

ORDER
of the Court of First Instance of the Unified Patent Court
issued on 29/04/2026
concerning: R. 190 order to produce evidence

HEADNOTE:

Request to produce evidence on the basis of R. 190 RoP partially awarded. Request too broad and therefore limited.

KEYWORDS:

Evidence, duty to produce.

Date of receipt of Statement of claim : **08-08-2025**

CLAIMANT

1) IQIP Holding B.V.
Molendijk 94, 3361 EP, Sliedrecht, NL

Represented by Peter VAN GEMERT

DEFENDANTS

1) TMS Technical & Maritime Supplies B.V.
Biesboschhaven Noord 18, 4251 NL,
Werkendam, NL

Represented by Wim MAAS

2) TMS Technical & Maritime Services B.V.
Biesboschhaven Noord 18, 4251 NL,
Werkendam, NL

Represented by Wim MAAS

THIRD PARTY

1) IQIP B.V.
Molendijk 94, 3361 EP, Sliedrecht, NL

Represented by Peter VAN GEMERT

PATENT AT ISSUE

Patent no.

Applicant

EP2148123

IHC Handling Systems V.O.F.

DECIDING JUDGE

Presiding judge

Edger Brinkman

Judge-rapporteur

Edger Brinkman

LANGUAGE OF PROCEEDINGS: English

SUBJECT-MATTER OF THE PROCEEDINGS

Infringement proceedings - Request to produce evidence

REQUEST AND ITS GROUNDS

1. In defence against the infringement claim brought by Claimant, Defendants allege public prior use. Plugs having all features as claimed by the Patent were already used in the public domain before the priority date of the Patent (24 July 2008) or the filing date of the Patent (23 July 2009) in two projects from 2008: the 2008 Rhyl Flats Project and the 2008 Gunfleet Sands Project.
2. These Plugs were supplied for use in these 2008 projects by IHC Handling Systems, which later merged into IQIP BV, a subsidiary of Claimant in these proceedings.
3. Defendants therefore request that the Court order:
 - I. IQIP and IQIP BV to provide to TMS materials, such as technical specification documents, plug specifications, instructions for use, photos, towing plans and project reports regarding the Prior Plug (as defined in par. 1.6 of this application) supplied for use in the 2008 Rhyl Flats Project and the Prior Assembly (as defined in par. 1.6 of this application) used in this project, which:
 - (1) specify the design of the Prior Plug,
 - (2) specify how the Prior Plug is arranged on or in the pipe of the Prior Assembly,
 - (3) specify the design of the sealing means of the Prior Plug,
 - (4) specify how the sealing means of the Prior Plug exerts a sealing force onto the pipe of the Prior Assembly when assembled,

- (5) which specify the technical requirements of the Prior Plug for directly towing the Prior Assembly from the Prior Plug,
- (6) specify the loads or forces the Prior Plug needs to be able to bear when in use, and
- (7) specify how the driving force exerted on the Prior Plug when towing the Prior Assembly is transferred to the pipe of the Prior Assembly,

II. IQIP and IQIP BV to provide to TMS materials, such as technical specification documents, plug specifications, instructions for use, photos, towing plans and project reports regarding the Prior Plug (as defined in par. 1.6 of this application) supplied for use in the 2008 Gunfleet Sands Project and the Prior Assembly (as defined in par. 1.6 of this application) used in this project, which:

- (1) specify the design of the Prior Plug,
- (2) specify how the Prior Plug is arranged on or in the pipe of the Prior Assembly,
- (3) specify the design of the sealing means of the Prior Plug,
- (4) specify how the sealing means of the Prior Plug exerts a sealing force onto the pipe of the Prior Assembly when assembled,
- (5) which specify the technical requirements of the Prior Plug for directly towing the Prior Assembly from the Prior Plug,
- (6) specify the loads or forces the Prior Plug needs to be able to bear when in use, and
- (7) specify how the driving force exerted on the Prior Plug when towing the Prior Assembly is transferred to the pipe of the Prior Assembly,

III. IQIP and IQIP BV to provide to TMS any materials, such as invoices, order agreements, tender documents or contracts to sell, rent out or service the Prior Plugs, which show that the Prior Plugs have been supplied for use in the 2008 Rhyl Flats Project before the priority date of the Patent (24 July 2008) or the filing date of the Patent (23 July 2009),

IV. IQIP and IQIP BV to provide to TMS any materials, such as invoices, order agreements, tender documents or contracts to sell, rent out or service the Prior Plugs, which show that the Prior Plugs have been supplied for use in the 2008 Gunfleet Sands Project before the priority date of the Patent (24 July 2008) or the filing date of the Patent (23 July 2009),

V. IQIP and IQIP BV to provide these documents under I to IV within 2 weeks of service of the order (together with – if need be – a R. 262A and/or R. 262.2 RoP request), and

VI. that if IQIP or IQIP BV fails to comply with this order, the Court shall take such failure into account when deciding on the issue in question (R. 190.7 RoP).

