

**ORDER**  
**of the Court of Appeal of the Unified Patent Court**  
**concerning an application for suspensive effect (R. 223 RoP)**  
**issued on 24 April 2026**

APPELLANT AND APPLICANT (DEFENDANT IN THE INFRINGEMENT PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

**Polytechnik Luft- und Feuerungstechnik GmbH**, Hainfelderstraße 69, A-2564 Weißenbach, Austria

(hereinafter also referred to as “**Polytechnik**”)

represented by Rainer Schultes, Attorney-at-law, GEISTWERT Kletzer Messner Mosing Schnider Schultes  
Rechtsanwälte OG

RESPONDENT (CLAIMANT IN THE INFRINGEMENT PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

**Dall Energy ApS**, Agern Allé 24, st., DK-2970 Hørsholm, Denmark

(hereinafter also referred to as “**Dall**”)

represented by Soren Chr. S. Andersen, Attorney-at-law, Accura Advokatpartnerselskab

PATENT AT ISSUE

EP 2 334 762

DECIDING PANEL

Panel 1b

Klaus Grabinski, presiding judge and president of the Court of Appeal

Paolo Catalozzi, legally qualified judge and judge-rapporteur

Emmanuel Gougé, legally qualified judge

LANGUAGE OF THE PROCEEDINGS

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Court of First Instance of the Unified Patent Court, Copenhagen Local Division, dated 10 April 2026

Number attributed by the Court of First Instance: UPC\_CFI\_513/2025

SUMMARY OF FACTS AND PARTIES' REQUESTS

1. In the context of patent infringement proceedings brought by Dall against Polytechnick before the Copenhagen Local Division regarding the patent at issue, the judge-rapporteur – following the interim conference – issued an Order dated 10 April 2026 (hereafter the «impugned Order»). By means of this Order, the Defendant was ordered, within two weeks of publication and subject to a penalty payment of up to EUR 1,000.00 for each day of delay, 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 (Exhibit GEISTWERT 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.
2. Within the same Order, the judge-rapporteur ruled that “access to the requested information shall be restricted to the Claimant’s legal representatives and their team members exclusively and that 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”.
3. In evaluating the Claimant’s Application for the Production of Evidence under Rule 190 RoP, the Copenhagen Local Division noted that such an order is contingent upon the existence of facts relevant to the substantiation of claims which require proof by the applicant. These provisions ensure that the party bearing the burden of proof has access to the necessary evidentiary tools. Accordingly, the Claimant must specify the facts to be proven, the means of evidence sought, and the underlying justification.
4. The Local Division noted the Defendant's contention that the Polyheld device is technically incompatible with a process incorporating feature F2.1.2 and features F7 / F7.1. The Defendant asserted that the Polyheld does not reach the 400°C threshold during the drying stage (operating instead between 100°C and 300°C) and that its lateral combustion stage prevents heat transfer to the fuel’s top layer, thereby rendering infringement technically impossible.
5. Conversely, the Local Division found that the Claimant’s Statement of Claim and Reply to the Statement of Defence provided reasonably available and plausible evidence of infringement. Regarding feature F7, the Claimant relied on the Defendant’s own marketing materials. Although the Defendant submitted an affidavit (Exhibit GEISTWERT 2) claiming its marketing materials were technically inaccurate – providing a corrected technical explanation in Exhibit GEISTWERT 3 – the Court deemed the requested disclosure essential for the Claimant to effectively rebut the Defendant’s new technical narrative.
6. Consequently, the Local Division held that the production of construction drawings and manuals was reasonable, proportionate, and relevant to the determination of infringement, granting the request in accordance with the operative part of the Order.

7. On 20 April 2026 the Polytechnik filed an appeal against this Order, concurrently seeking the suspension of its effect. Polytechnik argues that immediate enforcement would cause irreparable harm, as the compelled disclosure would permanently expose its core technical know-how, including component-level designs and customer-specific configurations. It further contends that the Court's protective measures are insufficient, asserting that patent attorneys and lawyers involved in the Dall's patent prosecution, opposition, or nullity proceedings must be excluded to prevent the "optimization" of patent claims based on confidential data. Furthermore, the Polytechnik argues that decision-makers (e.g., the CEO or Administrative Directors) should also be barred from access, noting that once trade secrets are disclosed, the status quo ante cannot be restored, regardless of the appeal's outcome.
8. Additionally, Polytechnik submits that while each Polyheld furnace has site-specific drawings, the underlying technical principles remain uniform. Therefore, immediate enforcement would result in a factual pre-judgement of the case. The Order effectively compels the disclosure of information that is typically only available after a finding of liability, thereby bypassing the procedural distinction between the infringement phase and the remedies or accounting phase. This, Polytechnik argues, undermines its right to a determination of infringement prior to facing consequences reserved for established liability.
9. Finally, the Polytechnik maintains that granting suspensive effect is indispensable to preserve the effectiveness of the appellate proceedings and does not result in any comparable prejudice to Dall.
10. In its comments on the application for suspensive effect, filed on 21 April 2026, Dall argues that the application for suspensive effect should be rejected by the Court of Appeal. Dall considers that the application fails to state specific reasons for granting suspensive effect, that the impugned order is not manifestly erroneous and that Polytechnik misinterprets the impugned order.

