



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

UPC CFI No. 342/2025

**ORDER
issued on 5 December 2025**

HEADNOTES

1. Verification of the applicant's compliance with the 'duty to disclose any material fact known to it which might influence the Court in deciding whether to make an order without hearing the defendant (rule 192.3 RoP)' must be conducted from an *ex ante* perspective, having regard to the time when the application was assessed by the Court for the purposes of making an order *without hearing the other party*.

It is the responsibility of the defendant raising this objection not only to allege, but also to document in a specific and clear manner, the elements - in theory - kept hidden by the other party that would have resulted in such a breach of the duty of full disclosure before the Court.

2. Article 60.1 UPCA - incorporating verbatim the general provision contained in Article 7.1 of Directive 2004/48/EC - establishes that the Court may order provisional measures to safeguard relevant evidence provided that the applicant has "*presented reasonably accessible evidence to support the claim that his patent has been infringed or is about to be infringed*".

The evidence submitted by the applicant must be '*reasonably accessible*'. Its acquisition - and subsequent submission to the Court - must therefore fall within the sphere of direct control of the applicant, without the need - at the same time - for excessively complex and/or burdensome activities or initiatives and, as such, unreasonable.

The applicant must submit sufficient evidence to the Court to verify the logical and factual consistency of the argument: the claim of infringement must be adequately supported and, at the same time, credible and therefore, as such, entirely plausible from a logical and factual point of view. All this must be done from an *ex ante* perspective, i.e. at the initial stage when the Court examines the application. This interpretative reconstruction is entirely consistent with the nature of the protected right, which is a procedural right to evidence.

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APPLICANTS FOR REVIEW (INITIALLY DEFENDANTS)

1) A.G.A. S.R.L. (formerly AZIENDA CHIMICA E FARMACEUTICA S.P.A. - A.C.E.F. S.P.A.) - piazza

Borromeo No. 12, Milan, 20123, Italy

2) AZIENDA CHIMICA E FARMACEUTICA S.R.L. - A.C.E.F. S.R.L. - via Umbria n. 8/14, Fiorenzuola D'Arda (PC), 29017, Italy

represented and defended by lawyers Raffaello De Marco, Federico Paesan and Giorgia Segaliari, with offices in Milan, Piazza Belgioioso No. 2, 20121, Italy

DEFENDANT (INITIALLY APPLICANT)

3V SIGMA S.P.A. - Milan, Via Fatebenefratelli 20, 20121, Italy

represented and defended by lawyers Luca Pellicciari and Lorenzo Battarino, with offices in Milan, Via Brera No. 6, 20121, Italy

PATENTS SUBJECT TO THE DISPUTE

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

DECIDING BODY

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

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

LANGUAGE OF THE PROCEEDINGS

Italian

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THE PROCEEDINGS

On 16 April 2025, 3V Sigma s.p.a. filed an appeal pursuant to Art. 60.5 UPCA and rules 192 et seq. RoP for the issuance of an *ex parte* order for the protection of evidence against A.G.A. s.r.l. (formerly 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 referred to as AGA and ACEF, respectively), prior to the commencement of the proceedings on the merits.

3V Sigma stated that it 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 protecting the skin and hair from the harmful effects of exposure to sunlight.

One of 3V Sigma's competitors, MFCI CO., Ltd., based in Hunagshi, Hubei, China, had 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* or also the Product). This product was intended for professional operators in the sunscreen manufacturing sector.

The defendant companies were distributors of MFCI products and, in particular, of the *MFSorb* filter

513 filter. Sales and promotional activities were currently underway, as could be seen from the advertising on the website www.acef.it, which was attributable to ACEF. With the help of a professional trader, the applicant had purchased a 25 kg sample of *MFSorb 513* and had it analysed by an external, independent laboratory, which confirmed 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 of the examined product sample from the defendants and (ii) acquire all technical, accounting and commercial documentation relating to the *MFSorb 513* filter. The definitive confirmation of the suspected infringement of its patents and the identification of all parties involved in the distribution chain would therefore enable it to initiate proceedings to ascertain the patent infringement.

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) RoP, without prejudice to any possible assessment regarding the acceptance 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)

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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 were to be carried out.

In compliance with this request, the applicant filed a supplementary defence brief on 8 May 2025.

