



Local Division The Hague
UPC_CFI_897/2025

**Ex Parte Order
Of the Court of first Instance of the UPC
issued on 25 September 2025
regarding: the preservation of evidence**

APPLICANT

DATA DETECTION TECHNOLOGIES LTD.

Topaz street, Park Tzora Industrial Area,

Kibbutz Tzora, 9980300, Israel

represented by Roeland Grijpink - Hoyng Rokh Monegier, Amsterdam, The Netherlands

DEFENDANT

Esde Makine Otomasyon Tarım Teknolojileri Sanayi ve Ticaret A.Ş.

Fevzi Çakmak Mahallesi, 10662. Sokak 3/1, 42050 Karatay,

Konya, Turkey,

PATENT AT ISSUE

EP 2569713 B1 (hereafter referred to as EP713), entitled *method and apparatus for dispensing items*

DIVISION

Local Division in The Hague

DECIDING JUDGES

This order has been issued by Margot Kokke acting as standing judge of the Local Division in the Hague to handle extremely urgent applications, pursuant to rules 1.2(c), 194.4, 345.5 and 351.1(a) Rop.

LANGUAGE OF PROCEEDING

English

SUMMARY OF FACTS AND PROCEDURE

1. On the 24th of September 2025 Data Detection Technologies Ltd. ("DDT" or "Applicant") filed an application for preserving evidence against Esde Makine Otomasyon Tarım Teknolojileri Sanayi ve Ticaret A.Ş ("Esde" or "Defendant") seeking an *ex-parte* order before the commencement of proceedings on the merits.

2. DDT is the proprietor of EP713, that protects a method and apparatus for dispensing items.
3. According to DDT, there is a trade fair, called *Seed meets Technology 2025* ("SMT"), that is taking place in Zwaagdijk-Oost, the Netherlands, until 25 September 2025. DDT and Esde are both participants. On 23 September 2025 DDT observed that Esde has a seed counting machine on display at SMT to which it refers as Seed Counting Machine SD-14010 (the "SD-14010"). DDT's Global Service Manager, present at SMT, immediately recognized the SD-14010 as being very similar to DDT's cutting-edge seed counting and packaging machine S-60, in which the technology of the patent is embodied, as he indicates in a declaration that was submitted with the application. He declares that - with high probability - the teachings of claims 1 and 8 of EP713 are completely reproduced in the SD-14010. DDT claims that the SD-14010, as also visible in the exhibited pictures, falls within the scope of protection of its patent. DDT considers that the final proof of the alleged infringement can be obtained only by means of an order for preserving evidence granted by the Court, as claims 1 and 8 also concern features that are not visible without further investigation.

ORDER SOUGHT BY THE APPLICANT

4. In summary, the Applicant seeks:
 - to physically seize the SD-14010 (as defined in this application), and all technical, promotional and commercial documentation in relation to the SD-14010 by means of a bailiff during the SMT exhibition, which takes place until and including 25 September 2025 at Tolweg 13, (1681 ND) Zwaagdijk-Oost, The Netherlands, or to physically seize the SD-14010 on any other location in the Netherlands;
 - to make a detailed description of the SD-14010, which will contain a detailed description of the features of the SD-14010 and of the relevant technical, promotional and commercial documentation about the SD-14010 on any of the locations referred to under (i), and/or to take the SD-14010 as a sample;
 - appoint an expert to assist to bailiff and to prepare a written expert report;
 - appoint a custodian of the SD-14010 to be seized or taken as a sample.

GROUNDS FOR THE ORDER

1. Jurisdiction and competence

5. The Court has international jurisdiction for the main case based on Article 7(2) of the Brussels I bis Regulation¹ because the allegedly infringing activities take place in The Netherlands so that there is also jurisdiction to hear the application for interim measures such as the present one. Competence of the Court follows from Article 32.1 (a) and (c) and Article 60.1 UPCA. The patent at issue is a European Patent that was not opted-out. The patent is in force, *inter alia*, in The Netherlands.

¹ Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

6. The Local Division in The Hague has competence pursuant to artt. 32.1 (c) and 33.1 (a) UPCA. As a matter of fact, Dutch territory is where the actual or threatened alleged infringement occurs. The Application was filed before The Hague Local Division where DDT intends to start proceedings on the merits based on art. 33.1 (a) UPCA, in conformity with rule 192.1 RoP.

