Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Düsseldorf local division

UPC_CFI_1696/2025

Order

of the Court of First Instance of the Unified Patent Court
issued on 4 May 2026
concerning EP 3 802 413

HEADNOTES:

1. There are grounds for concern regarding the impartiality of an expert where certain circumstances, from the perspective of a knowledgeable and reasonable observer, give rise to justified doubts as to the expert's impartiality or independence. Such doubts are justified if a knowledgeable and reasonable observer concludes that there is a likelihood that the expert's decision will be influenced by factors other than the aforementioned duties.

2. Insofar as the concern regarding bias is based on the performance of the expert's assignment itself, it must be borne in mind that the content of the expert opinion as such is not sufficient to raise doubts as to the expert's impartiality. Even a flawed report or a lack of expertise does not make the expert appear biased. Rather, there must be additional circumstances that suggest an unobjective attitude.

KEYWORDS:

Motion for recusal; expert; inspection and preservation of evidence; examination procedure

HEADNOTES:

1. There is cause for concern regarding an expert's impartiality if, from the perspective of a knowledgeable and reasonable observer, certain circumstances give rise to justified doubts as to the expert's impartiality or independence. Such doubts are justified if the aforementioned observer concludes that there is a likelihood of the expert being influenced by factors other than their duties.

2. If concerns about impartiality are based on the expert report itself, it should be noted that the content of this report alone is not sufficient to cast doubts on the expert's impartiality. A flawed report or lack of expertise does not necessarily indicate bias. Rather, there must be circumstances indicating a lack of objectivity.

KEYWORDS:

Challenging impartiality; expert; inspection and preservation of evidence; request for review

APPLICANT:

Topsoe A/S, represented by its Chief Executive Officer Roeland Baan, Haldor Topsøes Allé 1, DK-2800, Kgs. Lyngby, Denmark

represented by: Dr Christine Kanz, Attorney-at-law; Klaus Haft, Attorney-at-law; Dr Alexander Bothe, Attorney-at-law; Antonia Wilhelm, Attorney-at-law; Thomas Pfeffermann, Attorney-at-law, HOYNG ROKH MONEGIER, Steinstraße 20, 40212 Düsseldorf, Germany

Electronic service address: christine.kanz@hoyngrokh.com

RESPONDENTS:

1. **SYPOX GmbH**, represented by the managing director Gianluca Pauletto, Am Waldrand 3, 85354 Freising, Germany

2. **Josef Kerner Energiewirtschafts-GmbH**, represented by the managing director Josef Kerner, Papst-Viktor-Str. 27, 91795 Dollnstein, Germany

First respondent represented by: Attorney-at-law Dr Matthias Hülsewig, LL.M., Attorney-at- law Corinna Szlauer, PREU BOHLIG & PARTNER, Kennedy-damm 24, 40476 Düsseldorf, Germany

Electronic service address: mhu@preubohlig.de

PATENT APPLICATION: EUROPEAN PATENT NO. EP 3 802 413 B1

PANEL: Panel 1 of the Düsseldorf local division

JUDGES: This order was issued by the presiding judge Thomas, the legally qualified judge Dr Schumacher as judge-rapporteur, and the legally qualified judge Agergaard.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: Rule 197.3 of the RoP – Examination of an order for inspection and preservation of evidence; challenge to the experts on grounds of bias

ORAL HEARING: 23 March 2026

BRIEF SUMMARY OF THE FACTS:

1. The applicant is the proprietor of European patent EP 3 802 413 B1 (Annex HRM 4a; hereinafter the 'patent in question'), which was filed on 15 May 2019 in the English language of the proceedings, claiming the priorities of DK PA201800249 and EP 18175366 of 31 May 2018, as well as DK PA201800636 of 25 September 2018. The grant of the patent in question was published on 5 July 2023. The patent application is in force in Germany, Finland, France, the United Kingdom, Italy, Iceland, Lithuania, the Netherlands, Norway, Sweden, Switzerland and Spain. The applicant revoked the originally declared 'opt-out' from the jurisdiction of the Unified Patent Court by declaration dated 21 November 2025.

2. No preliminary objection was filed against the grant of the patent in question.

3. On 11 March 2026, the first respondent filed an action for annulment against the patent in question with the Central Chamber in Munich (Annex PBP 5).

4. The patent application is entitled "HYDROGEN PRODUCTION BY STEAM METHANE REFORMING".

5. Claim 1 is worded as follows in the language of the proceedings:

> "A hydrogen plant for producing hydrogen, said hydrogen plant comprising:
>
> - a reforming reactor system comprising a first catalyst bed comprising an electrically conductive material and a catalytically active material, said catalytically active material being arranged for catalysing steam reforming of a feed gas comprising hydrocarbons, a pressure shell housing said first catalyst bed, a heat insulation layer between said first catalyst bed and said pressure shell, and at least two conductors electrically connected to said electrically conductive material and to an electrical power supply located outside said pressure shell, wherein said electrical power supply is dimensioned to heat at least part of said first catalyst bed to a temperature of at least 500°C by passing an electrical current through said electrically conductive material, wherein said pressure shell has a design pressure of between 5 and 200 bar, preferably between 30 and 200, more preferably between 80 and 180 bar,
>
> - a water gas shift unit downstream of the reforming reactor system, and
>
> - a gas separation unit downstream of the water gas shift unit."

6. Independent method claim 22 reads as follows in the language of the proceedings:

> "A process for producing hydrogen from a feed gas comprising hydrocarbons in a hydrogen plant, said hydrogen plant comprising a reforming reactor system with a pressure shell housing a first catalyst bed, said first catalyst bed comprising an electrically conductive material and a catalytically active material, said catalytically active material being arranged to catalyse steam reforming of a feed gas comprising hydrocarbons, wherein said reforming reactor system-tem is provided with heat insulation between said first catalyst bed and said pressure shell; said process comprising the following steps:
>
> - pressurising said feed gas to a pressure of between 5 and 200 bar,
> - supplying said pressurised feed gas to the reforming reactor system,

- allowing said feed gas to undergo steam reforming reaction over the first catalyst bed and discharging a product gas from the reforming reactor system,

- heating said catalytically active material by supplying electrical power via electrical conductors connecting an electrical power supply placed outside said pressure shell to said electrically conductive material, allowing an electrical current to run through said electrically conductive material, thereby heating at least part of the first catalyst bed to a temperature of at least 500°C,

- feeding the product gas into a water gas shift unit downstream of the reforming reactor system in order to generate a water gas-shifted product gas,

- condensing water in the water-gas-shifted product gas and separating this water in a flash separation step, thereby providing a dry water-gas-shifted product gas, and

- removing at least CO2 from the dry water-gas-shifted product gas in a gas separation unit downstream of the water-gas-shift unit."

7. In the registered German translation, claim 1 reads:

"A hydrogen plant for producing hydrogen, wherein the hydrogen plant comprises:

- a reforming reactor system comprising a first catalyst bed comprising an electrically conductive material and a catalytically active material, wherein the catalytically active material is ordered to catalyse the steam reforming of a feed gas comprising hydrocarbons, a pressure vessel housing the first catalbed, a thermal insulation layer between the first catalyst bed and the pressure vessel, and at least two conductors electrically connected to the electrically conductive material and to an electrical power supply located outside the pressure vessel, wherein the electrical power supply is dimensioned such that it heats at least a portion of the first catalyst bed to a temperatureof at least 500°C by passing an electric current through the electrically conductive material, wherein the pressure jacket has a nominal pressure of between 5 and 200 bar, preferably between 30 and 200 bar, and most preferably between 80 and
180 bar,

- a water-gas shift unit downstream of the reforming reactor system, and

- a gas separation unit downstream of the water-gas shift unit."

