Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Copenhagen - Local Division

UPC _CFI_513/2025

Order of the Court of First Instance of the Unified Patent Court, Copenhagen Local Division, issued on 10 April 2026, regarding the claimant´s request for an order to produce evidence and allocation of a technically qualified judge (TQJ), the defendant´s request for hearing of witnesses in person during the oral hearing and the date of the oral hearing.

CLAIMANT

Dall Energy ApS

Agern Allé 24, st., DK-2970 Hørsholm, Denmark

(represented by attorney Mr. Søren Chr. S. Andersen)

DEFENDANT

Polytechnik Luft- und Feuerungstechnik GmbH

Hainfelderstrasse 69, 2564 Weissenbach, Austria

(represented by attorney Mr. Rainer Schultes)

PATENT AT ISSUE

Patent no.

EP2334762

Proprietor:

Dall Energy ApS

DECIDING JUDGE:

Composition of the full panel:

Presiding judge and judge-rapporteur Peter Juul Agergaard

Legally qualified judge Dr. Stefan Schilling

Legally qualified judge Marjolein Visser

This order is issued by presiding judge and judge-rapporteur Peter Juul Agergaard.

LANGUAGE OF PROCEEDINGS:
English

Subject matter of the proceedings:
Infringement action

Requests and procedural background:
During the interim conference held on 26 February 2026 multiple requests put forward by the parties in their pleadings were discussed.

These included the claimant´s request for an order to produce evidence and the question of whether a technically qualified judge (TQJ) should be allocated to the panel.

The defendant´s request to hear two witnesses in person during the oral hearing was also discussed.

During the interim conference the court stated that the requests would be taken into consideration and that an order would be issued based on the written material and the arguments presented during the interim conference.

Summary of the requests

Request from the claimant for an order to produce evidence
The claimant has requested that the defendant should be ordered to produce the following documents, regardless of format, including but not limited to emails and other electronic documents:

a. Complete construction drawings of the furnace at the Oberpullendorf site (see Exhibit Geistwerk ./3, page 4).

b. Complete construction drawings of Polyheld furnaces supplied to other sites.

c. Operation and Maintenance (O&M) manuals and other materials provided by the defendant to its customers relating to the Polyheld.

The documents under paragraph shall be produced within two weeks.

III. It is hereby ordered that the documents and their contents referred to in paragraph I. are confidential information that must be treated as confidential and may not be used or disclosed outside the present legal dispute, even after its conclusion.

IV. If the documents are not produced according to the order, a penalty payment of no less than EUR 1,000 for each day of delay, payable to the UPC, is imposed on the Defendant.

The claimant has argued that the defendant has made unsubstantiated statements with reference to the alleged design and characteristics of the Polyheld and no supporting evidence is provided. In the absence of technical records, design specifications, operational documentation, and other relevant documentation, the defendant's assertions remain unsubstantiated and cannot be regarded as a basis for establishing that the Polyheld is not suitable for use in a process that includes feature F2.1.2 and features F7 / F7.1.

An order to produce evidence is a possible remedy to this deficiency. An order to produce evidence is also justified by the defendant's approach, whereby the defendant contests, without producing any evidence to substantiate its allegations.

If the defendant asserts that the Polyheld is not suitable for use in a process that includes feature F2.1.2 and features F7 / F7.1 due to the design and characteristics of the Polyheld, the defendant must prove this according to UPC_CFI_324/2024 (Tiroler Rohre GmbH vs. SSAB Swedish Steel GmbH and SSAB Europe Oy).

The defendant must produce technical records, design specifications, operational documentation, and other relevant materials concerning the Polyheld that support its assertions of non-infringement.

It must be presumed that the defendant, as the manufacturer and supplier of the Polyheld, is in possession of such evidence, which must at the very least include the materials referenced in the Claimant's request. The claimant has no alternative means of obtaining knowledge of these internal documents: An order for their production is therefore both necessary and justified. Producing these documents will not be burdensome for the defendant given the limitation of the subject matter to the Polyheld.