2. Fulfilment of the provisions of rule 192.2 RoP

2.1. Content of the application

7. The application for preserving evidence contains:
 - (a) particulars in accordance with rule 13.1 (a) to (i) RoP;
 - (b) a clear indication of the measures requested, including the exact location of the evidence to be preserved where it is known or suspected with good reason (SMT location);
 - (c) the reasons why the proposed measures are needed to preserve relevant evidence;
 - (d) the facts and evidence relied on in support of the application.

2.2. Concise description of the future proceeding in the merits

8. The Applicant will start proceedings on the merits with respect to the patent infringement against the Defendant for the patent infringement relying on the evidence obtained by the present proceedings if, as is to be expected, the suspicion of patent infringement is confirmed.
9. Consequently, conditions as provided by rule 192.2 RoP are fully met.

3. Burden of proof for the applicant under art. 60 UPCA - Reasonably available evidence given by the Applicant

3.1. Rights on a valid patent

10. The Applicant sufficiently proved that it is entitled as proprietor of the patent EP713 to start proceedings and to request measures to preserve evidence, by submitting recent extracts from both the European Patent Office ("EPO") and Dutch national patent registries (as exhibits CE12 and CE13).
11. Concerning the validity of the patent at issue, no opposition has been filed at the EPO against the grant of the patent. DDT did not report the existence of any action for revocation brought before national Courts, as provided for in rules 13.1(h) and 192.2(a) RoP nor of any other material act known to it relating to the validity of the patent at issue which might influence the Court in deciding whether or not to make an order without hearing the Defendant (rule 192.2 RoP, second sentence). Therefore, the Court has no reason to doubt the validity of the patent at issue - at this early stage.

3.2. Alleged infringement

12. Reference is made to the application. EP713 protects a method for dispensing discrete items into a multiplicity of containers (see claims 1 - 7) and an item dispenser (see claims 8 - 14).

13. Claim 1 is divided into features by the Applicant as follows:

- 1.1 a method (204) for dispensing discrete items (116) into a multiplicity of containers (132) such that each of the multiplicity of containers contains a predetermined number of items, the method comprising:
 - 1.2 operating (232) a conveyor (120) such that items placed on the conveyor fall into a container at least partially in parallel,
 - 1.3 the conveyor activated for a period of time such that less than the predetermined number of items fall into the container;
 - 1.4 counting the falling items (236) using a counting mechanism (140) comprising at least three electromagnetic energy sources (316, 320, 324) and at least three receptors (336, 340, 344), wherein the counting mechanism is arranged such that:
 - 1.4.1 (a) each of the at least three electromagnetic energy sources emits energy in a different direction, and
 - 1.4.2 (b) no two of the at least three electromagnetic energy sources emit energy in perpendicular directions;
 - 1.5 determining a number of missing items in the container after items have fallen into the container during the operation and due to inertial forces after the operation; and
 - 1.6 operating the conveyor for a pulse duration (252).

14. Claim 8 is divided into features by the Applicant as follows:

- 8.1 An item dispenser (100) comprising: a parallel transport conveyor (140);
- 8.2 a counting mechanism comprising at least three electromagnetic energy sources (316, 320, 324) and at least three receptors (336, 340, 344), wherein the counting mechanism is arranged such that:
 - 8.2.1 (a) each of the at least three electromagnetic energy sources emits energy in a different direction, and
 - 8.2.2 (b) no two of the at least three electromagnetic energy sources emit energy in perpendicular directions,
- 8.3 wherein said counting mechanism is positioned below an end of said conveyor, for counting items falling off said conveyor, wherein at least some of the items are at least partially horizontally parallel when falling through said counting mechanism; and
- 8.4 a computing platform (104) connected to said conveyor and to said counting mechanism, and being configured to operate said conveyor in a continuous mode until a desired item count of a present batch is indicated by said counting mechanism as nearly being reached,
- 8.5 and in a pulsed mode to complete at least an amount of items missing from the desired item count, wherein the pulsed mode comprises activation of said conveyor in at least one pulse having a length which was pre-determined to cause a set number of items to fall off the conveyor as a direct result of the conveyor's operation as well as indirectly, due to inertial forces following the pulse.

15. The Applicant explains that the claimed method and the claimed apparatus make it possible to obtain accurate counting and division of individual items from bulk quantities into single packages.
16. DDT provided a written testimony from one of its employees, its Global Service Manager, (as exhibit CE8). He has personally seen on 23 September 2025, during the SMT exhibition, that Esde was showing at booth no. 42 a seed counting machine, named *SD-14010*, that looked very similar to the patented device. He declares the following:

“(...) I noticed that Esde Makine exhibits a seed counting machine in its booth of type SD-14010 which is very similar to Data Technologies' seed counter S-60. When visiting the booth of Esde Makine, I spoke to one of their sales persons about the SD-14010. I asked this person which technology is used in the SD-14010 for the counting mechanism, an infrared sensor or cameras. The sales person reported that the SD-14010 comprises 3 cameras on the inside that perform the counting of the seeds. (...)"