8. Claim 22 reads as follows in English:

"A method for producing hydrogen from a feed gas comprising hydrocarbons in a hydrogen plant, wherein the hydrogen plant comprises a reforming reactor system with a pressure vessel that accommodates a first catalyst bed, wherein the first catalyst bed comprises an electrically conductive material and a catalytically active material, wherein the catalytically active material is ordered to catalyse the steam reforming of a feed gas comprising hydrocarbons, wherein the reforming reactor system is equipped with thermal insulation between the first catalyst bed and the pressure vessel; wherein the method comprises the following steps:

- pressurising the feed gas to a pressure between 5 and 200 bar,

- feeding the pressurised feed gas to the reforming reactor system,

- allowing the steam reforming reaction of the feed gas to take place over the first catalyst bed and discharging a product gas from the reforming reactor system,

- heating the catalytically active material by supplying electrical energy via electrical conductors connecting a power supply located outside the pressure vessel to the electrically conductive material, thereby allowing an electric current to flow through the electrically conductive material, thereby heating at least a portion of the first catalyst bed to a temperature of at least 500°C,

- feeding the product gas into a water-gas shift unit downstream of the reforming reactor system to produce a water-gas shift product gas,

- condensing water in the water-gas shift product gas and separating this water in a flash separation step, thereby providing a dry water-gas shift product gas, and

- removing at least CO_2 from the dry water-gas shift product gas in a gas separation unit downstream of the water-gas shift unit."

9. On 21 November 2025, the applicant filed an application for an order to carry out an inspection and secure evidence at the registered office and production site of the first respondent, as well as at the registered office and premises of the second respondent.

10. The Düsseldorf local division subsequently issued the following order on 25 November 2025:

"The following inspection and preservation of evidence order is issued without prior hearing of the respondents:

I. The applicant is permitted to inspect the following documents and records through an expert and a bailiff, which includes, in particular, the making of physical and/or digital copies, located at the premises of the first respondent (Waldrand 3, 85354, Freising, Germany and Eichenstraße 9, 85416 Langenbach, Germany) and at the premises of the second respondent (Papst-Viktor-Str. 127, 91795 Dollnstein, Germany and Beim Weiher 1, 91795 Dollnstein, Germany). In particular, the inspection of the following documents is permitted:

1. process flow diagrams, which in particular illustrate the reaction processes of the electrically heated hydrogen production plant, normally designated by the model name SY-POX H-200 or SYPOX H-400;

2. technical drawings, technical data, design manuals, construction manuals, operating manuals, commissioning and operating procedure overviews, safety checks and reports, and data sheets for the aforementioned hydrogen production plant, showing the following:

- *the structure and components of the reactor;*

- *the reactor pressure vessel and all elements within the vessel;*

- *the means for connecting the electrically conductive parts within the reactor to an electrical system outside the reactor and the means for connecting elements within the reactor;*

- *the thermal insulation layer within the reactor and its positioning relative to the aforementioned catalysts and all electrically conductive parts;*

3. *Photographs, presentations or similar documentation showing the following:*

   - *the aforementioned hydrogen production plant in a fully assembled state or at a preliminary assembly/construction stage (e.g. in so-called pre-installation photographs);*

   - *components or internal parts of the aforementioned hydrogen production plant prior to installation, as well as their components and/or equipment.*

   The order concerns the aforementioned documents, regardless of whether they exist in physical form or are stored in digital form, the latter including documents stored on local computers, servers or in the cloud and which can be accessed from the inspected sites.

II. *In the alternative to I., should none of the documents listed under I. 1. to 3. be provided by the respondents:*

The applicant is entitled to remove all computers and/or laptops from the respondents' premises in order to analyse whether documents referred to in I. 1. to 3., and to make digital copies of these documents. The defendants are required to provide all necessary passwords or other means of accessing these documents.

III. *The applicant is permitted to inspect the electrically heated hydrogen production plant located at the production site of the first respondent (Waldrand 3, 85354 Freising, Germany) and at the business premises of the second respondent (Beim Weiher 1, 91795 Dollnstein, Germany), which is normally designated by the model name SYPOX H-200 or SYPOX H-400, by an expert and a bailiff, which includes the taking of photographs and video recordings, and in particular:*

1. *to visually inspect the exterior of the aforementioned hydrogen production plant, in particular*

   - *the control system for operating the plant and the electronics;*

   - *all physical components of the installed hydrogen production plant, including, but not limited to, the reactor, the water-gas shift reactor (WGS) and the pressure swing adsorption unit(s) (PSA), as well as*

   - *all connecting pipes and valves, instruments and ancillary equipment such as pumps, compressors and/or heat exchangers;*

2. *to open the reactor forming part of the aforementioned hydrogen production plant and to inspect its interior, including, but not limited to, the catalyst bed, the thermal insulation layer and the electrical cabling;*

3. *to access the control systems of the aforementioned hydrogen production plant (including, but not limited to, the Distributed Control System (DCS) and/or any local control system (e.g. Human-Machine Interfaces (HMI) of a Programmable Logic Controller (PLC)) as well as the plant sensors (e.g. for temperature, pressure and flow rates) and to export live process data;*

IV. in the alternative to III.3., if the control systems do not provide live process data, to access all historical process data stored on the control systems of the aforementioned hydrogen production plant and to export this data.

V. In the alternative to III., if inspection (in particular of the interior of the reactor of the electrically heated hydrogen production plant, normally designated by the model name SY-POX H-200 or SY-POX H-400) is not possible, in particular because the plant is in operation, the respondents are obliged to shut down the plant, not to alter or remove any parts or components thereof, and to allow an inspection of the exterior and interior of the plant within seven days. Following notification by the first respondent or the second respondent that the plant has been shut down, the inspection must take place without delay.

VI. The experts shall, within a period of three weeks, draw up a detailed description of the electrically heated hydrogen production plant, normally designated by the model name SYPOX H-200 or SYPOX H-400, and submit it to the Chamber, which shall include a detailed description of the features of the aforementioned hydrogen production plant relevant to an assessment of the infringement of the patent in suit.

The detailed description to be prepared by the experts and all other findings of the inspection and preservation of evidence may only be used in main proceedings against the first respondent and/or the second respondent.

VII. The following are appointed as experts:

Ms Annkathrin Solf, patent attorney at the law firm Solf & Zapf, for the inspection at the premises of the first respondent

and

Mr Philipp Harlacher, patent attorney, of the law firm Solf & Zapf, for the inspection at the premises of the second respondent

, both practising at the Munich office at Candidplatz 15, 81543 Munich, although they may be replaced by other European patent attorneys working at the same firm.

VIII. To assist the experts,

the bailiff Reinhard Hierl (for the registered office of the first respondent in Freising),

the bailiff Wolfgang Radecker (for the production site of the first defendant in Langenbach)

and

bailiff Verena Späth (for the registered office and business premises of the second defendant in Dollnstein)

are appointed as assistants, whereby they may be replaced by other locally competent bailiffs in the event of their unavailability.

IX. Mr Klaus Haft, Ms Christine Kanz, Mr Alexander Bothe, Ms Antonia Wilhelm and Mr Thomas Pfeffermann, all UPC representatives and legal representatives of the applicant in this matter from the law firm HOYNG ROKH MONEGIER, Steinstraße 20, 40212 Düsseldorf, to be present during the measures applied for under points I to V, whereby another Attorney-at-law from the law firm HOYNG ROKH MONEGIER may represent the aforementioned representatives in the event of their unavailability.

However, during the inspection and preservation of evidence at both premises of the first respondent, only one of the aforementioned Attorney-at-laws of the applicant may be present at any one time. The same applies to the inspection and preservation of evidence at both premises of the second respondent. In this case, a further one of the aforementioned Attorney-at-laws of the applicant may be present.

Representative bodies or employees of the applicant may not be present during the conduct of the inspection and preservation of evidence.

X. The persons involved in carrying out the inspection and the preservation of evidence, and in particular the bailiff, the expert and the applicant's legal representatives, are obliged to keep confidential from both third parties and the applicant any facts that come to their knowledge in the course of executing the entire order. Furthermore, until an order of release is issued by the Unified Patent Court, the aforementioned persons must not provide any opportunity the applicant or third parties to inspect the electrically heated hydrogen production plant, normally designated by the model name SYPOX H-200 or H-400, any documents that may have been seized, or the detailed description to be prepared by the expert.

XI. The respondents are to be requested to comment on their potential confidentiality interests following the submission of the detailed description by the experts. The applicant's Attorney-at-laws, who are present during the inspection and the securing of evidence, are to be heard. Only thereafter shall the court decide whether and to what extent the detailed description is to be brought to the applicant's personal attention and whether the duty of confidentiality for the applicant's Attorney-at-laws is to be lifted.

XII. The respondents are obliged to cooperate in the implementation of the measures requested under points I to V, in particular by granting the bailiff and the expert unrestricted access to the electrically heated hydrogen production plant, which is normally designated by the model name SYPOX H-200 or SYPOX H-400, and to the design and operating documents referred to in point I (whether in physical or digital form), in particular to remove any obstacles to access (which includes, in particular, entering passwords on electronic devices to access digitally available information, regardless of whether this information is stored on the device, a remote server or a cloud server) and to put the aforementioned hydrogen production plant into operation.

