any other party involved in the production and distribution chain of the product *MFSorb 513*, in order to (i) establish the infringement of patents EP'872 and EP'426, (ii) obtain a permanent injunction pursuant to Article 63 of the UPCA, (iii) obtain any other further and appropriate ancillary or corrective measures pursuant to Article 64 of the UPCA, and (iv) obtain compensation for damages pursuant to Article 68 of the UPCA.

Consequently, the conditions set out in Rule 192.2 RoP are fully satisfied.

3. Burden of proof for the applicant under Article 60 UPCA - reasonably available evidence provided by the applicant

3.1. Ownership of valid patents

3V Sigma has proven to be the current holder of patents EP'872 and EP'426 (see documents TC11 and TC12), granted on 5 May 2021 and 4 September 2019, respectively, and as such presumed valid (see Court of Justice C-44/21, 28 April 2022, paragraph 41). The applicant has stated that no opposition has been filed with the European Patent Office and has not reported the existence of any revocation/invalidity proceedings before national courts, as required by rules 13.1(h) and 192.2(a) of the Rules of Procedure, nor any other circumstances relating to the validity of the patents at issue that could influence the Court's decision on whether or not to issue an order *without hearing the other party* (see Rule 192.3, second sentence, of the Rules of Procedure).

At this stage of the proceedings, the Court has no grounds to doubt the validity of the patents at issue, nor are there any reasons to doubt that the applicant has withheld relevant information.

The Registry's examination also confirmed that no protective letters had been filed by the defendants.

3.2. The applicant's allegations regarding patent infringement

EP'872 protects new triazine chemical compounds characterised by the presence of a *core structure* consisting of a symmetrical triazine and having a high absorption capacity for sun filters, in particular in the UV-B region, and their use in the manufacture of formulations or creams for protection against sunlight. According to the applicant, claims 2, 3, 4, 5 and 6 are particularly relevant in the present case.

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The chemical compounds described in EP'872 fall within a general structural formula (I) described in paragraph [0019]. Independent claim 1 refers to compounds falling within the general formula (I) and characterised by the substitutions of substituent groups X, A and B described in paragraph [0019].

Dependent claim 2 claims compounds according to the above formula (I) selected from the compounds of formula (V), (VI) or (VII) described in paragraph [0021].

Claim 3 claims the compounds of the preceding claims selected from the compounds of formula (V), (VI) or (VII) wherein the ratio of the absorption capacity in the UV-A region to the absorption capacity in the UV-B region is greater than a UV-A/UV-B ratio of 0.20 and preferably greater than a UV-A/UV-B ratio of 0.30.

The subsequent dependent claims 4 and 5 relate to cosmetic compositions containing the compounds of the preceding claims selected from the compounds of formula (V), (VI) or (VII), alone or in combination with other filters having UV-A and UV-B absorption properties (claim 4) and alone or in combination with specifically identified filters having UV-A and UV-B absorption properties.

Dependent claim 6 is a claim for the use of the compounds of claims 1 and 2 for the protection of the skin and hair.

EP'426 protects cosmetic compositions intended for the protection of skin and hair from UV radiation, so that the use of a combination of several sun filters is capable of providing broad protection against both UV-A and UV-B rays. Combinations of several sunscreens in cosmetic formulations are also necessary to impart other essential or desirable properties, such as, for example, stability when exposed to light and heat, good compatibility with other substances used in the formulation, water resistance and good adhesion to the skin.

According to the applicant, the following are particularly relevant in the present case

- Claims 3, 4, 5 and 6.