The SD-14010 is also displayed on Esde's website (exhibit CE7).

17. In addition to the declaration, Applicant submitted a video (as exhibit CE11) that Esde published on YouTube (“@EsdeMachineryTurkey”) that shows the functioning of the SD-14010. In this video (the “Esde Video”), the SD-14010 is shown in combination with a packing machine referred to as the “Full Auto Envelope Seed Pack Machine SD-15110” (“SD-15110”), that is also displayed on Esde's website. Relevant stills from the Esde Video were submitted as exhibit CE10. From (stills of) the video, it also seems plausible that the counting machine functions in a continuous mode until the desired count is almost reached, and then changes shortly to a pulsed mode to reach the exact count desired (as required by features 1.3, 1.5, 1.6, 8.4 and 8.5).
18. The application thus contains a detailed comparison of the operating features of the *SD-14010* as observed during the SMT exhibition with the claimed features of the patent. The suspicion of a patent infringement by Esde seems plausible.
19. Applicant explained that machines like the SD-14010 are often not easy to get a hold on and companies that sell or have bought and use such machines generally are not willing to grant access to their premises or their machines for inspection by patentees. For these reasons the proposed measures are needed to preserve relevant evidence (R. 192 (2)(c) RoP). The SMT provides a rare opportunity for DDT to obtain further evidence regarding Esde's infringing product in a European jurisdiction.
20. The Applicant has sufficiently substantiated that it needs an order for gathering more evidence to be able to fully prove the alleged infringement.

4. Requirements under rule 194.2 RoP and rule 197 RoP

21. According to rules 194.2 and 197 RoP, the Court shall take into account the urgency of the action and the reasons to grant an order *ex parte* in exercising its discretion to decide the Application without hearing the Defendant (rule 194.1(d) RoP). In accordance with rule 197 RoP the Court may order measures to preserve evidence without the defendant being heard, in particular where there is a demonstrable risk of evidence being destroyed or otherwise ceasing to be available. Such is the case here, especially since the Defendant is not based in UPC territory.
22. The requirement of extreme urgency is met as the exhibition where the alleged infringement takes place will end on 25.9.2025, whereafter the evidence likely ceases to be (readily) available within UPC territory.
23. Consequently, taking into account all relevant factors, this order needs to be granted without the defendant having been heard, in particular since there is a demonstrable risk of evidence being no more available once the SMT exhibition is over, for Esde is based abroad and the technical and commercial documentation relating to SD-14010 machine could easily be destroyed or otherwise cease to be available (art. 60.5 UPCA).

5. Payment of court fees

24. The Sub Registry in The Hague confirmed that the court fee of € 350 was paid on 24 September 2025.

6. Balance of interests and modalities of execution

6.1. Balance of interests

25. The weighting up of the interest of the parties implies granting the measure, considering the potential risk of harm for each of the parties, in the case of granting - for the Defendant - or denial of the measure - borne by the Applicant.
26. Taking into consideration the principle of proportionality, the threat of definitive loss of the evidence borne by the Applicant is deemed to be prevalent over the Defendant's exposure to the enforcement of the required measures. Furthermore, as Applicant indicated that the order if granted will be carried out towards the closure of the SMT, the expected impact on Esde caused by the seizure is relatively limited, given that the machine will have been presented during almost the entire the trade fair.
27. The reasoned application for preserving evidence *ex parte* shall therefore be granted, mostly as requested by the Applicant. As the Court fails to see the urgency and need of the requested seizure of promotional and commercial materials for the assessment of infringement, the seizure shall be limited to technical materials.

6.2. Modalities of execution

28. Pursuant to rule 196.4 RoP, the authorised measures will be carried out in accordance with the national law of the place where the measures are executed - i.e. Dutch law. The

measure shall thus be carried out by a bailiff assisted by an expert as requested. Both are named in the Application (at 77 and 78 and in the operative part) and are appointed by the Court. The bailiff is also appointed as custodian of the machine to be seized, as requested.