In partial acceptance of the requests made by 3V Sigma, on 19 May 2025, the Court issued an order for the protection of evidence against ACEF only, authorising (i) the acquisition of technical documentation relating to the product known as *MFSorb 513*, excluding accounting and commercial documentation relating to the same product, and (ii) the collection of samples of the *MFSorb 513* product in a quantity sufficient to carry out any subsequent laboratory analyses.

The effectiveness and enforceability of the order were conditional upon the payment by the applicant of a deposit of €15,000.

The Court ordered that the material found during the operations be kept confidential, making it available to the applicant only from 30 June 2025, in the absence of requests for protection of confidential information by the defendants. On 26 June 2025 - and therefore within the assigned deadline - AGA and ACEF requested protection of confidential information: the related sub-proceedings (appeals nos. 30771/2025 and 31205/2025) were concluded with an order filed on 23 September 2025, which granted protection of confidential information. This order was not appealed.

On 27 June 2025, AGA and ACEF filed a request for review *pursuant to* Article 60.6 UPCA and rule

197.3 RoP of the order for the protection of evidence of 19 May 2025, arguing, in particular, the lack of evidence of interference by the product *MFSorb 513* with the patents held by 3V Sigma and the lack of urgency.

As a preliminary matter, they challenged the laboratory methodology adopted by the applicant and the reliability of the related results.

The laboratory commissioned by the appellant had analysed the product *MFSorb 513* using high-performance liquid chromatography (HPLC-UV), a method that should indirectly provide information on the technical and physical characteristics of chemical compounds. However, no information was provided on the experimental conditions of the analytical method applied, with the

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making it impossible (i) to interpret the results unambiguously and (ii) to reproduce the analyses.

The applicant then had a second analysis carried out using the HPLC-UV/MS technique, which is useful for identifying the molecular weight or exact mass of the substances contained in a sample. However, the molecular weight alone was not sufficient to ascertain the precise structure of a substance, given that the experimental conditions of the analytical method applied had not been provided for this second analysis either.

This conduct therefore constituted a breach of the obligations under Rule 192.3 RoP, according to which *'the applicant shall be under a duty to disclose any material fact known to it which might influence the Court in deciding whether to make an order without hearing the defendant'*.

On the merits, AGA and ACEF noted the absence of substitutes with two phenyl portions and therefore the non-interference of the Product with the claims of the two patents asserted by 3V Sigma.

Even in the unlikely event that dimeramides E and F were found to be present, their presence was limited to small and negligible quantities, which were therefore unlikely to significantly affect the functionality of the sample, with the consequent absence of any possible interference with the technical solutions claimed in patents EP'872 and EP'426.

3V Sigma had therefore not provided *'reasonably accessible evidence to support its claim that its patent has been infringed or is about to be infringed'*, as required by Article 60.1 UPCA.

Finally, the defendants contested the lack of urgency.

The Product had been marketed by ACEF since at least January 2023, and this fact was known to the other party. There had therefore been extensive and long-standing tolerance on the part of the applicant.

The defendants concluded by requesting the complete revocation of the order to preserve evidence
of 19 May 2025.

In the alternative, AGA and ACEF requested the partial revocation of the order, with its effectiveness limited solely to the *MFSorb 513* product samples and with the consequent return of all other evidence found at ACEF's premises during the execution of the measure. This request was justified by a better balance of the interests of the parties, taking into account the need to protect ACEF's confidential information.

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On 29 September 2025, 3V Sigma filed a *brief in response to the request for review*. In general, it pointed out that the party requesting an order for the protection of evidence under Article 60 UPCA does not have to provide full proof of the alleged interference, otherwise the measure would be totally deprived of its function of protecting the right to evidence.

The appellant had provided all the evidence at its disposal to demonstrate the more than probable presence of the compounds claimed in the patents, doing everything that could reasonably be expected of it at the time the application was filed. The analysis was carried out by an independent laboratory on a sample of the Product purchased through an intermediary in the sector, using the HPLC-UV technique. This method of analysis was commonly used to separate, identify and quantify the components of a mixture. Following this, an HPLC-MS analysis was carried out, which made it possible to detect the exact mass of each component, confirming the presence of components with an exact mass coinciding with that of the dimeramides indicated by the independent laboratory as E and F.

The objections regarding the failure to indicate the experimental conditions of the analytical method applied were unfounded. The counterparties had commented extensively on the results, which were perfectly intelligible to an expert in the field. The counterparties had carried out counter-analyses based on the same method, with unreliable results since the analyses had been carried out by MFCI, the manufacturer of *MFSorb 513*, and as such a party in a clearly non-impartial and non-independent position with respect to the events of the case.