The defendant has requested that the court dismisses the claimant's request for an order to produce evidence pursuant to Rule 190 RoP.

The defendant has argued that the claimant’s request for the production of complete construction drawings and operation manuals for the "POLYHELD" product is legally unfounded and constitutes an impermissible attempt to bypass the established rules on the burden of proof.

Under the fundamental principle of art. 54 UPCA, the burden of proving facts shall be on the party relying on those facts. In the present case, the claimant alleges indirect patent infringement. Consequently, the claimant bears the full burden of proving that the "POLYHELD" satisfies all features of Claim 1. The claimant asserts in its reply that if the defendant disputes the suitability of the POLYHELD for the patented process (specifically regarding features F2.1.2 and F7/F7.1), the defendant must prove this non-suitability. This argument incorrectly attempts to reverse the burden of proof. The claimant's reliance on the UPC's decision in UPC_CFI_324/2024 (Tiroler Rohre GmbH vs. SSAB Swedish Steel) is misplaced, as that case does not relieve a claimant of the burden to provide "reasonably available evidence" of infringement. The case underlying UPC_CFI_324/2024 was completely different, insofar as in that case the defendant relied upon facts external to the attacked embodiment, allegedly making it impossible to infringe the patent in suit.

In the present case instead, the attacked POLYHELD itself does not use the claimed combustion method. The POLYHELD cannot be "combined" with any other embodiment which could trigger infringement, nor can it be used according to claim 1. Under the Rules of the UPCA, the burden of proof is reversed to defendant solely in a very specific case, namely in case of a process patent for obtaining a new product, if claimant has successfully proven that defendant's product is identical to the "new product". Only in this very specific case, the UPCA, namely art 55 UPCA shifts the burden of proof to a defendant. This fundamental rules for the distribution of evidence cannot be overturned by the RoP. It is not up to claimant to judge, which evidence the defendant has to rely on. It is the task of the Court to assess whether a disputed fact is true by evaluating the facts presented by both parties and the evidence offered (LD Mannheim, UPC_CFI_471/2023). UPC_CFI_471/2023). Thus the defendant has provided sufficient and suitable proof of non-infringement by means admissible under art 53 UPCA and complied with its duty under Rule 172 RoP. The evidence produced and applied for by Defendant is not inconsistent with the front-loaded nature of the proceedings before the UPC.

Pursuant to art 59 UPCA, an order for the production of evidence is only permissible if the applicant has already presented sufficient, reasonably available evidence to support its claims. Defendant's evidence, however, must not be disregarded. Based on the evidence presented by Defendant, it is demonstrated that the POLYHELD does not infringe Claimant's patent.

Since the defendant has substantiated its denial of the presence of features F2.1.2 (temperature in the drying stage) and F7/F7.1 (position of the combustion stage and heat transfer), the Claimant's request amounts to an inadmissible "fishing expedition." The Claimant seeks to obtain the defendant's internal technical records to find a basis for a claim it has not yet proven, which is contrary to the "frontloaded" nature of UPC proceedings. Furthermore, feature F2.1.2 is a process feature whose implementation cannot necessarily be derived from the constructive features. Therefore, the request to submit construction drawings is not even helpful in determining a possible patent infringement, which reinforces the impression that the applicant only wants to use

the request for an order to produce evidence pursuant to Rule 190 RoP to obtain the defendant's know-how.

The documents requested - specifically complete construction drawings - represent the defendant's most sensitive technical know-how and trade secrets. Art 58 UPCA mandates that the Court must take necessary measures to protect confidential information. Should the Court, despite the concerns outlined by the defendant, order defendant to produce any additional documents, it is requested, pursuant to Rule 262A RoP that the Court orders that the collection and use of evidence is restricted to documents specific to the subject matter of the proceedings and that access is restricted to Claimant's counsel, which is to be ordered to keep the information confidential vis a vis the claimant.