29. This expert is a UPC representative and long-term experienced patent attorney, who currently is the managing partner of a firm established in The Netherlands. The Applicant declares that this expert does not have any relationship with DDT or Defendant. The choice appears to guarantee expertise, independence and impartiality, as required by rule 196.5 RoP.
30. In view of the extreme urgency, in the event that the appointed expert or bailiff is not available to carry out the measure, they are hereby authorised to designate, as of now, a replacement within their professional firm with the same qualification and similar experience.
31. The expert and the bailiff are subject to the professional obligations of confidentiality regarding all information to which they may have access in the course of his duties.
32. The appointed expert shall lodge a written report, together with a full copy of all the documents acquired as a result of the execution of the measures, immediately and no later than four working days after the completion of execution of the measures.

6.3. Confidentiality

33. DDT requests the Court to determine that the persons involved in the carrying out of the measures for the preservation of evidence pursuant to the order to be rendered in this matter, like the bailiff, the expert and the custodian, shall not be allowed to provide information to DDT or third parties concerning these measures (including in the detailed report to be drafted by the bailiff in relation to these measures and by the expert in relation to the detailed description), and shall not provide opportunity to provide insight to the SD-14010 or to the respective detailed reports or to examine these, except if the defendant consents or on the basis of a further order of the UPC.
34. In accordance with the principles set out by the Court of Appeal regarding the interpretation of the provisions relating to the application for the preservation of evidence or the inspection of premises, especially for confidentiality and access to the preserved evidence by the Applicant (CoA 23 July 2024, UPC_UPC- CoA-177/2024), the Court considers that in this case the standard of caution suggested by the Applicant for the protection of confidentiality is reasonable. The application under Article 60 UPCA and rules 192 et seq. RoP implies a request to disclose to the applicant the outcome of the measures. The Applicant is therefore not required to lodge further requests to gain access to the preserved. The expert report and its annexes will be filed by the expert via the Court's case management system ("CMS") and the Applicant will have access to this information from the date specified in the order, unless the Defendant makes use of its opportunity to request confidentiality, irrespective of whether other remedies - such as review or appeal

- are proposed. Applicant's access shall be by way of the Court's case management system (CMS) in which the written report shall be uploaded by the expert. If a request for confidentiality is made by Defendant before the specified time, the Court will determine by specific order, after having consulted the parties, whether, to whom and to what information access will be granted.
- 35. Pursuant to art. 60.8 UPCA and rule 198 RoP, the measures to preserve evidence shall be revoked or otherwise cease to have effect, at the Defendant's request, if the Applicant does not bring action leading to a decision on the merits of the case before the Court within a period not exceeding 31 calendar days or 20 working days, whichever is the longer, that will start 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.

6.4. Restrictions on the use of the written report

- 36. The written report and any other outcome of the measure to preserve evidence may only be used in the proceedings on the merits of the case, in accordance with rules 196.2 and 199 RoP.

6.5. Service

- 37. Taking into account the need to ensure the surprise effect, service of the application with exhibits, together with this order, shall be carried out by the Applicant, with the bailiff's occurring support, at the premises where the SMT exhibition is taking place, immediately at the time of the execution of this order, in accordance with rule 197.2 RoP,

6.6. Security

- 38. Pursuant to rule 196.6 RoP, the Court considers that there are special circumstances for not making the enforceability of the measure conditional on the lodging of a security by the Applicant. In fact, the time limit for the fair is only one day from the adoption of the present order, with an objective irreparable compromise of the possibility of its execution if it is subject to the payment of a security or to the reservation of an equivalent guarantee. The Applicant presents itself as a large industrial company which should therefore be able to compensate the defendant for any damage caused by the enforcement of the measure.
- 39. The measure is therefore immediately enforceable pursuant to rule 196.3 RoP.

6.7 Other points

- 40. The application is directed to seizure in the Netherlands. This means Dutch law also applies to the application and (in particular) its execution (such as the Dutch Code for Civil Procedure, DCCP, but also common practices of the Dutch courts for these types of seizures). In as far as necessary, the court refers in particular to the Beslagsyllabus to be found at: <https://www.rechtspraak.nl/SiteCollectionDocuments/Beslagsyllabus.pdf>, especially chapter G13 thereof.

41. The Court further reasons that it is part of these national rules that as a principle, representatives of the claimant are not allowed to be present during the seizure (see also Article 443(2) of the DCCP²). Reference is also made to two earlier orders by this Court, in re UPC_CFI_736/2025 (ACT_34712/2025) and UPC_CFI_739/2025 (ACT_34718/2025). Applicant has ensured the details of the relief sought conform to those orders.

