



Düsseldorf local division
UPC_CFI_1325/2025

Order
of the Court of First Instance of the Unified Patent Court
issued on 23 January 2026
concerning EP 3 653 275 B8

APPLICANT:

Van Loon Beheer Nederland B.V., represented by Jan van Loon, De Velde 1, 8064 PH Zwartsluis, Netherlands

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RESPONDENTS:

1. **Inverquark Deutschland GmbH**, Cuvilliesstr. 14, 81679 Munich, Germany
2. **Inverquark GmbH**, Moos 75, 5431 Kuchel, Austria

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PATENT APPLICATION:

EUROPEAN PATENT NO. EP 3 653 275 B8

PANEL/CHAMBER:

Judicial Panel of the Local Division in Düsseldorf

PARTICIPATING JUDGES:

This order was issued by Presiding Judge Thomas, legally qualified judge Dr Schumacher as rapporteur, and legally qualified judge Mlakar.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: Art. 60 UPC Agreement, R. 194 (d), 196, 197, 199 RoP – Applications for a supplementary opinion and for the release of the detailed description

SUMMARY OF THE FACTS:

1. On 28 October 2025, the applicant filed an application for an order to inspect and preserve evidence at the respondents' exhibition stand in advance of a main action.
2. On 30 October 2025, the Düsseldorf local division issued such an order without first hearing the respondents.
3. The order was executed on 30 October 2025 at the respondents' stand at the "Aquanale Cologne" trade fair.
4. The expert commissioned by the Düsseldorf local division to carry out the inspection and preserve evidence prepared the detailed description requested of him on 12 November 2025.
5. In a procedural order issued on the same day, 12 November 2025, the rapporteur granted the respondents' legal representative access to the unredacted version of the detailed description prepared by the expert and gave the respondents the opportunity to assert any confidentiality interests by 26 November 2025. At the same time, access to the detailed description was restricted to the applicants' legal and patent attorneys and they were obliged to maintain confidentiality, including vis-à-vis the applicants, until further notice.
6. In a document dated 26 November 2025, the respondents initially announced their intention to apply for a review of the order within 30 calendar days of its execution, in accordance with Art. 60 (6) of the UPC Agreement, R. 197.3 of the RoP. They also requested that the decision on possible confidentiality interests be postponed until the order of 30 October 2025 becomes final, or alternatively that the confidentiality requirements from the order of 12 November 2025 continue to apply on a provisional basis.
7. In a further document dated 28 November 2025, the respondents stated that, contrary to their initial intention, they would not be filing an application for review of the order.
8. They now request, in essence, that
 - I. The court orders the expert to prepare a supplementary report in which he comments on the following questions:
 1. *Is it possible that the sketch in Fig. 14 of the expert opinion does not accurately represent the cross-section of the flow housing?*

2. *Is it possible that the cross-section of the flow housing (1) could first be constant, (2) then taper slightly over a shorter section, (3) then be constant again over a longer section or widen slightly, and (4) then widen significantly over a short section ("bead") at the outlet?*
3. *Is it possible that the measurements could contain significant measurement errors?*
4. *Does the flow housing have a cross-sectional expansion on the outlet side?*
5. *Did the expert have the applicant's application and the respondents' protective letters at his disposal when preparing the expert opinion?*
- II. The costs of the supplementary report shall be borne by the applicant, or alternatively by the respondents.
- III. The decision on possible confidentiality interests is postponed; alternatively, the confidentiality requirements pursuant to Section II of the order of 12 November 2025 and Section IV of the order of 30 October 2025 shall continue to apply until the court has decided on the release of the supplementary report.
9. In a document dated 16 December 2025, the applicant requested that
 - I. The respondents' application of 28 November 2025 for an order for a supplementary expert opinion is rejected.
 - II. The applicant be granted access to the unredacted version of the detailed description by the expert Kreuels dated 12 November 2025.
10. The respondents responded to this in a document dated 17 December 2025.

ARGUMENTS OF THE PARTIES:

11. The applicant argues:
 - The right to a supplementary expert opinion does not exist in the UPC Agreement system.
 - According to Art. 57 (4) of the UPC Agreement, R. 187 of the RoP, questions of understanding may be asked at most, but this is not the case here.
 - Since the products examined are now freely available on the market, there is no reason for further confidentiality protection.
12. The respondents argue:
 - The applicant herself is of the opinion that questions may be put to the expert regarding the expert opinion.

- If the court considers that no supplementary expert opinion is required to answer the questions, the questions could also be submitted to the expert for answering independently of this.