XIII. The respondents are ordered to instruct their directors and employees to comply with the requests of the bailiff and/or the expert in accordance with Section XII.

XIV. In the event of a culpable breach of this order, the court may impose a penalty payment on each party for each breach, the amount of which the court may determine having regard to the circumstances of the individual case.

XV. The order to be issued shall be served personally by one of the applicant's representatives named in Section IX, together with a copy of the application for the order, including the exhibits and other documents on which the application is based, as well as the notice regarding provisional measures and instructions for accessing the proceedings in the CMS, without delay at the time the measures are enforced. These documents shall be served in cooperation with the bailiff present at the time.

XVI. The applicant is obliged to bear the costs of the inspection and preservation of evidence, including the detailed description. The applicant is required to pay the experts a reasonable advance on costs, to be determined by them, prior to the commencement of the inspection, unless they waive such an advance.

XVII. The measures for inspection and preservation of evidence shall be revoked on application by the respondents or shall otherwise lapse if the applicant, within a period of no more than 31 calendar days or 20 working days, whichever is longer, after the detailed description to be prepared in accordance with Section VI has been disclosed to the applicant, or the court has decided by a final order not to grant access to this description, has brought an action against the first respondent or the second respondent.

XVIII. The order is immediately enforceable.

XIX. "In all other respects, the application for inspection and preservation of evidence is dismissed."

11. On the very same day, 25 November 2025, the applicant filed an application to correct this order, as the original applications contained inaccuracies which were reflected in the operative part of the order.

12. The Düsseldorf local division subsequently amended the order for inspection and preservation of evidence on 26 November 2025 as follows:

"I. The operative part of the order of 25 November 2025 is amended as follows:

1. On page 15, section I. reads as follows instead of:

'… at the premises of the first respondent (Waldrand 3, 85354, Freising, Germany and Eichenstraße 9, 85416 Langenbach, Germany) and at the premises of the second respondent (Papst-Viktor-Str. 127, 91795 Dollnstein, Germany and Beim Weiher 1, 91795 Dollnstein, Germany) …"

now:

"… at the premises of the first respondent (Am Waldrand 3, 85354 Freising, Germany and Eichenstraße 9, 85416 Langenbach, Germany) and at the 3 premises of the second defendant (Papst-Viktor-Str. 27, 91795 Dollnstein, Germany and Beim Weiher 1, 91795 Dollnstein, Germany) …".

2. On page 16, section III. reads as follows:

"… at the production site of the first respondent (Waldrand 3, 85354 Freising, Germany) …"

it now reads:

"… at the production site of the first respondent (Eichenstraße 9, 85416 Langenbach, Germany) …"

II. In all other respects, the order of 25 November 2025 remains unchanged."

13. The inspection and preservation of evidence took place on 26 November 2025.

14. The expert Harlacher, assisted by the senior bailiff Späth, carried out the inspection and preservation of evidence on the premises of the second respondent (see enforcement report, Annex HRM 16). Dr Gianluca Pauletto, managing director of the first respondent, was present on site. The expert Harlacher found the following installations on the premises of the second respondent:

- A facility in the wood-panelled container shown below, hereinafter referred to as 'Pilot 0' (see the expert's detailed report of 30 December 2025, p. 3):

Abbildung 1 – Pilot 0 (Foto des Sachverständigen)

- A system in the white container shown below, hereinafter referred to as "Pilot 2" (see the experts' detailed description of 30 December 2025, p. 4):

Abbildung 2 - Pilot 2 (Foto des Sachverständigen)

15. The white container of the “Pilot 2” facility bears the inscription “www.hygear.com” on its outer wall. During the inspection and preservation of evidence on 26 November 2025, the expert Harlacher initially expressed doubts as to whether this facility was covered by the order of 25/26 November 2026. Following an on-site assessment, the expert concluded that, in his opinion, the facility was covered by the order and, amongst other things, took photographs of the facility and secured the relevant documents. By letter dated 1 December 2025, the applicant stated that, in her view, the inspection of this very same additional plant was not covered by the order. The applicant further states that, according to the persons present on site, although the reformer belonging to the first respondent was installed in this plant, the plant itself apparently originated from Hygear in the Netherlands.

16. The expert Solf carried out the inspection and preservation of evidence on the premises of the first respondent.

17. She found a plant in the grey container shown below, which is hereinafter referred to as ‘Pilot 1’ (see the expert’s detailed description of 30 December 2025, p. 62):

Abbildung 75 - Foto des grauen Containers auf dem Betriebsgelände der SYPOX GmbH

18. By document dated 25 December 2025, the first respondent filed an application for a review of the order for inspection and preservation of evidence pursuant to Rule 197.3 of the RoP.

19. The experts drew up their detailed description on 30 December 2025.

20. As early as 4 December 2025, the applicant had filed a further application with the Düsseldorf local division for an order for inspection and preservation of evidence, which concerned the aforementioned 'Pilot 2' facility. On 10 December 2025, the Düsseldorf local division issued a corresponding order (UPC_CFI_1849/2025). In this respect, an examination procedure under Rule 197.3 of the RoP is also pending.

KEY PROCEDURAL STEPS:

Application for recusal of the experts

21. By a document dated 2 February 2026, the first respondent requested that the experts Harlacher and Solf be relieved of their duties on the grounds of suspected bias, and that all results of the inspection and preservation of evidence be declared inadmissible and destroyed.

22. By order of 12 February 2026, the judge-rapporteur stated that it was intended to rule on the challenge for bias against the experts and any consequences for the admissibility of the detailed description following the oral hearing.

23. The applicant has opposed the applications.

24. The expert Solf commented on the challenges in a document dated 25 February 2026, and the expert Harlacher in a document dated 26 February 2026. These were transmitted by the experts to the court registry via Tresorit and

uploaded by the law firm to the CMS on 16 March 2026.

25. In pleadings dated 10 April 2026, the applicant and the first respondent each submitted further comments following the oral hearing, supplementing the challenges for bias and the experts' statements.

Costs of the expert's statement

26. On 26 March 2026, the experts Harlacher and Solf submitted invoices for EUR 4,005 (work by expert Harlacher) and EUR 1,260 (work by expert Solf) to the file. The services invoiced relate, at least predominantly, to the preparation of the expert opinions on the challenge filed by the first respondent.

27. The judge-rapporteur has given the parties the opportunity to comment on this.

28. In a document dated 10 April 2026, the applicant argued that the costs incurred by the first respondent for these additional expert opinions on the challenges should be borne by the first respondent. These were not costs relating to the inspection and preservation of evidence under Section XVI of the order of 25/26 November 2025. In accordance with the 'whoever causes' principle applied by the Chamber in the order (see para. 48 of the order), the costs are to be borne by the first respondent, who, by filing its application, constituted the procedural cause of the costs.

29. In its document of 10 April 2026, the first respondent emphasised that the costs of the inspection and preservation of evidence, including the detailed description, pursuant to the order of 25/26 November 2025 are to be borne by the applicant and that the costs claimed by the experts fall under this. In her view, however, expert opinions issued following motions for recusal do not, as a matter of principle, give rise to any costs that are recoverable.

Application for release of a redacted version

30. By order of 19 January 2026, the judge-rapporteur gave the respondents the opportunity to assert confidentiality interests. At the same time, access to the unredacted version of the detailed description dated 30 December 2025 was restricted to the applicant's Attorney-at-law representatives until a decision had been made on the defendants' possible confidentiality interests.

31. The first respondent asserted confidentiality interests in a document dated 2 February 2026 and submitted several versions of the detailed description to the file, in which the passages to be redacted in her view are highlighted in grey.

32. By a document dated 20 February 2026, the applicant requested an order that the detailed description submitted by the applicant be made available in a redacted version in accordance with the passages marked by the respondents.

33. The first respondent opposed this.

34. By order of 2 March 2026, the judge-rapporteur clarified that a decision on the release of the detailed description to the applicant would only be made after the oral hearing.

Application for the appointment of a technical judge

35. With regard to the action for annulment brought before the Central Chamber on 11 March 2026, the first respondent requested, by a document dated 12 March 2026, that a technical judge be appointed in accordance with Rule 33 of the RoP (by analogy).