The confidentiality obligations apply for the entire duration of the business relationship. In addition, the relevant confidentiality clauses are expressly reiterated in the individual purchase orders. This ensures that all technical information may be used exclusively for the respective contractual purpose also within the procurement and supply process and may not be disclosed to third parties. Requests for comprehensive information not limited to specific facts which are needed for the pursuit of rights constitute an inadmissible investigation. This is in contrast with U.S. discoveries. The reasons for this interpretation is the principle of proportionality and to avoid undermining the principles of burden of proof (LD Mannheim, UPC_CFI_471/2023). Ordering the disclosure of such comprehensive technical specifications would be disproportionate.

The Claimant's interest in facilitating its own evidence-gathering does not outweigh the Defendant's right to protect its intellectual property, especially when the Claimant has failed to provide a solid evidentiary basis for the alleged infringement. According to art 59 UPCA, an order to produce evidence shall not result in an obligation of selfincrimination.

Defendant´s request for hearing two witnesses in person during the oral hearing

The defendant has requested that two witnesses should be heard in person [redacted] and [redacted] The defendant has argued that especially the witness [redacted] has the technical information that is required to decide the technical part of infringement.

The claimant has requested that the court dismiss the request. The claimant has argued that the defendant's application for these witnesses to be heard in person does not comply with the requirements of Rule 176 RoP. In particular, the defendant has not set out the reasons why the witnesses should be heard in person beyond general comments about the attributes of hearing a witness in person in order to evaluate credibility and so on. These are, however, not reasons that carry any weight at the UPC where it is the exception, not the rule, for witnesses to be heard in

person. For this reason alone, the defendant's application for witnesses to be heard in person should be denied.

Claimant´s application for allocation of a technically qualified judge to the case

The claimant has requested that the court allocates a technical qualified judge to the panel pursuant to Rule 33 RoP. It is disputed that there is any delay in lodging the application. It is further argued that the defendant's Statement of Defence was so skeletal in terms of submissions and not least evidence that it was both sensible and legally merited for the claimant to not file an application pursuant to Rule 33 RoP prior to receiving the defendant's Rejoinder on 9 January 2026. It is the claimant's subsequent analysis of the argument made in the Rejoinder that auto-ignition is allegedly possible at very low temperatures that causes the Claimant to make an application to add technical expertise to the panel. The argument remains undocumented, but technical expertise is nonetheless relevant to gauge the soundness of the argument. This is a relevant point of contention as the Defendant has cited this argument against the Claimant's reliance on the statements in Exhibit 21 for its case on infringement, see point 5.3.3 of the Reply.

The defendant has requested that the court dismisses the request. The defendant has argued that the claimant's request is delayed. According to Rule 33 (2), such an application shall be lodged as early as possible in the written procedure: Defendant filed its statement of defense on October 10, 2025. Claimant could have requested an additional judge in its Reply dated December 9, 2025. Claimant's request is delayed for two reasons: It was not filed as early as possible and it was not filed in the written procedure. Rule 33(2) RoP allows to grant an application lodged after the closure of the written procedure only if justified in view of changed circumstances, such as new submissions presented by the other party. It was claimant itself who introduced the topic of auto ignition (see Claimant's Reply to the Statement of Defence dated December 9, 2025, Section 5.3.3). Thus, neither the circumstances changed, nor had Defendant presented new submissions.

Reasons for the order

The request from the claimant for an order to produce evidence

Art. 59, 1 UPCA provides that: "At the request of a party which has presented reasonably available evidence to support its claims and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the Court may order the opposing party or a third party to present such evidence, subject to the protection of confidential information. Such order shall not result in an obligation of self-incrimination".

R.190 RoP states that "Where a party has presented reasonably available and plausible evidence in support of its claims and has, in substantiating those claims, specifies evidence which lies in the

control of the other party or a third party, the Court may on a reasoned request by the party specifying such evidence, order that other party or third party to produce such evidence. For the protection of confidential information, the Court may order that evidence be disclosed to certain named persons only and be subject to appropriate terms of non-disclosure".

In accordance with the case law of the Court of Appeal´s order of 24 September 2024 in cases UPC_CoA_298,299 and 300/2024 (Guangdong OPPO and Orope/Panasonic), as well as the Local Division Mannheim´s order of 20 October 2024, order number 47065/2024 in UPC_CFI_471/2023 (Dish/Aylo), Rule 190 RoP implements and must be interpreted in accordance with Article 6(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.