DEFENCE

- 4. Both Claimant and IQIP BV (hereinafter: IQIP, singular) filed comments. IQIP defers to the discretion of the Court on whether any production of evidence should be ordered. Based on the documents IQIP has been able to gather, at least the following documents do either not exist or are in any case not in possession of IQIP: invoices, signed order agreements, tender documents, contracts to sale, rent out or service of the plugs used in the Rhyl Flats and Gunfleet Sands project. With regard to these documents, IQIP will therefore in any case be unable to comply with an order to produce these documents and no such order should be given.

5. In addition, IQIP argues that TMS's request for production of evidence is overly broad and disproportionate in scope and should at least be denied to that extent. Moreover, the requested documents contain sensitive commercial and technical information which should be subject to appropriate terms of confidentiality. Therefore, if any production of evidence should be ordered, IQIP requests the Court to grant the Application only to the limited extent set out in its comments and subject to the confidentiality conditions set out below, as well as to stipulate that IQIP be allowed to redact Confidential Information not relevant for the purpose of the Application:
- (i) to order that access to documents containing Confidential Information shall be restricted exclusively to:
 - a. TMS's authorised representatives in these proceedings, members of the legal team, as well as their internal support staff,
 - b. TMS's external technical expert(s) for these proceedings, who are not employees of TMS,
 - c. at most two natural persons designated by TMS, to be identified by name to the Court and IQIP;
 - (ii) to order that all persons granted access under (i) above shall treat the Confidential Information as strictly confidential and shall not use, disclose, or reproduce such information for any purpose other than these proceedings;
 - (iii) to order that the confidentiality obligations shall remain in full force and effect after termination of these proceedings;
 - (iv) to order that no later than three months after final termination of these proceedings, all persons having received access to the Confidential Information shall destroy or return to IQIP all documents, copies, notes, and other materials containing or derived from such Confidential Information;
 - (v) to order that any breach of these confidentiality obligations shall subject TMS to a penalty payment of EUR 100,000, or alternatively an amount to be determined by the Court having regard to the severity and circumstances of the breach, with such penalty being imposed for each individual violation.

GROUNDS FOR THE ORDER

6. The sections of Article 59 UPCA and Rule 190 RoP relevant to the request read as follows:

Article 59(1) UPCA

At the request of a party which 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, 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.

Rule 190(1) RoP

Where a party has presented reasonably available and plausible evidence in support of its claims and has, in substantiating those claims, specified 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 the evidence be disclosed to certain named persons only and be subject to appropriate terms of non-disclosure.

7. It follows from these provisions that the following requirements must be satisfied before the Court can order any party to submit any evidence into the proceedings:
- (i) The requesting party must have presented evidence “reasonably available” to it in support of its claims;
 - (ii) the evidence to which access is requested must be “specified” and lie in control of the other party;
 - (iii) the other party’s confidential information must be protected;
 - (iv) based on the general rules of Articles 41(3) and 42 UPCA, as well as Article 3 of the Enforcement Directive, any order to produce evidence must satisfy the requirements of proportionality, equity, and fairness.

(i) reasonable evidence in support of its claims

8. IQIP has not disputed TMS’s entitlement to the documents as such. The Court will therefore assume TMS has thus far provided reasonably available evidence to support its claim of public prior use, bearing in mind that the public prior use was allegedly done by a predecessor of IQIP.

(ii) sufficient specification of the evidence

9. IQIP has contested whether all documents requested exist or are in its possession. Since Defendants have not given any arguments or evidence to the contrary, the Court will accept this and hence exclude these from the order. In as far as TMS seeks to establish the precise timing of when the plugs were used for installing monopiles at the offshore locations, IQIP indicated uncontested that IHC Handling Systems was not involved in the actual Rhyl Flats and Gunfleet Sands projects themselves, but merely supplied the plugs. To the best of IQIP’s knowledge, IHC Handling Systems never possessed documents indicating the exact project timeline or installation schedule. In any case, IQIP has not been able to identify any such documents. For such project-specific timing information, TMS should approach e.g. Ballast Nedam, the project contractor and/or MT Højgaard.
10. IQIP further indicated that “it will not dispute that the plugs used in the Rhyl Flats project were delivered prior to the priority date of the Patent” (mn 21 of its comments). While not mentioned specifically in that paragraph, the Court assumes that the same applies to the plugs used in the Gunfleet Sands project from the wording of the following paragraph:

22. As a result, there is no longer any need for TMS or interest in obtaining access to documents “*which show that the Prior Plugs have been supplied for use in the Rhyl Flats project or Gunfleet Sands project before the priority date of the Patent*”

(24 July 2008) or the filing date of the Patent (23 July 2009)". Ordering their production would therefore also not be proportionate.