Order for the provision of security in the event of the reactor being opened

36. At the oral hearing on 23 March 2026, the applicant's representatives stated that the applicant reserved the right to carry out a further inspection and to secure evidence.

37. Following the oral hearing, the Chamber subsequently, on the same day, 23 March 2026, the Chamber supplemented the order of 25/26 November 2025 to the effect that, pending a decision on the application for examination, the reactor of the hydrogen production plant may only be opened after security in the amount of EUR 500,000 has been provided.

Application to stay enforcement

38. By document dated 10 April 2026, the first respondent, following the oral hearing, applied for the enforcement proceedings arising from the inspection and preservation of evidence order of 25/26 November 2026 to be stayed.

39. The Chamber rejected the application by order of 14 April 2026.

APPLICATIONS:

Application for review

40. The first respondent requests:

I. The order of the Düsseldorf local division of 25 November 2025, as amended on 26 November 2025, UPC_CFI_1696/2025, be set aside.

The applicant is prohibited from using the findings, documents and data obtained during the inspection of 26 November 2025 in these or other proceedings on the merits. The documents, records and/or data secured are to be handed over by the experts to the first respondent.

II. In the alternative (in the event that the court does not set aside the order):

1. The order is amended to the effect that access to the report to be prepared by the experts, as well as to any secured data (in particular design documents, CAD data, process data), documents, records and findings obtained by the experts during the inspection, is granted exclusively to the appointed representatives of the applicant (Section IX of the order) ("Attorney-Eyes-Only"), irrespective of the conduct of the hearing proceedings pursuant to

Section XI of the order, is granted exclusively to the appointed legal representatives of the applicant (Section IX of the order) ('Attorney-Eyes-Only'). In particular, access for employees, executive bodies and/or in-house legal counsel of the applicant is excluded.

2. The order is supplemented to the effect that the applicant is obliged to provide an appropriate security deposit for the measures carried out, the amount of which is left to the discretion of the court, but shall not be less than EUR 2,000,000.

3. It is ordered that the report referred to in Section VI of the order, as well as the secured data, documents, records and files, may only be made accessible by the experts once the security referred to in Section II.2 (above) has been fully deposited/provided.

41. The applicant requests:

I. The order of 25 November 2025 be upheld unchanged.

II. The costs of the proceedings shall be borne by the respondents

Application for recusal

42. In a document dated 2 February 2025, the first respondent requested:

1. that the experts Dipl.-Ing. Philipp Harlacher and Dipl.-Ing. Annkathrin Solf be relieved of their duties on the grounds of suspected bias;

2. that the expert report and detailed description dated 30 December 2025, prepared with the involvement of the experts Dipl.-Ing. Philipp Harlacher and Dipl.-Ing. Annkathrin Solf, as well as all findings based thereon, be declared inadmissible;

3. to order the experts Dipl.-Ing. Philipp Harlacher and Dipl.-Ing. Annkathrin Solf to delete all data collected during the inspection, photographs taken, handwritten or digital notes, and copies made – in particular, but not limited to, the documents and findings relating to the 'Pilot 1' and 'Pilot 2' facilities – in full and irrevocably from all data storage media, to destroy physical documents, and to provide the court with written proof of the implementation of these measures within a period to be determined by the court, by submitting a deletion log and an affidavit.

43. The applicant requests:

that the challenges for bias against the experts Harlacher and Solf be dismissed.

FACTUAL AND LEGAL ISSUES:

Application for review

Dual-use nature of the facilities

44. The first respondent submits:

45. The contested order is based on the assumption that the plants to be inspected were specifically designed for the patent-protected production of hydrogen. This is not accurate in this form. Rather, it is a 'dual-use' platform technology. This is technically designed in such a way that it can produce methanol or, for example, synthetic natural gas (SNG) through methanation. The patent in question protects exclusively a 'hydrogen plant for the production of hydrogen' or a 'process for the production of hydrogen'. The production of methanol is not covered by the scope of protection of the patent in question.

46. The methanol option is also evident from Annex HRM 2 submitted by the applicant, where it states on page 1: "SYPOX enables you to produce hydrogen or even methanol …". This alone demonstrates that the advertised technology is advanced, as it even enables methanol production. Although the applicant had submitted Annex HRM 2 to the court, it had failed to highlight or had concealed the important reference to the methanol option in the application, even though, according to its own submission, the ability to produce methanol was part of general technical knowledge.

47. The applicant, on the other hand, takes the view that the alleged dual-use nature is irrelevant. According to the first respondent's own submission, the reactor could at least also be used for the purpose of hydrogen production. It is also clear from the description on the first respondent's website that the commercial objective is the marketing of hydrogen plants (provisionally designated H-200 and H-400). The reactor thus serves at least in part to produce hydrogen, particularly as the remaining components for the construction of a ready-to-use hydrogen plant are also provided by the first respondent (see Annex HRM 2: 'Plug-and-Produce Units for Biogas to Hydrogen'). Suitability for the patent-infringing use is sufficient to justify an inspection of the reactor and the other components of the plant. Furthermore, it is common knowledge that a steam reforming reactor can in principle be used for the production of methanol. This is because steam reforming initially produces syngas containing carbon monoxide (CO) and hydrogen (H_2). In further reaction steps, hydrogen can be extracted from this syngas or methanol (CH_3OH) can be formed. Methanol production would require different technical components to those used in hydrogen production (in particular a methanol synthesis reactor). However, such components are not described anywhere in the publicly available materials of the first respondent. In contrast, the water-gas shift and PSA units, which are typical for hydrogen production, are described on several occasions (see HRM 8 and 14).

Attorney-Eyes-Only-Club

48. Furthermore, the first respondent submits that, in any event, access to the (entire) report and to any stored data (in particular design documents, CAD

data, process data), documents, records and the expert's findings obtained during the inspection must be granted exclusively to the applicant's legal representatives ('Attorney-Eyes-Only').

49. As the hardware (construction, heating elements, reactor design) is intended for use in methanol production, this know-how directly relates to a market that is not protected by the patent in question. If the applicant's employees (e.g. R&D engineers) were to gain access to this data/documentation, they could use the knowledge to optimise their own technology for the methanol market. By simply redacting the report and the documents retrospectively, the justification for which ultimately depends on a balancing of interests, such an unauthorised transfer of know-how cannot be effectively prevented in the present dual-use scenario.

50. It should be borne in mind that the expert did not selectively secure documents relevant to the audit, but rather copied the entire "Engineering Folder" and "R&D Folder" of the first respondent wholesale. The data volume amounts to over 30 gigabytes. These folders contained not only information on the contested plant, but also the entirety of the first defendant's technical know-how, including:

- data on 'dual-use' technology (methanol/methanation), which does not infringe any patents;
- Strategic plans for future development steps;
- Patent applications not yet filed (patent drafts) and invention disclosures.

51. In any case, only technical information was concerned and no commercial information requiring internal processing and analysis. The applicant was not reliant on personally inspecting technical information for the purposes of its legal proceedings.

52. The applicant, on the other hand, is of the opinion that there is no need for such a restriction on access. The first respondent does not claim that the design of the reactor for the production of methanol differs from that for the production of hydrogen. It is also inconsequential that the experts secured extensive design data during the inspection. Should the detailed description go beyond the examination of the patent's features and contain trade secrets that are not relevant to the assessment of infringement, the relevant passages could be redacted prior to disclosure. There is therefore no need to fear a transfer of know-how.

State of the law

53. Having brought an application for revocation against the patent in suit before the Central Chamber on 11 March 2026, the first respondent further submits in its document of 12 March 2026 as follows:

54. The situation is as referred to in paragraphs 43/44 of the order of the Court of Appeal of 15 July 2025 in the case of Maguin v. Tiru (UPC_CoA_327/2025).

55. The legal validity of the patent in suit is undermined by the prior art cited in the action for revocation.

56. For the respondent's detailed arguments regarding the lack of legal validity of the patent in suit, reference is made to paragraphs 16 et seq. of the document of 12 March 2026. According to this, independent claims 1 and 22, as well as the dependent claims, were not based on an inventive step.

Security

57. The first respondent considers the order for security to be indispensable. The court's reasoning for refraining from ordering security, according to which there is a risk of "at most minor damage", constitutes a departure from the general rule under Rule 196.6 of the RoP. The applicant's submissions in this regard are incorrect.