Independent claim 1 relates to cosmetic compositions for topical use for the protection of skin and hair from UV rays, comprising:

- at least one sunscreen agent or filter (a) selected from those included in the general formula (I) and characterised by the substitutions of substituent groups A and B described in paragraph [0019] and
- at least one other UV agent or filter (b) selected from 2-ethylhexyl p-methoxycinnamate, 2-hydroxy-4-methoxybenzophenone, 2-hydroxy-4-methoxybenzophenone-5 sulfonic acid, ethylhexyl salicylate, ethylhexyl dimethyl PABA, drometrizole trisiloxane, 3-(4'-

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methylbenzylidene)-d, 1-camphor, diethylhexyl butamido triazone, Ethylhexyl Triazone, 4-(tert-butyl)-4'-methoxy-dibenzoilmethane, 2-ethylhexyl ester of 2-cyano-3, 3-diphenylacrylic acid, bis-ethylhexyl-oxiphenol-methoxyphenyl-triazine, methylene-bis-benzotriazolyl-tetramethylbutylphenol, 2-(4-diethylamino-2-hydroxybenzoyl)-hexyl ester of benzoic acid, 2,4-bis-[4-[5-(1,1-dimethylpropyl)benzoxazol-2-yl]phenylimino]-6-[(2-ethylhexyl)imino]-1,3,5-triazine, trisbiphenyl triazine, titanium dioxide and zinc oxide and, - optionally, other components such as solvents, diluents, auxiliaries and carriers normally used in the cosmetic field.

Dependent claim 3 relates to the cosmetic compositions of claims 1 and 2 in which the agent or filter (a) is selected from the compounds of formula (V), (VI) and (VII) described in EP'426 (and in EP'872).

Dependent claim 4 refers to the cosmetic compositions of claims 1 to 3 in which component (a) (UV agent or filter) has a ratio of absorption capacity in the UV-A region to absorption capacity in the UV-B region greater than 0.20 and preferably greater than 0.30.

Dependent claim 5 relates to the cosmetic compositions of the previous claims in which component (b) is selected from a more restricted list of already known UV filters. Claim 6 concerns the use of the cosmetic compositions of claims 1 to 4 as a sunscreen for protecting the skin and hair.

The ACEF companies are active, inter alia, in the sale of raw materials for the cosmetics industry (see documents TC02, TC03, TC16a and TC16b).

ACEF s.r.l. distributes the products of MFCI Co. (see doc. TC6) and, in particular, the filter called *MFSorb 513* used for the preparation of cosmetic compositions for sun protection and described on MFCI's website as '*a high-performance UVB filter with an exceptional specific extinction of 1500*' (see doc. TC7).

ACEF s.r.l. promotes the sale of the *MFSorb 513* filter on its website www.acef.it (see documents TC10 and TC15).

3V Sigma turned to a specialised trader to purchase a sample of *MFSorb 513*. The purchase was made on 3 March 2025 and concerned a 25 kg tin of product from the batch identified with code no. W1268804 (see doc. TC17).

The product sample was then delivered to an external analysis laboratory on 25 March 2025 in order to verify the presence in *MFSorb 513* of the compounds of formula (V), (VI) and (VII) described in the two patents at issue.

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The analysis report was released on 2 April 2025 and concluded as follows (see doc. TC18): "*On the basis of the results reported above, it can be concluded that:*

- *the HPLC-UV traces obtained are comparable with those provided by the customer*
- *the signals attributed to dimeramides D, E and F are detectable*
- *the in-depth analysis by HPLC-MS confirmed the presence of dimeramides E and F in the sample*
- *the in-depth analysis by HPLC-MS excluded the presence of dimeramide D in the sample".*

3V Sigma had the report examined by a technical expert of its choice. The expert concluded that the analyses carried out by the laboratory in charge confirm the presence in the sample of *MFSorb 513* supplied by 3V Sigma of dimeramides E and dimeramides F, corresponding to the structures of formula (VII) and formula (VI) respectively, which are described and claimed in EP'872 and EP'426 (see doc. TC19).

At this stage of the proceedings, the Court finds that the applicant has provided reasonable evidence to support its well-founded suspicion that its patents have been infringed, in particular by the defendant ACEF s.r.l.. The burden of proof on the applicant must also be adjusted according to the content of the claim, which, in the present case, concerns a procedural right (to evidence) and not a substantive right (as in the case of an injunction and/or compensation for damages).

The applicant has a well-founded fear that ACEF may contest the identity of characteristics between the product sample examined and *the MFSorb 513* marketed by them. It has also clarified that it is unable to purchase the product from the defendants due to the direct competitive relationship with the counterparties, which precludes the possibility of establishing a sales channel.