As for the confirmed presence of dimeramides E and F, their identification was based on molecular weight, a fundamental parameter for identifying a chemical substance with a very high degree of probability. The exact mass criterion used was even more precise.

AGA and ACEF had not inferred anything regarding the possible presence of substances with an exact mass corresponding to dimeramides but additional and different from the latter. 3V sigma had therefore provided reasonable evidence of their presence in the Product. As for the possible presence of a minimal and negligible quantity, this would not have been sufficient to rule out interference, since the patents did not describe or claim a minimum quantitative limit for presence.

Finally, 3V Sigma noted that urgency, understood as the absence of delay in the applicant's reaction, was not a requirement for the issuance of the order for the protection of evidence.

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On 24 October 2025, AGA and ACEF filed a *generic application* pursuant to *Rule 9 RoP*. They stated that they had entrusted the University of Milan with conducting more in-depth technical analyses on the *MFSorb 513* product, the results of which had only become available on 23 October 2025. The results of this assessment showed that no traces of dimeramide compounds D, E and F were found in a sample of the product. They therefore requested authorisation to file the technical report of the University of Studies of Milan.

3V Sigma filed *its defence notes in response to the opposing party's brief of 24 October 2025* on 3 November 2025.

It objected to the inadmissibility of the request made by the counterparties and the documents filed. The party requesting the review was burdened with a specific obligation to immediately allege and prove all the facts and circumstances on which the request was based, as provided for in rule 197.3 RoP.

The analyses had been commissioned on 16 July 2025, i.e. after the date of filing (27 June 2025) of the request for review, without providing any information on this circumstance during the proceedings, either to 3V Sigma or to the Court.

In any case, the results of the analyses showed an inconsistency with the investigations previously conducted by the same counterparties, with a clear need for further technical investigation to be reserved for the subsequent judgment on the merits.

The parties discussed the request for review at the hearing on 11 November 2025.

REASONS FOR THE DECISION

1. Preliminarily, on the admissibility of the request for the production of new documents

The requests made by ACEF and AGA in the application filed on 24 October 2025 are inadmissible. On this point, it suffices to note that, according to Rule 197.3 RoP, the party submitting the request for review is required to highlight: '(a) *the reasons why the order to preserve evidence shall be revoked or modified; and (b) the facts and evidence relied on*'.

In their appeal of 27 June 2025 (see page 5), AGA and ACEF expressed '*the broadest possible reservation to supplement this Technical Opinion in the course of this proceedings or in the course of the proceedings on the merits and/or to file other technical opinions and/or laboratory analysis results on the MFSorb 513 product*'. However, they did not acknowledge that they had already commissioned - at that time - further technical investigations from one or more independent laboratories. The deadlines for submission

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of the request for review – 30 days after the measure was implemented – would certainly have allowed at least the start of such technical investigations, subject to documenting the outcome as soon as it became available.

The defendants assigned the task to the University of Milan on 16 July 2025, i.e. only twenty days after the appeal for review was filed, without, however, providing any information about this circumstance to the Court or to the other party, with procedural conduct that does not appear to be entirely consistent with the principle of fairness and mutual loyalty between the parties, as it is aimed at creating a surprise effect or, in any case, an information asymmetry to their advantage, also taking into account an inevitable degree of uncertainty regarding the final outcome of the analyses.

In light of these considerations, the request for the production of new documents is deemed inadmissible and, as such, rejected.

2. On the merits, regarding the lack of interference of the *MFSorb 513* product with the 3V Sigma patents

The defendants' arguments on this issue relate to (i) the alleged breach by the applicant of the duty of disclosure under Rule 192.3 RoP for the purposes of issuing an *ex parte* order and (ii) the failure of 3V Sigma to meet the burden of proof as defined in Article 60.1 UPCA.

2.1. Applicant's duty to disclose any material fact known to it which might influence the Court in deciding whether to make an order without hearing the defendant (rule 192.3 RoP)¹

This first ground for review requires the Court to verify the actual existence of one of the requirements for issuing a protective order without prior adversarial proceedings against the defendants. This verification must be conducted from an *ex ante* perspective, taking into account the moment when the request was assessed by the Court for the purposes of issuing an order *without hearing the other party* (in this regard, with reference to the specific issue of assessing the risk of destruction of evidence, see UPC CFI No. 127/2025, Local Division of Milan, 27 October 2025 and, more generally, UPC CFI No. 407/2025, Local Division of Brussels, 12 November 2025).