#### GROUNDS FOR THE ORDER

##### *Admissibility.*

11. The application is admissible, as it refers to an Order against which an appeal was timely filed pursuant to Article 73(2) UPCA and Rule 220.1(c) RoP. Furthermore, the application sets out the grounds upon which suspensive effect should be granted, alongside the facts, evidence, and legal arguments in support thereof.

##### *Legal framework.*

12. On the merits, the application is found to be unsuccessful.
13. As established by the settled case law of this Court, suspensive effect shall only be granted to appealed orders under exceptional circumstances that justify an exception to the principle laid down in Article 74(1) UPCA. This principle applies with particular force to appeals against procedural orders, in view of the necessity to avoid impeding the expeditious conduct of first-instance proceedings. Indeed, while Article 74(3) UPCA provides that an appeal on such matters – including, as in the present case, an appeal against an order to produce evidence – shall not prevent the continuation of the proceedings, it nonetheless stipulates that the Court of First Instance shall not render a final decision in the main proceedings before the Court of Appeal has issued its decision concerning the appealed order.
14. In this regard, it must be examined whether the Appellant's interest in maintaining the status quo – namely, in avoiding the immediate effects of the impugned Order – until a decision is made on the merits of the appeal, exceptionally outweighs the Respondent's interest in the immediate enforcement of this Order.
15. A first category of circumstances justifying the grant of suspensive effect has been identified in cases where, absent such a stay, the appeal would be rendered devoid of purpose or largely ineffective,

because the consequences of enforcement of the impugned Order cannot be effectively reversed should that Order later be set aside (UPC\_CoA\_407/2023, Order of 6 November 2023, Ocado v. Autostore, para. 6; UPC\_CoA\_177/2024, Order of 2 May 2024, Progress Maschinen v. AWM, para. 10; UPC\_CoA\_301/2024, Order of 19 June 2024, ICPillar v. ARM, para. 7).

16. A further category of situations that could justify suspensive effect arises where the impugned Order is manifestly wrong (UPC\_CoA\_4/2024, Order of 18 January 2024, Meril v. Edwards; UPC\_CoA\_894/2025, Order of 2 December 2025, Windhager v. Belissa, para. 10; UPC\_CoA\_44/2026, Order of 24 March 2026, ALPINA v. CUP&CINO, para. 11), i.e., based on factual findings or legal considerations that are clearly untenable, even on the basis of a summary assessment (UPC\_CoA\_549/2024, Order of 29 October 2024, Belkin v. Philips, para. 60; UPC\_CoA\_430/2025, Order of 20 May 2025, Chint v. Jingao, para. 12).
17. Within the scope of these situations, the Court may also consider instances where there is an evident breach of fundamental procedural rights, such as the right to a fair hearing, provided that such a breach is liable to affect the outcome of the proceedings (UPC\_CoA\_549/2024, Order of 29 October 2024, Philips v. Belkin; UPC\_CoA\_737/2025, Order of 15 August 2025, RiVOLUTION v. Cilag).

*Serious and irreparable harm.*

18. The Applicant contends that, absent the grant of suspensive effect, the appeal would be rendered moot, as the disclosure of the documentary evidence mandated by the Court's order would cause prejudice to the party that a subsequent successful appeal could not remedy.
19. This argument is not persuasive.
20. It must be recalled that Article 59 UPCA empowers the Court, upon the request of a party that has presented reasonably available evidence sufficient to support its claims and has, in substantiating those claims, specified evidence which lies in the control of the opposing party or a third party, to order said party to produce such evidence, subject to the protection of confidential information and provided that such an order does not result in an obligation of self-incrimination. Rule 190 RoP further clarifies the procedural modalities under which the Court may issue such an order.
21. The specific recognition of a party's right, under certain conditions, to request an order for the production of evidence – whether documentary or otherwise – and the corresponding power of the Court to issue such an order, is rooted in the acknowledgment of the information asymmetry that may arise in infringement proceedings to the detriment of the claimant. This occurs where evidentiary material necessary to prove infringement (or the resulting damages) is within the exclusive control of the opposing party or a third party. In such circumstances, a rigid application of the adversarial principle would unreasonably prejudice the patent holder's right to enforce their title.
22. The balance between the patent holder's interest in effective judicial protection and the general principle – established also in the interest of the defendant – that the claimant bears the burden of proving the facts alleged in support of its claim (Rule 171 RoP), is achieved by requiring the applicant to provide reasonably available evidence sufficient to support its claims and to specify, in substantiating those claims, the evidence controlled by the opposing party. The assessment of these conditions is ultimately deferred to the discretionary power of the Court.
23. In this regard, the legal effect of the first-instance Court's issuance of the contested Order lies in the fact that such evidence is incorporated into the evidentiary record upon which the Court will base its decision on the merits. It follows that, contrary to the Applicant's contention, should the request for suspensive effect be denied, the appeal would nonetheless retain its purpose; indeed, a successful appeal would result in the exclusion of the produced documents from the evidentiary record. Therefore, it cannot be held that, absent the grant of the sought suspensive effect, the appeal would be rendered devoid of purpose; on the contrary, the consequences of enforcing the impugned Order – specifically, the