58. The disclosure of the design data and process parameters threatens the first defendant with the loss of its technological lead in the patent-free methanol market. Should the patent in question prove to be invalid or not infringed in the main proceedings – a possibility that cannot be ruled out in view of the methanol option – the applicant must at least be liable for the (competitive) damage that has arisen or would arise as a result of the disclosure of the 'dual-use' technology. The applicant is not domiciled in Germany, which leads to additional hurdles in the enforcement of claims for damages and reimbursement of costs. Furthermore, it cannot be expected of the first respondent to bear the applicant's insolvency risk.

59. Furthermore, paragraph III.2 of the contested order permits the 'opening' of the reactor. Such an opening had led to irreversible damage to the refractory lining in the 'Pilot 1' system. Complete, irreparable destruction would also occur if the reactor referred to in the contested order were opened. The mere fact that the applicant did not have the opportunity to cause such destruction during the inspection on 26 November 2025 does not alter the necessity of ordering a security deposit even retrospectively.

60. The (total) damage to be secured amounts to the total loss of the reactor (replacement value > EUR 500,000) as well as the imminent, massive (competitive) damage resulting from the outflow of know-how in the methanol sector. Taking into account the considerable legal costs in the UPC proceedings, security of not less than EUR 2,000,000 is appropriate and necessary.

61. The fact that no damage was actually found during the inspection was pure coincidence. Refraining from ordering security on the basis of a false submission in the preliminary stage due to a 'procedural review' would trigger an intolerable knock-on effect.

62. The applicant is of the opinion that there is no need to issue an order for the provision of security.

63. There is no risk of a loss of know-how, as the detailed description merely incorporates information directly related to the features of the application in question

. The first respondent must accept that this information could also provide insight into a technology usable for methanol production. Given the undisputed identical construction of the reactor for both purposes, this is unavoidable.

64. Furthermore, it is not apparent that there is currently any risk of damage to the reactor. The inspection took place on 26 November 2025 and has been completed. The experts were able to gain an insight into the interior of the reactors there without it being necessary to open them fully, which could have led to damage. Furthermore, the risk of damage to the reactor is not sufficiently substantiated, particularly as, according to the first respondent's own submission, the Pilot 1 plant is not even of the same construction as the plants relevant to the present proceedings. Furthermore, it is disputed that, in the case of Plant 1, the mechanical stress of the opening process alone caused massive cracking and spalling of the refractory lining. Rather, it is plausible that the reactor was opened improperly.

65. In any event, the amount of the security deposit should

be set at a low level. Motion for recusal

66. In its written statement of 2 February 2026, the first respondent objected to the experts Harlacher and Solf on the grounds of suspected bias. It submits in this regard:

Expert Harlacher

67. Expert Harlacher exceeded his remit with regard to the 'Pilot 2' plant. In the detailed description of 30 December, the expert himself states that 'Pilot 2' is not covered by the order (page 5), yet nevertheless evaluates the documents (D1–D12) in detail. Moreover, he had already known at that time that the second order of 10 December 2025 (UPC_CFI_1849/2025) also did not permit a document inspection for 'Pilot 2' in the absence of a corresponding order. The court order had thus been deliberately circumvented.

68. The justification for the search of 'Pilot 2', according to which this facility was not expressly excluded, demonstrated the zeal to incriminate and the arbitrary nature of the investigation. Anyone acting as a court-appointed expert on the premise that 'whatever is not expressly prohibited, I shall inspect and take away' abandons the role of a neutral assistant to the court.

69. Furthermore, the expert extracted data indiscriminately, showing a complete lack of proportionality. He accessed, without filtering, entire development and research folders belonging to the first respondent's company — regardless of their actual relevance — . This indiscriminate copying of trade secrets demonstrates an impermissible zeal to incriminate. With the assistance of an employee of the Technical University of Munich (TUM), the expert did not copy a large amount of data from a TUM computer. An expert who oversteps his authority in this manner and involves uninvolved third parties in his unauthorised investigations breaches his duty of neutrality.

70. The attempted access to the private smartphone of Dr Pauletto, the managing director of the first respondent, also demonstrates the expert's bias. Mobile phones used privately by officers of the first respondent were not listed in the order. The fact that the managing director of the first respondent does not have a separate company mobile phone does not make his private device a suitable object of enforcement by way of a procedural 'substitute execution'. Any expert who believes he is entitled to disregard the clear wording of the order demonstrates his lack of commitment to the court's mandate as set out in the court's inspection order. He had created an impermissible atmosphere of intimidation by using the threat of a physically invasive, escalating measure (the destructive opening of the reactor) to force access to a private device not covered by the inspection order at all, as a "quid pro quo". Furthermore, he had portrayed Dr Pauletto's legitimate refusal in a negative light in his description.

71. With regard to "Pilot 0" as well, the expert had exceeded his remit under the inspection order. He had himself stated in the expert report that
"Pilot 0" had never possessed either a "water-gas shift unit" necessary for a hydrogen production plant or a gas separation unit. Dr Pauletto had informed the expert of this in advance, as evidenced by the statements in the detailed description. Furthermore, it was undoubtedly apparent from the dimensions of the piping, the pressure vessels and the gas supply that 'Pilot 0' had completely different dimensions to the H-200/H-400 plants described in the application. It must have been clear to the expert that he was not inspecting the H200/H-400 hydrogen production plant, but a different plant. Nevertheless, he did not refrain from carrying out the inspection, which once again demonstrates his eagerness to incriminate.

72. In its document of 10 April 2026, the first respondent further points out that the expert exceeded the scope of discretion granted to him to her detriment and that the inconsistency of his approach is evident from the statement itself. For, on the one hand, he admits that the 'Pilot 2' plant was in any case not physically covered by the order, yet he nevertheless analyses the design documents (D1–D12) in great detail. The division of the court order he had constructed for this purpose – according to which the physical plant was not covered, but the detailed documents relating to exactly the same plant were – was untenable and inherently contradictory. The expert was thus not acting neutrally, but as a proactive investigator on behalf of the applicant. The expert's justification, citing the aspect of 'third-party ownership', also demonstrates his bias, as he only became aware of this aspect at the earliest upon the discontinuation of enforcement on 18 December 2025 in the parallel proceedings UPC_CFI_1849/2025. An expert who, on
1 December 2025 changes his interpretation at the applicant's behest and subsequently justifies this to the court with facts of which he only became aware two and a half weeks later is fabricating justifications to justify his conduct, which serves the applicant's interests alone. Furthermore, a neutral expert would not have arrived at the legally untenable notion of equating the term 'normally' in the order ('hydrogen production plant normally designated by the model name SYPOX H-200 or SYPOX H-400') with 'optional'. The expert's query to the Chamber also reveals his motives. Since the Chamber's order did not provide for a specialist firm to open the

reactor, and the ‘Pilot 2’ reactor could therefore not have been opened at all from a purely practical point of view, an alternative method must obviously have been found to achieve this. Since no request for document inspection had been made in the second proceedings (UPC_CFI_1849/2025), the documents (D1-D12) obtained illegally during the first inspection must obviously have been squeezed into the expert report on the first order in some way with regard to ‘Pilot 2’.

Sachverständige Solf

73. The expert Solf had acted inappropriately during the inspection of ‘Pilot 1’. The plant was clearly marked as a pilot plant and as part of the EU research project ‘ERe Tech’. The plaque cited by the applicant herself proves precisely this: it was the research demonstrator ‘Pilot 1’ and specifically not a model H-200 or H-400. The inspection order had expressly required the existence of a “complete plant”, namely a hydrogen production plant. Such a plant must, among other things, cumulatively comprise a water-gas shift unit and a gas separation unit; otherwise, it would not constitute a hydrogen production plant. If the expert had established on site, and had also been expressly informed by Mr [Name], that these essential components were missing, it is clear that the inspection of this plant could not have been covered by the inspection order. The inspection should therefore not have taken place. Instead, the expert had invasively examined the research reformer with a rod camera and ‘seized’ detailed engineering know-how, particularly with regard to the reformer
.

74. Added to this is the extraordinary technical depth of detail with which the “Pilot 1” plant is described in the detailed description. This is out of all proportion to its limited relevance with regard to claims 1 and 22 of the patent application. The description is objectively capable of disclosing the most comprehensive technical information possible regarding a single plant component, even though this is not mentioned in a manner relevant to patent law in the present context. This reinforces the impression of an excessive investigation by the expert, not limited to the purpose of preserving evidence.