The Court therefore considers that the acquisition of some of the evidence requested is indispensable in order to obtain definitive confirmation of the suspicion of interference.

4. Requirements under Rules 194.2 and 197 RoP

Pursuant to Rules 194.2 and 197 RoP, the Tribunal, in exercising its discretion to decide on the application without hearing the respondent – as provided for in Rule 194.1(d) RoP – must take into account the urgency of the application and the reasons for granting an order *without hearing the other party*.

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In accordance with rule 197 of the Rules of Procedure, the Tribunal may order measures for the preservation of evidence '*without the defendant having been heard*', in particular '*where there is a demonstrable risk of evidence being destroyed or otherwise ceasing to be available*'.

In the present case, the existence of such a risk has been proven.

4.1. Urgency

The results of the laboratory tests and the expert's assessment became available a few days before the application was filed.

3V Sigma is not in a position to proceed with a direct purchase of an additional product sample from ACEF, due to the direct competitive relationship between the parties involved.

It is also clear that the applicant has no possibility of obtaining further technical documentation relating to *MFSorb 513*.

As already noted above, the promotion and marketing of *MFSorb 513* is currently underway. The applicant therefore needs to obtain confirmation within a reasonably short period of time of the suspected infringement of its patents in order to initiate subsequent proceedings on the merits.

4.2. Reasons for granting an order without hearing the defendant - risk of destruction of evidence

One of the applicant's main objectives is to obtain copies of the technical documents relating to *MFSorb 513* held by the defendants in digital format.

It is generally known that digital data and files can be easily hidden or deleted if the defendant is given advance notice of a request for an order for the preservation of evidence.

Therefore, there is a real risk that the evidence in digital format could be easily removed or concealed if the defendant companies are heard at a hearing or otherwise informed of the existence of these proceedings before the measure is enforced.

Consequently, taking into account all potentially relevant factors, this order must be granted *without hearing the other party*, because there is a demonstrable risk that the evidence may be destroyed or otherwise cease to be available (Article 60.5 UPCA).

5. Payment of court fees

The court fees have been duly paid (see doc. TC22). The conditions laid down in rule 192.5 RoP are therefore satisfied.

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6. Balancing of conflicting interests and manner of execution

6.1. Balancing of interests

The weighing of the conflicting interests leads the Court to grant the measure, considering the potential risk of harm to each of the parties in the event of granting the measure - for the sole defendant ACEF s.r.l. - or refusing the measure - for the applicant.

Taking into account the principle of proportionality, the threat of definitive destruction of the evidence against 3V Sigma must be considered to outweigh the risks arising from the execution of the measures against ACEF s.r.l.. These measures are strictly procedural in nature, limited to allowing the collection of evidence, and do not directly affect the subjective position of the defendant or its commercial activity, except for some limited effects that will be considered below for the purposes of quantifying the security.

In this case, the Court considers that the request for an order *without hearing* for the protection of evidence is adequately justified and must therefore be granted, subject to certain objective and subjective limitations as specified below.

6.2. Objective and subjective limitation of the measure

From an objective point of view, the Court considers that the measure should be granted only to the extent of the acquisition of certain samples of the *MFSorb 513* product and the technical documentation relating to that product, excluding accounting and commercial documentation. The application is in fact aimed, first and foremost, at verifying and substantiating the suspicions regarding the counterfeit nature of the product distributed by the defendants.

The acquisition of accounting and commercial documents is, on the other hand, instrumental, on the one hand, in identifying other parties potentially involved in promotional and distribution activities and, on the other, in providing evidence of sales volumes for the purpose of determining the amount of damages to be awarded. It is well known that companies incorporated under Italian law are subject to specific obligations to keep accounting records, and no risks of possible destruction or concealment of these documents have been alleged in this regard. Furthermore, the procedural rules in force under the TUB allow, under certain conditions, for complete information on all the aspects indicated to be obtained during the subsequent proceedings on the merits. Reference is made in this regard to the general provisions contained in Article 67 of the UPCA and Rules 190 and 191 of the RoP.