(iii) *protection of confidential information*

11. TMS has not contested that the documents to be provided contain confidential information. The uncontested confidentiality regime requested by IQIP to address this will be ordered.

(iv) *proportionality, equity and fairness*

12. The Court deems the production of the above evidence proportional and reasonably necessary to further the case of public prior use, while ensuring that IQIP's interest in maintaining the confidentiality of certain information is properly protected.

various

13. The Court does not require the documents to be uploaded to the CMS. They are only to be submitted as an exhibit when they are relied on. Four weeks after the documents are received, Defendants may submit another pleading, relating only to the allegation of public prior use. Four weeks after this submission, Claimant may reply. Where confidential information is submitted or referenced, the relevant party should apply for confidentiality (R. 262/R.262A) and submit both a redacted and an unredacted version. Upon the first request from TMS, IQIP will indicate which parts of TMS's pleading should be redacted and will provide a redacted version of any document to be submitted with the pleading. Applications for confidentiality will be granted, and the same confidentiality regime will apply, for which no further order is needed unless the panel decides otherwise, subject to any subsequent order on an application under R. 262.3 RoP.

ORDER

The Court orders:

I. IQIP and IQIP BV to provide to TMS materials, such as technical specification documents, plug specifications, instructions for use, photos, towing plans and project reports regarding the Prior Plug (as defined in par. 1.6 of this application) supplied for use in the 2008 Rhyl Flats Project and the Prior Assembly (as defined in par. 1.6 of the application) used in this project, which:

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- (4) specify how the sealing means of the Prior Plug exerts a sealing force onto the pipe of the Prior Assembly when assembled,
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- (6) specify the loads or forces the Prior Plug needs to be able to bear when in use, and
- (7) specify how the driving force exerted on the Prior Plug when towing the Prior Assembly is transferred to the pipe of the Prior Assembly,

- II. IQIP and IQIP BV to provide to TMS materials, such as technical specification documents, plug specifications, instructions for use, photos, towing plans and project reports regarding the Prior Plug (as defined in par. 1.6 of this application) supplied for use in the 2008 Gunfleet Sands Project and the Prior Assembly (as defined in par. 1.6 of the application) used in this project, which:
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 - (5) which specify the technical requirements of the Prior Plug for directly towing the Prior Assembly from the Prior Plug,
 - (6) specify the loads or forces the Prior Plug needs to be able to bear when in use, and
 - (7) specify how the driving force exerted on the Prior Plug when towing the Prior Assembly is transferred to the pipe of the Prior Assembly,
- III. IQIP and IQIP BV to provide these documents under I to II within 2 weeks of service of the order,
- IV. that if IQIP or IQIP BV fails to comply with this order, the Court shall take such failure into account when deciding on the issue in question (R. 190.7 RoP),
- V. that IQIP may redact any information unrelated to public prior use;
- VI. as to confidentiality of the documents to be provided:
- (i) that access to documents containing Confidential Information shall be restricted exclusively to:
 - a. TMS's authorised representatives in these proceedings, members of the legal team, as well as their internal support staff,
 - b. TMS's external technical expert(s) for these proceedings, who are not employees of TMS,
 - c. at most two natural persons designated by TMS, to be identified by name to the Court and IQIP;
 - (ii) that all persons granted access under (i) above shall treat the Confidential Information as strictly confidential and shall not use, disclose, or reproduce such information for any purpose other than these proceedings;
 - (iii) that the confidentiality obligations shall remain in full force and effect after termination of these proceedings;
 - (iv) that no later than three months after final termination of these proceedings, all persons having received access to the Confidential Information shall destroy or return to IQIP all documents, copies, notes, and other materials containing or derived from such Confidential Information;
 - (v) that any breach of these confidentiality obligations shall subject TMS to a penalty payment of EUR 100,000, or an amount to be determined by the Court having regard to the severity and circumstances of the breach, with such penalty being imposed for

each individual violation.

V.II that four weeks after receipt of the documents, TMS may file a pleading, only relating to its claim of public prior use in the 2008 Rhyll Flats Project and the 2008 Gunfleet Sands Project, and that IQIP may reply to this four weeks later,

VIII all further requests are denied.

Brinkman, presiding judge and judge rapporteur	
For the Deputy Registrar, clerk	