

Order
of the Court of First Instance of the Unified Patent Court
issued on 19 December 2025
concerning EP 2 593 025 B1

Headnotes:

1. If an order for inspection and/or preservation of evidence states that the defendant should be heard of possible confidentiality interests as soon as the detailed description was delivered by the expert, and if the defendant has received an access code to the CMS at the time of inspection and/or preservation of evidence, it is defendant's responsibility to appoint a UPC representative in good time. This allows the representative to log into the CMS before the Court has received the detailed description.
2. If, despite the defendant being notified in good time of the intention to give them the opportunity to comment on possible confidentiality interests and despite the CMS access code being provided at the time the order was served, no UPC representative logged into the CMS on the defendant's side at the time of the provision of the detailed description by the expert, there is no effective way of hearing the defendant's views on possible confidentiality interests. The expert opinion is then usually disclosed directly to the applicant.

Keywords:

Application to preserve evidence; inspection; opportunity to comment; confidentiality; service; no access to the CMS

Applicant:

LiNA Medical AG, represented by its CEO Lars Peter Melbye, Platz 3, 6039 Root D4, Switzerland

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Further representative: Attorney-at-law Daniel Hoppe, Bonabry Partnerschaft von Rechtsanwälten mbB, Neuer Wall 72, 20354 Hamburg, Germany

Electronic address for service: dinges@bonabry.de

Defendant:

Schultz Medical (UK) Ltd., Unit 6 Commerce Park, Crowland Street, Southport PR9 7RL, United Kingdom

Patent in suit:

European patent n° EP 2 593 025 B1

PANEL/DIVISION:

Panel of the Local Division in Düsseldorf

DECIDING JUDGES:

This order was issued by Presiding Judge Thomas acting as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT OF THE PROCEEDINGS: Art. 60 UPCA, R. 194 (d), 196, 197, 199 RoP – Application to preserve evidence and for inspection

SUMMARY OF THE FACTS:

1. On 17 November 2025, the Applicant filed an application for preservation of evidence and inspection prior to the proceedings on the merits.
2. After the Düsseldorf Local Division issued a corresponding order the following day, the measures in question have been executed at the Defendant's exhibition booth at the MEDICA trade fair (hereafter referred to as "MEDICA"), which took place from 17 November 2025 to 20 November 2025 in Düsseldorf, Germany.
3. In its order, the Court informed the parties about the intended procedure after the receipt of the detailed description. The respective provision in Section XII of the Court's order reads as follows:

“The Defendant shall be provided with the opportunity to comment on any confidentiality interests it may have after the expert appointed to carry out this order has submitted the detailed description to be prepared in accordance with Section IV. The abovementioned representatives of the Applicant shall be heard. Only then shall the Court decide whether and to what extent the detailed description shall be brought to the personal attention of the Applicant and whether the confidentiality order shall be lifted for the representatives of the Applicant.”

(Emphasis added by the Court)

4. According to its Section XVI, the order shall be delivered in person by the representative of the Applicant named in Section IX of the order together with a copy of the application for the order, including the exhibits and other documents on which the application is based prior to or upon the execution of the order, as well as the notice of preliminary measures and instructions for access to the proceedings (provided by the CMS). It is stated in the certificate of service in the file that service was carried out at the trade fair on 19 November 2025.
5. On 15 December 2025, the expert delivered its detailed description, including some exhibits, as well as its invoice.
6. To date, no representative of the Defendant has logged in the CMS.

GROUND FOR THE ORDER:

7. According to Section XII of the order dated 18 November 2025, the Defendant shall be given the opportunity to comment on possible confidentiality interests after receiving the expert’s detailed description.
8. However, the Court can only give the Defendant this opportunity to comment if the Defendant can be reached in the manner provided for this purpose, i.e. via the CMS. This is lacking if the Defendant received a CMS access code but this code has not yet been used by any UPC representative. In this situation, the Court could only give the Defendant the opportunity to comment outside of the CMS. In practice, this means that the detailed description, along with all the attachments and the relevant order, would need to be served to the Defendant in paper form. Additionally, the relevant documents may need to be translated into the language of the country in which the service is intended to be provided. The associated effort and delays would be unreasonable for both the Applicant and the Court. Moreover, such a procedure is incompatible with the Applicant's interests in preserving evidence and effectively enforcing its patent.
9. Disclosure of the detailed description does not put the Defendant at an unreasonable disadvantage. As the order was served on 18 November 2025, the Defendant had been aware of the access code to the CMS, as well as the Court’s intention to provide an opportunity to comment on possible confidentiality issues after the detailed description had been received. The Defendant therefore had sufficient time to prepare for this situation and hand over the access code to a UPC representative. If the Defendant chooses not to do so, that is its own decision. This cannot be to the disadvantage of the Applicant.
10. The time limit for bringing an action is based on Art. 60(8) UPCA in conjunction with R. 198.1 and R. 199.2 RoP.
11. In accordance with R. 196.2 RoP and R. 199.2 RoP, an order for inspection or preservation of

evidence shall specify that, unless otherwise is ordered by the Court, the outcome of the measures to preserve evidence and/or inspection may only be used in the proceedings on the merits of the case. This has been taken into account in both Section V. of the Order dated 18 November 2025 and Section IV of the present order.

ORDER:

- I. The unredacted version of the detailed description provided by the expert, including the annexes, shall be disclosed to the Applicant's legal representatives and to the Applicant itself.
- II. The confidentiality order in Section XI of the order dated 18 November 2025 is lifted with regard to the facts contained in the expert's written description, including the annexes, in relation to the Applicant.
- III. According to Section XV of the order dated 18 November 2025, the measures for inspection and preservation of evidence shall be revoked at the request of the Defendant or shall otherwise cease to have effect if the Applicant does not, within a period of no more than 31 calendar days or 20 working days, whichever is longer, after the written description to be prepared in accordance with Section IV. has been disclosed to the Applicant or the Court has decided by a final decision not to grant access to this description, bring the main proceedings in the matter against the Defendant before the Unified Patent Court.

This period will start when this order is uploaded in the CMS.

- IV. The detailed description and all other results of the inspection and preservation of evidence shall only be used in the main proceedings before the Unified Patent Court as stipulated in Section V. of the order dated 18 November 2025.
- V. Any objections to the expert's invoice dated 12 December 2025 must be raised by 9 January 2026.

Issued on 19 December 2025
NAMES AND SIGNATURES
Presiding Judge Thomas