The precedent cited by the appellant in support of its request for the acquisition of accounting documents does not appear to be relevant. A reading of the cited measure (see Düsseldorf Division

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of Düsseldorf, UPC CFI No. 539/2024, order of 18 October 2024), it appears that in that case the appellant had already repeatedly requested its counterparty to provide information on the distribution and supply channels and on the identity of the supplier, without success. In the case before this Local Division, however, there is no evidence of a similar persistent refusal on the part of the defendants.

From a subjective point of view, the Court considers that the measure to preserve evidence can only be authorised against ACEF s.r.l., to be enforced at its registered office, including offices and warehouses at its disposal at that address, and not against ACEF s.p.a..

From an examination of the documents attached by the applicant, it appears that all the potentially infringing conduct complained of - promotion, marketing and sale of *MFSorb 513* - can be attributed solely to ACEF s.r.l..

ACEF s.p.a. holds the entire share capital of ACEF s.r.l. (see doc. TC03). However, the mere fact that ACEF s.p.a. exercises corporate control does not appear sufficient to justify extending the order for the protection of evidence against it. At this stage of the proceedings, there is no evidence of its direct involvement in the patent infringement alleged by the applicant.

6.3 Method of execution

Pursuant to Rule 196.4 RoP, the measures authorised must be implemented by an expert appointed by the Court – specifically mentioned in the operative part – in accordance with the national law of the place where the measures are carried out, i.e. Italian law.

The appointed expert is included in the list of patent experts who regularly work with national courts, so that the choice guarantees competence, independence and impartiality, as required by Rule 196.5 RoP. The expert will be assisted by an auxiliary of his choice, in particular an expert in computer forensics, to proceed at the premises of the defendant ACEF s.r.l..

The search for and copying of documents in digital format on media and devices used by the defendant ACEF s.r.l. will be carried out on the basis of the list of keywords indicated by the claimant in the supplementary statement filed on 8 May 2025.

This method of data selection is intended to ensure the highest probability of actual relevance and correlation between the documents retrieved and the patent infringement alleged by the claimant.

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The assistant shall operate under the direct control and responsibility of the expert and shall be subject to the same professional obligations of confidentiality in relation to all information to which he has access in the performance of his duties.

The task entrusted to the expert and his assistant is to protect the evidence. This order is issued *without hearing the other party*, and the expert appointed by the Court is only able to act on the basis of the information provided by the claimant. The duty to act independently and impartially precludes any advisory support being provided to the applicant, as the expert must comply solely with the instructions given by the Court for the execution of this order.

The appointed expert shall proceed with the assistance of the competent bailiff.

The representatives of the applicant and a technical expert appointed by the applicant, whose names are indicated in the operative part of this order, may be present at the execution of the authorised measure. No other representative, employee or collaborator of the applicant is therefore authorised to be present at the execution of the measures.

The defendant against whom the requested measure is authorised has the right to contact their lawyers and technical consultants so that they may take part in the execution of the order for the protection of evidence, with the express warning that, in any case, the actual execution of the measure may not be delayed in any way.

The expert appointed by the Court shall submit a written report, together with a complete copy of all documents and data acquired as a result of the measures, immediately and no later than two days after the completion of the measures.

For the sake of clarity, it is hereby specified that the expert appointed by the Court pursuant to Rule 196.5 RoP cannot be equated with the Court expert provided for in Article 57 UPCA and Rules 185 et seq. RoP, with the consequence, in particular, that the costs of his professional activity are to be advanced by the applicant, subject to subsequent final settlement of the costs of the proceedings at the end of the proceedings on the merits.

6.4. Protection of confidential information

As repeatedly stated by this Court (Local Division of Milan, UPC CFI No. 337/2024, order No. 51269/2024 of 11 September 2024; Local Division of Milan, UPC CFI No. 127/2025, order No. 11002/2025 of 18 March 2025), the principles of law established by the Court of Appeal in its decision of 23 July 2024 (Appeal No. 20002/2024

- UPC CoA no. 177/2024), which provided a systematic interpretation of the

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orders for the protection of evidence. The most relevant passages of the reasoning are reproduced in full in the original English text.