75. In the document of 10 April 2026, the first respondent points out that the expert Soll also gives rise to concerns regarding bias by negating her own scope of duties in the statement of 25 February 2026. By taking the view that it is not her task to classify the facilities under investigation, she is attempting to shield the basis of her decision from scrutiny. In fact, experts must, of course, assess whether a particular facility may be covered by the order, and the expert Solf did so in relation to approximately three purely laboratory facilities, which she assessed as irrelevant. Added to this is the untenable suggestion, also contained in expert Solf’s statement, that the wording ‘normally’ in the order should be equated with
“optional”.

Joint responsibility

76. By jointly signing the detailed description, the experts had mutually endorsed the misconduct. Expert Harlacher endorsed the breach in 'Pilot 1', whilst expert Solf endorsed the breach and the de facto circumvention of the stay of enforcement in 'Pilot 2'. Viewed as a whole, this conduct demonstrates that the experts understood their role not as neutral assistants to the court, but as 'investigators' for the applicant, displaying a clear zeal to incriminate.

77. This paints a picture of experts who, working in concert, ignored the legal boundaries and restrictions of the underlying order in order to serve the applicant in every respect – whether by physically opening a facility other than H-200/H-400 or by utilising documents not covered by the inspection order. From an objective point of view, confidence in the impartiality of both experts has thus been irretrievably destroyed.

Unresolved transfer of information

78. In its statement of 10 April 2026, the first respondent further argues that the unexplained transfer of information immediately following the inspection also gives rise to concerns regarding bias. The applicant had used a photograph of the 'Pilot 2' container in its application for the second proceedings (UPC_CFI_1849/2025). This photograph had undoubtedly been taken during the first inspection on 26 November 2025. As the applicant's representatives were not permitted to take their own photographs, the first respondent assumes that the photograph was taken by the court-appointed expert and subsequently passed on to the applicant's representatives so that they could substantiate their second application. The associated proactive and undisclosed provision of evidence to the applicant for the preparation of further proceedings constitutes a breach of the duty of neutrality and of paragraph X of the order, as the expert is acting in this case as a direct assistant to the applicant in the investigation. This also gives rise to concerns regarding bias.

79. The applicant submits:

80. The application for recusal is unfounded.

Expert Harlacher

81. The expert witness Harlacher acted within the powers conferred upon him by the court through the first inspection order.

82. During the inspection on 26 November 2025, he was entitled to assume that his duties included inspecting not only the unit labelled 'Sypox' but also the unit in the white container labelled 'www.hygear.com' ('Pilot 2'). The expert had attempted to consult with the court. However, the local division had left the assessment to him. After reading the operative part repeatedly, he had concluded that "Pilot 2" was covered by the order. He had taken the decision to include "Pilot 2" on the basis of his own assessment of the

circumstances of the case and the interpretation of the operative part, as well as following transparent communication with the court.

83. The production of copies in digital and physical form was expressly covered by the inspection order.

84. With regard to Dr Pauletto's private smartphone, too, the expert had complied fully with the court's order. As Dr Pauletto had stated that he did not own a company mobile phone, it had been natural for Mr Harlacher to ask to see photos on the smartphone. There had never been any question of gaining full access to a private smartphone.

85. The first respondent's submission regarding a (non-existent) patent infringement by 'Pilot 0' is irrelevant, as the present case concerns proceedings for the preservation of evidence. It is not the experts' task to independently examine a possible patent infringement.

Expert Solf

86. Expert Solf had also acted within the powers conferred upon her by the court through the first order.

87. The 'Pilot 1' attachment was covered by the operative part of the order. If the attachment bore a name other than that specified in the order, this issue must be clarified on the basis of the overall circumstances. In the present case, all the circumstances pointed to this being the case with regard to 'Pilot 1'.

88. It was precisely the expert's task to draw up a comprehensive and detailed description. The objection raised by the first respondent, according to which patent infringement was ruled out due to allegedly missing components, was the subject of any infringement proceedings and not part of the inspection proceedings.

REASONS FOR THE ORDER:

A. Motion for recusal

89. The by the respondent against 1 raised motion for recusal against the experts is unfounded.

I. Principles

90. An expert appointed to carry out the preservation of evidence and inspection, as well as to draw up the detailed description, must guarantee expertise, independence and impartiality, R. 196.4, 196.5, 199 RoP.

91. The duties of a court-appointed expert set out in R. 186 RoP apply in addition. According to R. 186.7 RoP, the expert's primary duty is to assist the court impartially with regard to matters falling within his or her field of expertise. He or she must be independent and objective and must not advocate on behalf of any of the parties to the proceedings.

92. There is grounds for concern regarding bias if certain circumstances, from the perspective of a knowledgeable and reasonable observer, give rise to justified doubts as to the impartiality or independence of the expert. Such doubts are justified if a knowledgeable and reasonable observer concludes that there is a likelihood that the expert's decision will be influenced by factors other than the aforementioned duties.

93. Insofar as the concern regarding bias is based on the performance of the expert's assignment itself, it must be borne in mind that the content of the expert opinion as such is not sufficient to raise doubts as to the expert's impartiality. Even a flawed report or a lack of expertise does not make the expert appear biased. Rather, there must be additional circumstances that suggest an unobjective attitude.

II. Assessment on a case-by-case basis

94. Measured against this, no grounds for concern regarding the impartiality of the experts Harlacher and Solf can be identified.

1. Expert Harlacher

a) Pilot 2

95. There is no evidence of the deliberate circumvention of the orders by expert Harlacher, as alleged by the first respondent.

96. During the on-site inspection, the expert expressed doubts as to whether the 'Pilot 2' facility was covered by the order. He attempted to seek clarification in this regard. Having received no instructions from the Chamber, the expert himself interpreted the operative part on site, as documented in the enforcement report of Senior Bailiff Späth dated 26 November 2025 (Annex HRM 25, p. 4). It states:

> *'… Following discussion and repeated reading of the operative part of the interim order, it was decided that the annex at the business premises, as mentioned in the operative part, is therefore not expressly excluded in the interim order and will thus be inspected, and that an inspection by Mr Harlacher (expert) may take place.'*

97. The Chamber is unable to establish that this assessment by the expert was influenced by irrelevant considerations or that it gives rise to doubts as to the expert's impartiality or independence for any other reason. A knowledgeable and reasonable observer would not interpret the expert's assessment, as recorded in the enforcement report, that the facility is 'not expressly excluded', as an expression of excessive zeal in the prosecution. Rather, this clearly refers to the fact that, in the operative part of the order of 25/26 November 2025 under point III, the inspection of the "the electrically heated hydrogen production plant located at the premises of the second respondent …, which is normally designated by the model name SYPOX H-200 or SYPOX H-400" is permitted. The fact that, should more than one plant be found on the premises of the second respondent to which the wording in section III of the order appears, on the face of it, to apply, questions of interpretation arise,

is understandable from an objective point of view. Irrespective of the substantive correctness of the assessment ultimately made, from the perspective of a knowledgeable and reasonable person, this does not suggest that irrelevant considerations were taken into account.

98. The same applies to the expert's decision, following the applicant's statement of 1 December 2025, not to use the photographs relating to the 'Pilot 2' facility, but to continue to regard the documents held by the respondents as falling within the scope of the order. In his statement of 26 February 2026, the expert explained that it was only the applicant's statement of
1 December 2025 that led to a change in his on-site assessment, which is why the photographs taken were not used. However, in his view, this interpretation concerned only the issue of the inspection, i.e. Section III of the order, but not the documents held by the respondents, i.e. Section I of the order. Since the applicant expressly refers in her letter of 1 December 2025 to the inspection of the second facility and justifies this by citing the ownership structure of the facility, an objective observer would not regard this assessment by the expert as being influenced by non-objective considerations.

99. The Chamber does not share the view of the first respondent that the expert altered his interpretation at the applicant's behest and justified this with facts of which he only became aware two and a half weeks later, upon the discontinuance of enforcement proceedings in the second case UPC_CFI_1849/2025. The reference to the ownership structure was already included in the applicant's statement of 1 December 2025 ('However, the equipment appears to originate from Hygear in the Netherlands.'). Against this background, from the perspective of an objective observer, the expert Harlacher neither changed his assessment 'on the spot' nor relied on facts that only became known subsequently to justify it.