As a rule, an order to produce evidence presupposes that there is a fact that is relevant to the substantiation of claims and that the fact requires proof by the party who is making the application. The purpose of these provisions is to ensure that the party who has the burden of proof will have access to the tools for carrying this burden.

To this end, the claimant must set out in the application which fact it wishes to prove by which means of evidence and for what reason. No evidence is required for a fact that is not (specifically) contested, Rule 171.2 RoP. If a fact is not relevant to the claims being pursued, ordering the production of evidence for such a fact is generally at least disproportionate. For an order pursuant to Rule 190 RoP the claimant must have presented reasonably available and plausible evidence in support of its claims before an application under Rule 190 RoP can be granted.

Whether the claimant has met this requirement and - as a result -, an order to produce evidence against the opponent or a third party can be considered is at the discretion of the court. When exercising this discretion, the circumstances of the individual case must be taken into account, taking into account the mutual interests and the principle of efficient conduct of proceedings. In addition, with regard to the case management there is a margin of discretion for the court when adjudicating on a request for an order to produce evidence. The burden of presentation and proof for the existence of the prerequisites for an order to produce evidence, lies with the applicant.

According to article 54 UPCA the burden of proof of facts shall be on the party relying on those facts.

The decision of the Local Division Munich of June 6 2025 (UPC_CFI_324/2024 (Tiroler Rohre GmbH vs. SSAB Swedish Steel GmbH and SSAB Europe Oy) together with article 54 UPCA establishes that if the defendant claims that infringement is impossible due to factors outside the scope of the patent the burden of proof lies with the defendant. The claimant does not need to address such external factors.

The defendant has stated that the Polyheld is not suitable for use in a process that includes feature F2.1.2 and features F7 / F7.1 due to the design and characteristics of the Polyheld. It is stated that Polyheld does not heat the fuel in the drying stage to a temperature of 400 degrees or above but only to a temperature of 100 degrees to 300 degrees. Furthermore it is stated that the gas combustion stage is not above the updraft gasifier, but lateral to the gasifier and heat from the gas combustion is not transferred to the top layer of fuel in the updraft gasifier which makes infringement impossible.

These statements cannot be interpreted as if the defendant is claiming that infringement is impossible due to factors outside the scope of the patent claim.

Consequently, the defendant is not responsible for proving that the Polyheld is unsuitable for use in a process that includes feature F2.1.2 and features F7 / F7.1 due to its design and characteristics.

As the claimant is alleging infringement it is their responsibility to prove that the Polyheld fulfils all the features of the patent in suit.

The court finds that the claimant in the statement of claim and in its reply to the statement of defence has presented reasonably available and plausible evidence in support of their claims.

Regarding feature F7 the evidence rests among other things on the defendant´s own marketing material. During the case the defendant presented an affidavit (Exhibit GEISTWERT 2) stating that the marketing material was not technically accurate and provided an explanation of the Polyheld technology in Exhibit GEISTWERT 3.

The court assesses that the requested information would be useful and necessary in order for the claimant to respond to the defendant´s arguments. The request for construction drawings and the requested manuals and other material are relevant to determining possible patent infringement. For these reasons it is reasonable and proportionate to grant the claimant´s request for the defendant to produce the documents in question, in accordance with the terms set out in the operative part of the order.

The court determines that at least some of the requested documents contain confidential information. The Court must therefore take the necessary measures to protect the confidential information.

Access to the requested information shall therefore be restricted to the claimants´ legal representatives and their team members exclusively as the claimant has not identified one natural

person from the party to be named according to Rule 262 A, 6. These individuals are required to treat the confidential information as strictly confidential beyond the scope of these proceedings and to use the confidential information exclusively for the purposes of these proceedings.

The public shall be excluded from part of the oral proceedings pursuant to the extent that information requiring confidentiality is discussed.

The confidential information shall be excluded from access by third parties and redacted prior to the publication of the grounds for the judgment or other announcements.