An application for the preservation of evidence or inspection of premises within the meaning of Article 60 UPCA and rules 192 et seq. RoP implies a request to disclose to the applicant the outcome of the measures, including the report written by the person who carried out the measures. This follows from the fact that the legitimate purpose of the measures is the use of the evidence in proceedings on the merits of the case (rules 196.2 and 199.2 RoP), which includes the use of the evidence to decide whether to initiate proceedings on the merits and to determine whether and to what extent the evidence will be submitted in these proceedings.

Disclosure of the evidence to the applicant or to certain persons acting on behalf of the applicant is indispensable for that purpose. Moreover, rules 196.1 and 199.1 RoP provide that the Court may decide in its order that the evidence shall be disclosed to certain named persons and shall be subject to appropriate terms of non-disclosure. This confirms that the procedure initiated by an application under Article 60 UPCA aims not merely at the preservation of evidence and the inspection of premises as such, but also at the disclosure of the evidence to the applicant.

However, granting an application for preservation of evidence or inspection of premises does not imply an unconditional order to disclose the evidence to the applicant. Pursuant to Article 60(1) UPCA, the order must be subject to the protection of confidential information (see also Article 7(1) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights). Where the evidence may contain confidential information, this entails that the Court must hear the other party before deciding whether and to what extent to disclose the evidence to the applicant. In this context, the Court must give the other party access to the evidence and must provide that party with the opportunity to request the Court to keep certain information confidential and to provide reasons for such confidentiality. If the other party makes such a confidentiality request, the Court must provide the applicant with the opportunity to respond in a manner that respects the potential confidentiality interests of the other party. The Court may do this, for example, by granting access only to the representatives of the applicant whom the Court, pursuant to rule 196.3(a) RoP, has authorised to be present during the execution of the measures and subject to appropriate terms of non-disclosure.

The opportunity for the other party to make a confidentiality request must be distinguished from the remedies available against the order for the preservation of evidence or the inspection of premises, such as the review of an order for preservation of evidence without hearing the

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defendant pursuant to rule 197.3 RoP. Therefore, the Court must hear the other party on the request for disclosure even if this party has decided not to file a remedy against the order to preserve evidence or inspect premises. For the same reasons, the failure to apply for a review of an order for the preservation of evidence or for the inspection of premises cannot be considered as tacit approval of the disclosure of evidence. 4. Pursuant to Article 60(8) UPCA, the Court shall ensure that measures to preserve evidence or to inspect premises are revoked or otherwise cease to have effect, at the defendant's request, if the applicant does not bring, within a period not exceeding 31 calendar days or 20 working days, whichever is longer, action leading to a decision on the merits of the case before the Court (see also Article 7(3) of Directive 2004/48/EC and Article 50(6) of the Agreement on Trade-Related Aspects of Intellectual Property Rights). Rules 198.1 and 199.2 RoP specify that the time period runs from the date specified in the Court's order, taking into account the date when the report referred to in rule 196.4 RoP is to be presented. These rules must be interpreted in the light of the purpose of the measures for the preservation of evidence or inspection of premises, which is to use the outcome of these measures in the proceedings on the merits of the case (rules 196.2 and 199.2 RoP). In view of this, the Court must, as a general principle, specify in its order a time period that starts to run from the date of disclosure of the evidence to the applicant or from the date on which the Court has made a final decision not to grant the applicant access to the evidence.

It is clear that access to the computer systems and devices of the defendant ACEF s.r.l. and the acquisition of certain data contained therein entails a real risk of confidential information being extracted.

For this reason, the Court considers that a very high standard of caution must be applied, temporarily preventing any access to the content of the expert's report and its annexes, even by the representatives of the applicant, and making such access subject to the actual verification of the existence of confidential information worthy of protection.

As clarified by the Court of Appeal, the application under Article 60 UPCA and Rule 192 RoP implies a request by the applicant for access to the contents of the documents acquired as a result of the execution of the measures. The applicant is not required to submit any further request for access after the execution of the measure. The expert's report and its annexes will be filed with the Registry of the Local Division of Milan and the applicant will have full access to them from 30 June 2025, unless the respondent avails itself of the

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possibility of requesting the protection of confidential information, regardless of whether other remedies - such as review or appeal - are actually proposed.