ORDER

The Court

- I. grants leave to carry out precautionary **seizure of evidence** under Defendant at his stand at the *Seed meets Technology 2025* exhibition, that takes place until 25 September 2025 at Tolweg 13, (1681 ND) Zwaagdijk-Oost, The Netherlands, specifically allowing:
 - a. to physically seize one SD-14010 machine as a sample;
 - b. to obtain, gather and preserve all the *technical* documentation regarding the *SD-14010*;
 - c. to preserve evidence by detailed description of the machinery identified with the commercial name *SD-14010* present on site, accompanied by photos and videos of this machine and / or components, also in order to establish whether the machinery is implementing the teachings as claimed in EP2569713;
 - d. in case the SD-14010 is not at the above location but at another location in the Netherlands, the seizure can be carried out there.
- II. appoints the **bailiff** Mr. G. Bakker of Equilibristen Gerechtsdeurwaarders B.V., Kuipershaven 25, (3311 AL) Dordrecht, to carry out the order and to be assisted by a technical expert;
- III. appoints the bailiff as custodian of the SD-14010 to be seized;
- IV. appoints Mr. ir. Bas W.H. Langenhuijsen, Julianaplein 4 (5211 BC) Den Bosch, info@patentwerk.nl, +31(0)736911350, as **technical expert** to assist the bailiff to carry out his order;
- V. authorizes the bailiff and the expert to appoint a suitable substitute if either is not available, according to the conditions set out in the grounds of this order;
- VI. orders the expert to assess the seized machine and to draw up a **written expert report** on the findings of the measures to preserve evidence with regard to the suspected infringement of EP2569713, enclosing all the collected documents, once the required activities will have been completed and to submit this report **within two weeks after the seizure** to the Court and to Defendant('s representative) via the Court's case management system (CMS), but in case of technical problems with the CMS, by a secure link to be provided by the registry;
- VII. stipulates that the written Report
 - a. and any other outcome of the measures to preserve evidence may only be used in the proceedings on the merits of this case;
 - b. shall at first be accessible to the representatives of the Defendant only, but from the **fifteenth working day** after its uploading also to the representatives

² Dutch Code of Civil Proceedings

of the Applicant, **unless** the Defendants makes use of the opportunity to file a request for **confidentiality** before that date, in which case the Court shall decide by specific order on access and on the terms of a “confidentiality club”.

VIII. orders Defendant to allow the persons appointed to carry out this order by allowing the persons carrying out the seizure (i) to enter its spaces at the *Seed meets Technology 2025* exhibition and to preserve evidence; (ii) to take photographs or films for documentary purposes relevant to the ordered preservation of evidence; (iii) to have full access to all technical documents regarding the machinery identified with the commercial name *SD-14010*;

IX. stipulates that

- a. in case the Defendant does not comply spontaneously with the above instructions, authorises the persons appointed to carry out the order - in accordance with the provisions of Dutch law on the execution of judicial measures - to request the assistance of law enforcement if deemed necessary;
- b. the appointed persons are subject to the professional obligations of confidentiality with regard to all information to which they may have access in the course of their duties.
- c. (representatives of) the Applicant ie (are) not allowed to be present during the execution of this order and the bailiff is not entitled to make an exception to this pursuant to the applicable national law;
- d. the bailiff may, if there are reasons to do so, make two different reports of the measures to be carried out pursuant to the order to be rendered in this matter: one report that is destined for DDT, which will contain only a global description of the measures taken pursuant to the order to be rendered in this matter, and a report that is destined for the Defendant, that will contain a detailed description of the measures taken pursuant to the order to be rendered in this matter;

X. orders that this order, together with a copy of the application and its exhibits as well as the letter of service and the instructions for access to the proceedings in the CMS, shall be served by the bailiff, at the above location on the Defendants immediately at the time of the execution of this order, complying with the Dutch law in regard to service of judicial documents;

XI. orders that the measure to preserve evidence shall be revoked or otherwise cease to have effect, at the Defendant’s request, if the Applicant does not bring action leading to a decision on the merits of the case before the Court within a period not exceeding 31 calendar days or 20 working days, whichever is the longer, that will start 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;

XII. declares this order immediately enforceable;

XIII. refers the decision on costs to the proceedings on the merits;

XIV. rejects the more or otherwise requested.

INFORMATION ABOUT REVIEW

Defendant may request a review of the present order to preserve evidence within 30 days after the execution of the measures. [Art. 60(6) UPCA, R. 197.3 RoP]

Kokke	
On behalf of the registry	

ORDER DETAILS

Order in UPC case number: UPC_CFI_862/2025

Application Type: Application for preserving evidence pursuant to RoP192