100. Nor does the fact that, in his statement of 26 February 2026, the expert commented on the description of the plant in the operative part of the order (para. 4 et seq.) suggest, from an objective point of view, that he was biased:

> *'Pursuant to Section I, the order extends to the inspection of documents, including the making of digital copies, relating to an electrically heated hydrogen production plant which is "normally" designated by the aforementioned model designation.*
>
> *"The order therefore, by virtue of the use of the term 'normally', is linked only optionally to a specific designation and, in the expert's view, extends to documents available at the aforementioned premises of the first and second respondents and relating to electrically heated hydrogen production plants."*

101. The first respondent objects to this assessment by the expert as untenable. It argues that the addition of "normally" in sections I and III of the order of 25/26 November 2025 is merely intended to prevent confusion regarding identity, specifically in the event of a last-minute renaming intended to effectively thwart the inspection. The addition, however, does not justify an extension of powers to
'all facilities'. However, even if this were the case and the expert's assessment were incorrect, this does not imply that the expert has an unobjective attitude.

b) Access to a private smartphone

102. Nor can an unobjective attitude on the part of the expert be inferred from an objective perspective from the fact that he asked Dr Pauletto for access to his smartphone. The first respondent appeals to the remarks on page 5 of the detailed description, according to which Dr Pauletto was explicitly asked for photos of the interior of the reforming reactor on his smartphone, in order to obtain relevant information on the internal structure of the reactor without having to open the reforming reactor, at least partially. In his statement of
26 February 2026, the expert witness Harlacher explained that Dr Pauletto had made several calls from the smartphone in connection with the inspection, giving him, the expert witness, the impression that it was a smartphone used for work purposes. After Dr Pauletto had explained that it was his private smartphone and that he had no access whatsoever to photos of a hydrogen production plant via it, no further enquiries were made.

103. Nor would a knowledgeable and reasonable observer interpret the enquiry as a threat, as the first respondent claims. Rather, it appears a reasonable approach to seek to avoid an opening by using existing photographs of the interior of the reactor.

104. Contrary to the view of the first respondent, the expert Harlacher did not, in his detailed description, view the refusal by the managing director of the first respondent in a negative light either. The statement on page 5 (“In the context of this request, Dr Pauletto expressly refused to provide photographs from his smartphone.”) is a neutral account of the sequence of events.

c) Unrestricted data access/inspection of digital documents

105. Nor is the allegation of an unrestricted data harvest, which would suggest a biased stance in favour of the applicant, justified from the perspective of a knowledgeable and reasonable observer. In his statement of
26 February 2026, the expert pointed out that an individual examination of all files on site had been practically impossible. Since the classification of files often depends not only on the file name but also on the storage location within the folder structure, a backup preserving the structure was carried out, with the evaluation of its contents taking place at a later stage. These considerations are understandable from the Chamber’s perspective, which is why the allegation of an excessively extensive data backup does not give rise to concerns regarding bias. In particular, a knowledgeable and reasonable observer would not expect the expert to check all data for relevance on site during a single inspection and evidence-preservation appointment.

d) Pilot 0

106. With the allegation that the expert should have refrained from inspecting the ‘Pilot 0’ plant because he recognised, or should have recognised, that essential components of a hydrogen production plant were missing, the first respondent does not demonstrate any misjudgement on the part of the expert. The question of whether all the features of the patent claims are realised is precisely the subject of the detailed

description. In any event, it is not apparent that any misjudgement on the part of the expert is based on a biased attitude and could therefore give rise to concerns about partiality.

e) Unresolved transfer of information

107. Nor is any concern regarding the expert's bias substantiated by the arguments put forward by the first respondent in its document of 10 April 2026, according to which the photograph of the 'Pilot 2' container used by the applicant in the second proceedings (UPC_CFI_1849/2025) must have been taken by the expert and subsequently passed on to the applicant's representatives so that they could substantiate their application. This is pure speculation. The first respondent has not provided any concrete evidence of this process, nor, in particular, of the expert's alleged intention. The mere fact that, in the first respondent's view, the applicant's representatives were not permitted to take photographs is not sufficient for this purpose.

2. Expert Solf

108. Insofar as the first respondent complains that the examined 'Pilot 1' plant does not feature essential elements of the patent in suit and that the expert Solf should therefore have refrained from conducting an examination, the comments regarding 'Pilot 0' relating to the expert Harlacher apply mutatis mutandis.

109. By alleging that 'Pilot 0' was recognisably a research plant, the first respondent raises the issue of a possible lack of patent infringement on this ground ('research privilege'). However, it is not the task of the expert to examine this, but rather this is reserved for the main proceedings.

110. Against this background, the Chamber is also unable to agree with the view of the first respondent that, in her statement of 25 February 2026, the expert attempted to remove the basis of her decision from scrutiny. The first respondent refers in this regard to the wording on page 2 of the statement by the expert Solf, which states:

> *"Furthermore, it was not the expert's task to determine whether the facility under investigation was in fact a pure research facility or not. In particular, it was not the expert's task to determine how and for what purpose this facility was or was to be used. Such a determination must be made exclusively by the court in the context of assessing whether an infringement has occurred or not."*

111. It is clear that these remarks do not relate to the question of whether the plant is covered at all by the operative part of the order, but exclusively to whether it was a purely research facility or not.

112. Nor does the first respondent demonstrate any bias on the part of the experts by arguing that it was apparent that the facility did not 'normally' bear the designation H-200 or H-400 (because it was a research facility). It remains unclear how this circumstance was supposed to be discernible. Apart from that, it cannot in any case be established from an objective point of view that

any misjudgement was caused by circumstances suggesting bias.

113. In so far as the first respondent objects to the level of detail in the detailed description, which is not commensurate with its relevance, this cannot, on objective consideration, support a concern regarding bias either. The preparation of a detailed description was precisely the task of the expert.

3. Overall assessment

114. Since there are no grounds for concern regarding bias in respect of either the expert Harlacher or the expert Solf, any mutual attribution arising from the joint signing of the detailed description is irrelevant.

115. Furthermore, even when all the circumstances are considered as a whole, no bias on the part of the experts can be established.

III. No invalidity and destruction of the results

116. The further applications by the first respondent dated 2 February 2026 seeking a declaration that the detailed description and all findings based thereon are inadmissible (Application 2) and for the complete and irrevocable deletion of all data collected during the inspection and the destruction of all documents (application 3) are justified by the first respondent solely on the grounds of concern regarding the experts' bias. Since, as explained, there is no such bias, the further applications are also unfounded.

VI. Costs of the experts' statements on the motion for recusal

117. The costs incurred by the experts' statements on the motions for recusal are to be borne by the applicant in accordance with Section XVI of the order of 25 November 2025.

118. Accordingly, the applicant is obliged to bear the costs of the inspection and preservation of evidence, including the detailed description. This Rule does not impose any restriction on the execution of the on-site inspection and preservation of evidence or the preparation of the detailed description. The challenge was lodged during the examination proceedings pursuant to Rule 197.3 of the RoP and is therefore still part of the proceedings concerning the inspection and preservation of evidence.

119. The applicant cannot derive anything to the contrary from the 'principle of the party requesting the action' mentioned in paragraph 48 of the order. That paragraph states that the applicant must in any event bear the costs until further notice, as she is seeking the inspection. However, it cannot be inferred from this that the applicant party must always bear the costs.

120. A different obligation to bear costs may, where appropriate, have been ordered in any main proceedings, as is also made clear by the wording
'at least until further notice'.

B. Application for review

121. The application for review by the first respondent is admissible, but is only partially successful on the merits.

I. Admissibility of the application for review

122. There are no objections to the admissibility of the application for review.

123. Pursuant to Rule 197.3 of the RoP, the application for review of the order for the preservation of evidence must be filed within 30 days of the measure being carried out. The preservation of evidence and inspection took place on 26 November 2025. The first respondent filed the application for review on
25 December 2025 and thus within the time limit.

II. (Un)merits of the application for review

124. The application for review by the first respondent is only partially successful on the merits.

1. Principles

125. The review proceedings serve solely to examine the order for any (manifest) errors on the part of the Court when issuing the order (UPC_CFI_539/2024, Order of 16 April 2025, para. 23 – Bekaert Binjiang Steel Cord v. Siltronic).