expansion of the evidentiary record to include the documents specified therein – can be effectively reversed should that Order subsequently be set aside.

24. It appears evident that the irreparable harm alleged by the Applicant does not stem from the mere fact that such evidence is admitted to the proceedings, but rather from the act of disclosure itself, which would grant third parties access.

*Protection of confidential information.*

25. The Applicant objects to the disclosure of these documents, noting that this “would permanently expose the Defendant’s core technical know-how, including detailed component-level design information and customer-specific configuration.” It argues that the measures ordered by the impugned Order to protect its trade secrets are insufficient, as they allow patent attorneys and lawyers handling the Plaintiff’s patent applications and opposition or nullity proceedings to access the files and use this protected information to “optimize” patent claims. The party further contends that these measures fail to exclude decision-makers such as the CEO and/or administrative directors of the Claimant, all of whom fall under the category of “legal representatives.”
26. Now, it must first be observed that the impugned Order binds the persons admitted to the confidentiality club to treat the protected information as strictly non-disclosable beyond the scope of these proceedings and to use such materials exclusively for the purposes of this litigation. It follows that, contrary to the Applicant’s assertions, the measure adopted does not permit those individuals to use the sensitive data to “optimize” patent claims or, more generally, for purposes unrelated to the present proceedings.
27. Secondly, it should be noted that the Applicant misinterprets the impugned Order in claiming that it provides for access to the confidentiality club for decision-makers such as the CEO and/or administrative directors of the Claimant. In fact, in referring to “legal representatives and their team,” said Order unequivocally refers to the subjects – lawyers authorised to practise before a court of a Contracting Member State and European Patent Attorneys entitled to act as professional representatives before the European Patent Office pursuant to Article 134 of the EPC and who hold appropriate qualifications such as a European Patent Litigation Certificate – who, pursuant to Article 48 UPCA, may represent parties in proceedings before the UPC.
28. Therefore, the impugned Order must be clearly construed as meaning that only the Claimant’s representatives and their legal team are authorized to access the confidential information specified therein and that these representatives and their legal team are prohibited from sharing the confidential information with the Claimant.
29. Regarding the number of persons to be included in the confidentiality club, Rule 262A.6 RoP provides that it shall be no greater than necessary in order to ensure compliance with the right of the parties to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and the respective lawyers or other representatives of those parties to the legal proceedings.
30. In the absence of any specific submissions by the Applicant regarding the number of individuals admitted to the confidentiality club – as correctly identified – the measure adopted by the Local Division in this regard cannot be deemed disproportionate.

*Risk of factual pre-judgment of the main proceedings.*

31. The Applicant contends that the disclosure of the information contained in the documents subject to the production order “would anticipate procedural stages reserved for remedies and accounting and thereby undermine the Defendant’s right to have infringement determined before being subjected to consequences typically linked to a finding of liability.”

32. The Applicant fails to clarify precisely why such disclosure would prejudice said right, nor, a fortiori, does it explain why such prejudice would constitute a circumstance of such a nature as to necessitate the stay of the effects of the impugned Order.
33. In any event, the alleged prejudice does not appear, in abstracto, capable of meeting the threshold of a breach of fundamental procedural rights. On the contrary, the system of procedural rules governing proceedings before the UPC follows the opposite principle, namely, that all facts and evidence must be adduced to the proceedings as early as possible, ideally during the written procedure. This is also intended to ensure the fair conduct of the proceedings by enabling all parties to be fully informed of the facts and arguments forming the subject-matter of the dispute. This is further confirmed by the rules governing appeal proceedings which, under Rule 222 RoP, limit the subject-matter of the proceedings to that of the first-instance proceedings, generally excluding claims, facts, and evidence that were not submitted during the latter.

#### *Conclusions*

34. It follows from the foregoing that there does not appear to exist an interest of the Applicant in avoiding the enforcement of the impugned Order which outweighs the Respondent's interest in having the specified documents adduced as evidence. Consequently, the application for suspensive effect cannot be granted.

#### ORDER

The application for suspensive effect is rejected.

This order was issued on 24 April 2026.

Klaus Grabinski, presiding judge and President of the Court of Appeal

Paolo Catalozzi, legally qualified judge and judge-rapporteur

Emmanuel Gougé, legally qualified judge