The defendants' complaints refer to the alleged incompleteness of the information on the experimental conditions of the analytical method applied by the laboratory appointed by the applicant.

¹ The text of the English version of Rule 192 RoP is reproduced here, as no official Italian translation is available.

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3V Sigma clarified that it had adopted HPLC-UV and HPLC-MS analysis methods, widely and commonly used for the precise identification and quantification of the components of a mixture and for the subsequent detection of the exact mass of each component. This circumstance was not contested by the counterparties.

The defendants submitted counter-analyses carried out by MFCI Ltd. - manufacturer of *MFSorb 513* - using the same technical investigation methods followed by the laboratory commissioned by 3V Sigma.

The defendants' adoption of the same method provides important confirmation of its reliability.

Furthermore, AGA and ACEF did not specify what the indications would be regarding the experimental conditions present (only) in their counter-analyses and not specified in the appellant's analyses. The objection regarding the omission of certain elements is therefore not entirely clear and complete, since the respondents did not specify in detail – for example, by comparing their own counter-analyses based on the same method – which conditions were deliberately omitted by the appellant and which should have been fully represented.

Finally, it is undisputed that the laboratory commissioned by 3V Sigma is independent and impartial with respect to the parties involved.

In light of all the factual elements indicated, no violation of the applicant's "*duty to disclose any material fact known to it which might influence the Court in deciding whether to make an order without hearing the defendant*", as provided for in rule 192.3 RoP, can be identified in this regard.

It is in fact the responsibility of the defendant raising this objection not only to allege, but also to document in a specific and clear manner, the elements - in theory - kept hidden by the other party that would have resulted in such a breach of the duty of full disclosure before the Court.

2.2. Failure by the applicant to meet the burden of proof provided for in Article

60.1 UPCA

Article 60.1 UPCA - incorporating verbatim the general provision contained in Article 7.1 of Directive 2004/48/EC - establishes that the Court may order provisional measures to preserve relevant evidence, provided that the applicant has "*presented reasonably accessible evidence to support the claim that his patent has been infringed or is about to be infringed*". In view of this provision, it is therefore necessary to clarify the threshold of the burden of proof placed on the applicant.

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Certainly, the applicant is not required to prove the actual existence of the patent infringement. Such a high threshold, equivalent to that imposed on those bringing an action on the merits, would completely render meaningless the measures for the protection of evidence, which retain their practical usefulness only in cases where the patent owner does not already have certain proof of infringement and therefore needs to obtain and preserve it.

The evidence presented by the applicant must be '*reasonably accessible*'. Its acquisition - and subsequent presentation to the Court - must therefore fall within the sphere of direct control of the applicant, without the need for excessively complex and/or burdensome activities or initiatives, which would be unreasonable.

The provision in question also stipulates that the evidence provided by the applicant must be sufficient to "*support the claim that his patent has been infringed or is about to be infringed*", thereby defining the minimum evidentiary threshold that must be met in order to grant the protection provided for in Article 60 UPCA. The applicant must submit sufficient evidence to the Court to verify the logical and factual consistency of the argument: the claim of infringement must be adequately supported and, at the same time, credible and therefore, as such, entirely plausible from a logical and factual point of view. All this must be done from an *ex ante* perspective, i.e., at the initial stage when the Court examines the application.

This interpretative reconstruction is entirely consistent with the nature of the protected right, which is a procedural right to evidence.

The Court is therefore not required to make a prognostic or probabilistic assessment of the actual existence of the infringement (in this sense, see UPC CFI No. 142/2025, Local Division of Mannheim, 3 March 2025), which is certainly necessary for the adoption of other precautionary and urgent measures that guarantee the protection of the substantive right of the patent holder.

In applying these interpretative principles, the Court considers that the applicant has provided reasonably accessible evidence to support its claim that its patent has been infringed, having regard to the time at which the application was filed.

As already highlighted above, 3V Sigma attached to the appeal the results of chemical analyses of a sample of the Product, carried out by an independent laboratory using methods commonly applied for the identification of the components of a chemical compound and whose results are generally recognised as reliable. The results of the analyses confirmed that the Product contains elements with a mass corresponding exactly to that of dime-rammidi E and F, with the consequent likely reproduction of the technical solution claimed by patents EP'812 and EP'426.