Allocation of a technically qualified judge to the case

According to Rule 33, 1, RoP any party to the proceedings may lodge an Application for allocating a technically qualified judge to the panel. The Application shall be lodged as early as possible in the written procedure, Rule 33, 2, RoP. According to Rule 34, 1, RoP, the judge rapporteur may at any time during the written procedure after consulting the presiding judge and the parties, request the President of the Court of First Instance to allocate a technically qualified judge to the panel.

The application from the claimant was submitted before the closure of the written procedure. Due to the arguments submitted in the pleadings the court finds that adding technical expertise is crucial to its decision. Accordingly the judge rapporteur will request The President of the Court of First Instance to allocate a technically qualified judge (TQJ) to the panel. Ideally the TQJ will have expertise in both physics and chemistry.

Hearing of witnesses in person during the oral hearing

According to Rule 176 RoP, a party seeking to offer oral witness evidence shall make an application for the hearing of a witness in person which shall set out: (a) the reasons why the witness should be heard in person; (b) the facts which the party expects the witness to confirm; and (c) the language in which the witness shall give evidence.

According to Rule 177,1, RoP, the court may order that a witness be heard in person: (a) of its own motion; (b) where a written witness statement is challenged by the other party; or (c) on an Application for the hearing of a witness in person [Rule 176].

The defendant has submitted written witness statements from [redacted] and [redacted] The defendant has not in writing specified the reasons why the witnesses should be heard in person during the oral hearing other than it would allow the court to evaluate the witness credibility, nor has the defendant stated the facts which the party expects the witnesses to confirm. During the interim conference the defendant stated that especially the witness [redacted] has the technical information that is required to decide the technical part of infringement.

Under these circumstances the court finds that the defendant has not provided sufficient reasons according to Rule 176 RoP, for the witnesses to be heard in person at the oral hearing. Therefore the defendant´s request for the two witnesses [redacted] and [redacted] to be heard in person during the oral hearing is dismissed.

Scheduling of the oral hearing
Both parties have informed the court that they are available for an oral hearing during week 35 in 2026.

The oral hearing is scheduled for **Wednesday, 26 August 2026 from 09:00 am to 4:00 pm** at The Local Division Copenhagen, in Courtroom B, Amaliegade 35, 1256 Copenhagen K, Denmark.

Order

The defendant is ordered within 2 weeks from publication of this order to produce the following documents, regardless of format, including but not limited to emails and other electronic documents:

a. Complete construction drawings of the furnace at the Oberpullendorf site (see Exhibit Geistwerk ./3, page 4).

b. Complete construction drawings of Polyheld furnaces supplied to other sites.

c. Operation and Maintenance (O&M) manuals and other materials provided by the defendant to its customers relating to the Polyheld.

If the documents are not produced according to the order, a penalty payment of up to EUR 1,000 for each day of delay, payable to the UPC, can be imposed on the defendant.

Access to the requested information shall be restricted to the claimants´ legal representatives and their team members exclusively. These persons are required to treat the confidential information as strictly confidential beyond the scope of these proceedings and to use the confidential information exclusively for the purposes of these proceedings.

The public shall be excluded from part of the oral proceedings pursuant to the extent that information requiring confidentiality is discussed.

The confidential information shall be excluded from access by third parties and redacted prior to the publication of the grounds for the judgment or other announcements.

The judge rapporteur will request The President of the Court of First Instance to allocate a technically qualified judge (TQJ) to the panel.

The defendant`s request for the two witnesses [redacted] and [redacted] to be heard in person during the oral hearing is dismissed.

The oral hearing will take place **Wednesday 26 August 2026 09:00 am- 4:00 pm** at The Local Division Copenhagen, in Courtroom B, Amaliegade 35, 1256 Copenhagen K, Denmark.

This order may be appealed under the conditions set out in article 73 UPCA and Rule 220.1, RoP.

Issued in Copenhagen 10 April 2026

Peter Juul Agergaard

Digitalt signeret af Peter Juul Agergaard
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Peter Juul Agergaard