REASONS FOR THE ORDER:

No supplementary expert opinion to be obtained

13. It was not ordered to obtain a supplementary expert opinion on the detailed description prepared in accordance with R. 196.1 (a), R. 196.4 RoP.
14. There is no basis for ordering such a supplement by the expert.
15. The provisions cited by the applicant (Art. 57 (4) of the UPC Agreement, R. 187 of the RoP) govern the submission of the opinion by an expert appointed by the court (court expert). The detailed description prepared by the expert in the present proceedings, on the other hand, is the result of the preservation of evidence following the order for inspection and preservation of evidence.
16. Furthermore, the order does not appear to be appropriate.
17. The purpose of an application for inspection and preservation of evidence differs from that of an action on the merits (see UPC_CoA_239/2025, order of 28 May 2025, para. 11 – Centripetal v. Palo Alto Networks). The legitimate purpose of the measures is to obtain evidence that can be used in proceedings on the merits (see Rule 196.2, 199.2 RoP.), which also includes the use of the evidence to decide whether proceedings on the merits or proceedings for interim measures should be initiated at all (see UPC_CoA_177/2024, order of 23 July 2024, headnote 1 – Progress Maschinen & Automation v. AWM; UPC_CFI_407/2025 (LD Brussels), order of 12 November 2025, headnote 4 – Organon Heist v. Genentech). However, the procedure for preserving evidence and inspection is not aimed at a final clarification of disputed issues between the parties.
18. Against the backdrop of this objective, the decision on whether to release the detailed description must be made promptly in the proceedings for the preservation of evidence and inspection. Clarification of the accuracy of the content of the detailed description by obtaining a supplementary expert opinion on the defendant's application is therefore not compatible with this.
19. Nor does the protection of the defendant require the obtaining of a supplementary expert opinion. The defendant's procedural rights in the event of an order for the preservation of evidence without prior hearing are protected by the application for review provided for in R. 197.3 RoP. The fact that the defendants in the present case decided not to make use of this does not alter this. Furthermore, the defendant is protected in the event of an order for the preservation of evidence and inspection by the provision in R. 196.2 RoP, according to which the results of the measures for the preservation of evidence may only be used in the corresponding proceedings in the main action. In such main proceedings, objections to the substantive accuracy of the detailed description may also be raised.

Release of the expert opinion

20. The respondents affected by the inspection and preservation of evidence have not asserted any confidentiality interests. The unredacted version of this description must therefore be disclosed to the applicant and its legal representatives (see UPC_CoA_177/2024, order of 23 July 2024, headnotes 1 ff. – Progress Maschinen & Automation v. AWM; UPC_CFI_260/2025 (LD Düsseldorf), order of 12 May 2025 – OTEC v. Steros; UPC_CFI_885/2025 (LD Düsseldorf), order of 17 November 2025 – OTEC v. Steros).
21. The deadline for filing an action is based on Art. 60(8) of the UPC Agreement in conjunction with R. 198.1 of the RoP and R. 199.2 of the RoP.
22. Pursuant to Rule 196(2) of the RoP in conjunction with Rule 199(2) of the RoP, unless the court orders otherwise, an order for inspection and preservation of evidence must contain a note that the results of these measures may only be used in the relevant proceedings. This is taken into account in both section III of the order of 30 October 2025 and section IV of the present order.

ORDER:

- I. The unredacted version of the detailed description prepared by the expert, including the annexes, shall be disclosed to the applicant's legal representative and to the applicant herself.
- II. The confidentiality order found in Section VI of the order of 30 October 2025 is lifted with regard to the facts contained in the expert's written description, including the annexes, in relation to the applicant and its employees.
- III. The applicant is advised that the measures for inspection and preservation of evidence will be lifted or otherwise cease to have effect at the application of the respondents if the applicant does not, within a maximum of 31 calendar days or 20 working days, whichever is longer, after the written description to be prepared has been disclosed to the applicant.

This period shall commence upon the entry of this order into the CMS.

- IV. The detailed description prepared by the expert and all other results of the inspection and preservation of evidence may only be used in main proceedings against the respondents.

Issued on 23 January 2026
NAMES AND SIGNATURES

Presiding Judge Thomas	<div>Ronny Thomas</div> <div><div>signed by</div><div>Digital</div><div>Ronny Thomas</div><div>Date: 23 January 2026 08:31:48</div></div>
Legally qualified judge Dr Schumacher	<div>JuleKathrin Schumacher</div> <div><div>Digitally signed</div><div>by Jule Kathrin Schumacher</div><div>Date: 23 January 2026 15:50:32</div></div>
Legally qualified judge Mlakar	<div>MOJCA MLAKAR</div> <div><div>Digitally signed</div><div>MOJCA MLAKAR</div><div>Date: 23 January 2026 15:07:41 +01'00'</div></div>