The applicant will have access by collecting a copy (previously made available by the expert, as already provided for in this order) at the Registry, under the supervision of the judge rapporteur and with the assistance of a registrar. The activities will be recorded in a specific report which will then be uploaded to the CMS.

If, by 30 June 2025, the defendant has actually submitted a request for protection of confidential information, the Court shall, after consulting the parties, determine by a specific order whether, to whom and to what information access shall be granted.

Requests for review and appeal may be submitted independently (see paragraphs 6.8 and 6.9 below) and the outcome of any such remedies must, of course, be respected.

Pursuant to Article 60.8 UPCA and Rule 198 RoP, the order for the protection of evidence shall be revoked or otherwise cease to have effect, at the request of the defendant, if the applicant does not commence proceedings on the merits before the Court within a period not exceeding 31 calendar days or 20 working days, whichever is longer, starting from the date on which the claimant gains access to the content of the evidence or from the date on which the Court has taken the final decision not to grant the claimant access to the evidence.

6.5. Restrictions on the use of the Court expert's written report

The written report of the expert and any other document obtained as a result of the execution of the order for the protection of evidence may only be used in subsequent proceedings on the merits, in accordance with the provisions of Rule 196.2 RoP.

6.6. Notification

Taking into account the need to ensure the surprise effect, the notice of appeal - together with this order - shall be served by the applicant in accordance with Italian national law at the registered office of the respondent ACEF s.r.l., immediately upon execution of this order, in accordance with Rule 197.2 RoP.

6.7. Security

Pursuant to Rules 196.3 and 196.6 RoP, the Court orders 3V Sigma to provide adequate security – also as a condition for the enforceability of this order – for legal costs and

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any compensation for any damage suffered or that may be suffered by the defendant, by depositing the amount of 15,000 euros.

This amount is calculated taking into account the commercial price applied for the sale of the product *MFSorb 513* (75 euros per kg) and the quantity of product samples that will likely need to be taken, i.e. at least 25 kg in total, where possible from different production batches. These product samples may not be marketed by ACEF s.r.l..

This order shall become effective and enforceable only after the security deposit in the amount indicated above has been actually paid by the applicant.

6.8. Review

The respondents may request a review of this order, as provided for in Article 60.6 UPCA and Rule 197.3 RoP.

6.9. Appeal

The parties may appeal within fifteen days of notification of this order in accordance with Article 73.2(a) UPCA and Rule 220.1 RoP.

ORDER

The Unified Patent Court - Court of First Instance - Local Division of Milan

1. orders that the applicant be allowed, solely in relation to ACEF s.r.l.:
 - a) to obtain, collect and store at the offices, warehouses and other premises available to ACEF s.r.l., located at its registered office in Fiorenzuola D'Arda (PC)
 - via Umbria n. 8/14, all technical documentation relating to the product named *MFSorb 513*, excluding accounting and commercial documentation relating to the same product, subject to verification and access to all digital media and data carriers, on any type of device, available to and in use by the defendant ACEF s.r.l., including external storage units/systems and cloud storage; in order to select and collect the documents in digital format, the keywords indicated by the applicant in the authorised note filed on 8 May 2025 will be used;
 - b) to proceed with a detailed description of the products identified with the trade name *MFSorb 513* as present in the offices, warehouses and other premises indicated above, with the creation of videos and photographs and with the express

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authorisation to collect samples of the *MFSorb 513* product, where possible from different production batches and in any case in sufficient quantities to allow for subsequent laboratory analysis; the product samples thus acquired must be stored in accordance with the procedures indicated by the expert appointed by the Court and in any case in such a way as to ensure their integrity for the entire foreseeable duration of the subsequent proceedings on the merits, by a custodian who must be appointed in accordance with the provisions of Italian law on the enforcement of judicial measures (and, in particular, in accordance with the rule set out in Article 521bis of the Italian Code of Civil Procedure, identifying the custodian as an employee of the defendant, named by the defendant to the bailiff at the time of enforcement of the measure, whose name and position shall be included in the court expert's report);