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The evidence attached therefore appears sufficient to support the claim of counterfeiting, rendering it consistent and credible, from an *ex ante* perspective, for the sole and limited purpose of granting protection of the right to evidence. In the subsequent judgment on the merits, which is the appropriate forum for this purpose, a thorough verification of the basis of the applicant's argument will be carried out, in full compliance with the principle of adversarial proceedings, with ample opportunity for AGA and ACEF to submit the results of the counter-analyses carried out on their behalf to the Court.

3. Lack of urgency

The defendants did not contest the existence of the requirement of *urgency of the action*, as provided for in rule 194.2(a) RoP. In this sense, *urgency* is one of the three elements that the Court may take into consideration in order to modulate its discretionary decision to issue (or not) an order for the protection of evidence without first establishing an adversarial procedure against the defendant.

AGA and ACEF, on the other hand, complained about 3V Sigma's culpable delay in filing the initial appeal, considering that the Product had been offered on the market by ACEF since January 2023.

On this point, the Court of Appeal of the Unified Patent Court clarified the following:

It is necessary to distinguish between the assessment of urgency in the context of an application for preserving evidence (rule 194.2(a) RoP) and the assessment of urgency in the context of an application for provisional measures (rule 209.2(b) RoP). In exercising its discretion to determine whether provisional measures should be ordered, the Court shall also have regard to any unreasonable delay in seeking provisional measures (Rule 211.4 RoP). No such requirement is imposed either by the UPC Agreement or by the Rules of Procedure when assessing whether an application for preserving evidence should be granted” (see UPC CoA No. 327/2025, 15.7.2025).

In the present case, therefore, there is no obligation on the applicant to take prompt action in relation to its knowledge of possible counterfeiting by the defendants. In addition, the Court observes that the urgency of taking action, understood in a broader and more extensive sense than that inferred by the respondents, was duly assessed in the contested order, including in two other equally relevant respects, namely the need to adopt the requested measures (rule 192.2(c) RoP) and the existence of a real risk of destruction of evidence (rule 197.2).

With regard to the first aspect, it should be reiterated that the acquisition of a sample of the Product was authorised in order to guarantee with absolute certainty the actual origin of the sample itself and its

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integrity for the purposes of any analysis, with storage by a custodian, under his direct responsibility.

As regards the real risk of destruction of evidence, it suffices to reiterate that technical documents in digital format are, by their very nature, exposed to the risk of deletion or alteration in the event that the party who has direct access to them is given prior notice of the need to select and acquire copies of them.

4. The request made in the alternative by the defendants

Subordinately to the complete revocation of the order for the protection of evidence, AGA and ACEF requested that it be confirmed only in the part in which it ordered the acquisition of a sample of the Product, with the return of all other evidence collected following the execution of the measure.

The only reason given in support of this request is the need to protect the confidential information contained in these documents.

The defendants' interest in protecting confidential information has already been duly considered and protected by the introduction of a specific confidentiality regime, as established by the order of the judge rapporteur of 23 September 2025, which has not been challenged by any of the parties to the proceedings.

5. Conclusions

In light of the above considerations, all the grounds for the request for review submitted by AGA and ACEF are unfounded, with the consequent rejection in its entirety of the request for review of the order for the protection of evidence of 19 May 2025.

Pursuant to Articles 73.2(a) and 60 UPCA, and Rules 220.1(c) and 224.2(b) RoP, the unsuccessful party may appeal against this order within 15 days of its notification.

The decision on the costs of the present proceedings is reserved for any subsequent judgment on the merits.

ORDER

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

- rejects the request made by A.G.A. s.r.l. and Azienda Chimica e Farmaceutica s.r.l. - A.C.E.F. s.r.l. to authorise the filing of the technical report of the University of Milan and its annexes;
- rejects the request for review of the order to protect evidence dated 19 May 2025;
- notes that the costs of the present proceedings will be settled in the proceedings on the merits;

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- acknowledges that the parties may appeal within fifteen days of notification of this order pursuant to Articles 60 and 73.2(a) UPCA and Rules 220.1(c) and 224.2(b) RoP.

Milan, 4 December 2025.

Pierluigi Perrotti

Presiding Judge and Judge Rapporteur

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for the Deputy Registrar



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