126. The Düsseldorf Local Division endorses the principles established by the Brussels Local Division in the order of 12 November 2025 (UPC_CFI_407/2025 – Organon Heist v Genentech) (see also UPC_CFI_834/2025 (LD Düsseldorf), Order of 19 December 2025, para. 34 et seq. – Ecovacs Robotics v. Roborock). Accordingly, the Court must carry out a two-part assessment in the context of the review under Rule 197.3 of the RoP:

127. First, the court must examine whether it was correct to issue an ex parte order for inspection and preservation of evidence (Rule 194.1(d) in conjunction with Rule 194.2 of the RoP). In making this assessment, the court must take into account the facts and evidence (i) set out in the application for an order for inspection and preservation of evidence, and (ii) which, insofar as they have not been disclosed to the court, are either publicly known or are deemed to be reasonably known to the applicant. Where facts and evidence have not been disclosed, the court must examine whether this omission is to be regarded as a breach of the applicant's duty under R. 192.3 RoP. Under that provision, the applicant must disclose all facts known to him which might influence the court's decision as to whether an order is to be made without a hearing of the defendant.

128. The court must then examine whether the order for inspection and preservation of evidence is to be amended, set aside or confirmed, Rule 197.4 of the RoP. In this assessment, the evidence to be taken into account is not limited to that which is either in the public domain or reasonably known to the applicant. Rather, this assessment encompasses all facts and evidence put forward by the parties,
R. 197.3(b) RoP. The assessment relates to the substantive examination of the conditions for the issuance (Art. 60(1) and (3) of the UPC Agreement) as well as the scope and conditions set out in the order for inspection and preservation of evidence.

129. The aforementioned assessment steps must be carried out with reference to the time of the issuance of the order to be reviewed.

130. The review therefore does not extend to the enforcement of the order for inspection and preservation of evidence, the outcome of such enforcement, or any information (evidence) gathered during enforcement.

2. Examination on a case-by-case basis

131. The first respondent has failed to demonstrate the existence of such errors.

a) Dual-use nature

132. The possibility of also using the plant for the production of methanol is irrelevant to the possibility of a patent infringement and thus also to the lawfulness of the order for inspection and preservation of evidence issued. The first respondent does not dispute that the plant is suitable for hydrogen production.

133. Against this background, the applicant's submission is not incorrect or incomplete, as alleged by the first respondent. Since the possibility of further use is not a relevant aspect for the examination, no submission was required in this respect.

b) Validity of the patent in application No

need to consult a technical judge

134. It must first be noted that there was no need to appoint a technical judge in the examination proceedings by way of analogous application of Rule 33 of the RoP.

135. Rule 33 of the RoP applies only to infringement proceedings. There is no corresponding provision in the rules concerning the preservation of evidence and inspection. The first respondent also accepts this.

136. However, there is also no need for an analogous application.

137. 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 purpose of the measures is to obtain evidence that can be used in proceedings on the merits (see Rule 196.2, 199.2 of the RoP), which also includes the use of such evidence to determine whether proceedings on the merits or proceedings for provisional 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). By contrast, the proceedings for the preservation of evidence and inspection are not aimed at a final resolution of disputed issues between the parties (see also UPC_CFI_1325/2025 (LD), Order of 23 January 2026, para. 17 – Van Loon Beheer v. Inverquark).

138. Given that the purpose of the order for inspection and preservation of evidence differs from that of infringement proceedings on the merits, there is no gap in the law.

There is no final clarification of technical issues which would require the involvement of a technical judge.

No examination of the merits

139. As the Board has already stated in the order of 25 November 2025, an examination of the validity of the patent in suit is, in principle, not to be carried out in the context of proceedings for inspection and preservation of evidence. The opposite may only apply if there are clear indications to cast doubt on the validity of the patent in question, for example following a negative validity decision (see UPC_CoA_327/2025, order of 15 July 2025, para. 43 – Maguin v. Tiru). Since there were no such indications at the time of the order, and no validity proceedings were pending, the assessment at the time of the order was not open to criticism.

140. The fact that an action for annulment has now been brought and the validity of the patent is being challenged does not therefore render the order erroneous. As set out above, what matters is the date on which the order was issued.

141. Apart from that, the filing of an action for annulment and the arguments put forward in this regard are in any case insufficient to cast doubt on the validity of the patent within the meaning of the principles set out above on the basis of clear indications. The first respondent appeals to the lack of inventive step. No exceptional circumstances of any kind can be inferred from their submissions.

c) Security

Imminent damage due to data leakage

142. In so far as the first respondent argues that the leakage of design data and process parameters threatens the loss of technological advantage in the patent-free methanol market, this argument does not hold water.

143. The first respondent is protected in this respect by the assertion of confidentiality interests, in so far as information is concerned that is received by the detailed description and its annexes.

144. Furthermore, as already mentioned, the data collected by the expert will not be disclosed to the claimant even after the detailed description and its annexes have been released.

Imminent destruction of the plant upon opening

145. The first respondent has plausibly argued that opening the reactor risks causing significant damage. It has justified this by stating that the opening of another reactor (‘Pilot 1’) at an earlier stage resulted in irreversible damage to the reactor. The applicant has failed to rebut this argument. It has merely pointed out that the opening must have been improper. However, it has not provided any concrete evidence to support this.

146. The security deposit of EUR 500,000 already ordered by the order of 23 March 2026 in the event of the reactor being opened shall therefore remain in place.

147. However, a security deposit exceeding this amount, irrespective of whether the reactor is opened, is not to be ordered. In this respect, it is not apparent that there was a threat of particular damage at the time of the order or that such a threat now exists.

d) Attorney-Eyes-Only

148. The first respondent asserts, irrespective of the assertion of specific confidentiality interests (see D. below), in the context of the application for examination, that the entire report and all secured data, documents, records and findings of the expert are to be restricted to the applicant's legal representatives ('Attorney-Eyes-Only').

149. As regards the detailed description and its annexes, these will have to be reviewed in accordance with the assertion of confidentiality interests before being released to the applicant (see section C. below).

150. As regards the other secured data, documents, records and findings, these are not to be disclosed to the applicant or her legal representatives, even after the information contained in the detailed description and its annexes has been released. Pursuant to paragraph X of the order of 25 November 2025, the expert is bound to maintain confidentiality regarding all facts that have come to his knowledge in the course of executing the order (see also R. 186.5 RoP). This obligation shall continue to apply after the conclusion of the proceedings.

C. Disclosure and protection of confidential information

151. Confidentiality interests may be asserted independently of an application for examination under Rule 197.3 of the RoP and require a separate assessment (see UPC_CoA_177/2024, Order of 23 July 2024, para. 12 – Progress Maschinen & Automation v. AWM). It will therefore be necessary, following the examination proceedings, to decide separately on the scope of disclosure of the detailed description, taking into account the confidentiality interests asserted by the first respondent.

D. Breach of the confidentiality order

152. The question of whether the applicant or its representatives, by filing the application in Case UPC_CFI_1849/2025 concerning the 'Pilot 2' facility, have breached the confidentiality order contained in the order of 25 November 2025 under review here is irrelevant to the present examination. It therefore requires no further consideration.

ORDER:

1. The application by the first respondent dated 2 February 2026 to relieve the experts Dipl.-Ing. Philipp Harlacher and Dipl.-Ing. Annkathrin Solf of their duties on the grounds of suspected bias is dismissed.

2. The further applications by the first respondent dated 2 February 2026 seeking a declaration that the detailed description and all findings based thereon are inadmissible (Application 2) and seeking the complete and irrevocable deletion of all data collected during the inspection and the destruction of all documents (Application 3) are also rejected.

3. It is clarified that invoices Nos. 26200509 and 26200510 dated 26 March 2026 from the experts Solf and Harlacher relate to the costs of the inspection and preservation of evidence within the meaning of Section XVI of the order of 25 November 2026. These are therefore to be borne by the applicant.

4. It is ordered that the reactor of the hydrogen production plant may continue to be opened only after security in the amount of EUR 500,000 has been provided.

5. Furthermore, the application by the first respondent for a review of the order for an inspection and preservation of evidence, including all ancillary applications, is dismissed.

6. The application by the first respondent for the appointment of a technically qualified judge is dismissed.

7. The appeal is allowed.

Issued on 4 May 2026 NAMES
AND SIGNATURES

Presiding Judge Thomas	
Legally qualified judge Dr Schumacher	
Legally qualified judge Agergaard	
For the Deputy-Registrar	

INFORMATION ON THE APPEAL

The respondent may appeal against this order within 15 days of its service (Art. 73(2)(a), 60 UPC Agreement, R. 220.1(c), 224.1(b) RoP).