2. orders ACEF s.r.l. to allow the persons appointed to execute this order
 - (i) to access the premises indicated above and to protect the evidence; (ii) to take photographs or film for documentary purposes, where deemed relevant for the protection of the evidence as ordered; (iii) to allow full and complete access to all technical documents, in any format, in its possession and available to it, relating solely and strictly to the *MFSorb 513* product, including through access to any type of device, unit or storage system in use, including in the cloud;
3. orders that, in the event that the defendant does not voluntarily comply with these instructions, the persons responsible for enforcing the order are authorised, in accordance with the provisions of Italian law on the enforcement of court orders, to request the assistance of a locksmith, to force access to the computer systems and, in any case, to request the assistance of the police if deemed necessary;
4. orders that this order be enforced by the judicial officer with territorial jurisdiction, Dr Diego Pallini Gervasi, with professional office in [REDACTED] - [REDACTED] appointed as Court Expert, assisted by an assistant of his choice who is an expert in computer forensics;
5. orders that only lawyers Luca Pellicciari and Lorenzo Battarino and the technical expert Dr Silvia Bertuccio are authorised to be present during the execution of this order, with the express exclusion of any other representative, employee or collaborator of the applicant; the authorised persons are required to keep confidential all information that comes to their knowledge during the execution of this order;

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6. orders the Court Expert to submit a written report on the results of the execution of the order for the protection of evidence to the Sub-Registry of the Local Division of Milan of the Unified Patent Court, attaching all the documents collected, immediately after completion of the requested activities and, in any case, no later than two days after the conclusion of all operations; three copies of the aforementioned report and documents shall be made available, one for the Court and one for each of the parties;
7. orders that the written report and any other results of the execution of the order for the protection of evidence may only be used in the subsequent proceedings on the merits;
8. acknowledges that the order for the protection of evidence shall be revoked or otherwise cease to have effect, at the request of the defendant, if the applicant does not bring the proceedings on the merits before the Court within a period not exceeding 31 calendar days or 20 working days, whichever is longer, which shall commence on the date on which the claimant gains access to the content of the evidence gathered or on the date on which the Court adopts its final decision not to grant the claimant access to the evidence;
9. orders that access to the expert's written report and its annexes be granted to the appellant from 30 June 2025, at the offices of the Sub Registry of the Local Division of Milan, under the supervision of the judge rapporteur, with the assistance of a registrar, unless the respondent exercises its right to file an application for protection of confidential information by 30 June 2025; in the event that such a request for confidentiality is actually submitted, the Court shall decide whether and which persons shall have access and to what information;
10. orders that this order, together with a copy of the application and the related annexes, as well as the letter of service and the instructions for access to the proceedings through the CMS, be served by the applicant at the defendant's registered office immediately upon execution of this order, in accordance with Italian law on the service of judicial documents;
11. orders that this order shall become effective and enforceable upon payment by the applicant of a security deposit of 15,000 euros;
12. defer all decisions on costs to the subsequent proceedings on the merits;
13. acknowledges that the respondent may request a review of this order within thirty days of the execution of the measures, pursuant to Article 60.6 UPCA and Rule 197.3 RoP;

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14. acknowledges that the parties may appeal within fifteen days of notification of this order pursuant to Article 73.2(a) UPCA and Rules 220.1(c) and 224.2(b) RoP.

Milan, 19 May 2025.

Pierluigi Perrotti
Presiding Judge and Judge Rapporteur

**Pierluigi
Perrotti**

Digitally signed by Pierluigi
Perrotti
Date: 19 May 2025, 09:40:06
+02'00

Alima Zana
legally qualified judge

Alima ZANA Digitally signed by Alima ZANA Date:
2025.05.18 12:21:40 +02'00'

Samuel Granata
legally qualified judge

**Samuel Rocco
M Granata**

Digitally signed by Samuel
Rocco M Granata
Date: 16 May 2025
08:14:44

for the Deputy Registrar

**FERRARI
MANUEL
A**

Digitally signed by
FERRARI MANUELA
Date: 2025.05.19
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