Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Central Division (Section Munich)
UPC_CFI_894/2026

Procedural order

of the Court of First Instance of the Unified Patent Court
issued on 27 July 2026
concerning EP 3 802 413 B1

CLAIMANT
SYPOX GmbH, Am Waldrand 3, DE-85354 Freising, Germany

Claimant represented by:
German and European patent attorney Dr Andreas Hofmann, LL.M. of RGTH Patentanwälte PartGmbB, and attorney-at-law Dr Matthias Hülsewig of AURODION PartmbB

DEFENDANT
Topsoe A/S, Haldor Topsøes Allé 1, DK-2800 Kgs. Lyngby, Denmark

Defendant represented by:
European Patent Attorney Connor McConchie of D Young & Co LLP

PATENT AT ISSUE
European patent no EP 3 802 413 B1

PANEL/DIVISION
Panel 1 of the Central Division (Section Munich)

DECIDING JUDGE
Daniel Severinsson acting as judge-rapporteur

LANGUAGE OF THE PROCEEDINGS
English

SUBJECT OF THE PROCEEDINGS
Revocation action – withdrawal from proceedings of unredacted document.

BACKGROUND AND SUMMARY OF FACTS
In the present revocation action the parties dispute inter alia whether SYPOX GmbH ("Sypox") qualifies as a small enterprise or a micro enterprise ("SME"), which may have relevance for e.g. determining the court fee and the cost ceiling. Topsoe A/S ("Topsoe") has held that a third party, European Energy A/S ("European Energy"), has dominant control over Sypox according to certain provisions in Sypox's Articles of Association (D27). In response to this Sypox held that the consent rights of European Energy in those provisions were limited in time to 1 July 2026 according to a provision in an Investment Agreement (D36). The parties disputed whether Sypox made a valid confidentiality request when submitting the Investment Agreement and whether Topsoe should be granted access to the unredacted version of the document. Before the Court issued any order regarding confidentiality and access to the Investment Agreement, Sypox stated that it withdraws the unredacted version of the Investment Agreement (D36) and that it shall be treated as not submitted. Sypox continues to rely on the redacted version of the Investment Agreement (D36R).

REQUESTS AND ARGUMENTS OF THE PARTIES
Sypox initially requested that certain information in the Investment Agreement (D36) be classified as confidential (Rule 262.2 RoP) and that Topsoe only be granted access to the redacted version of the agreement (D36R) (Rule 262A RoP).

Topsoe then requested that Sypox's Rule 262A RoP confidentiality request be denied or, in the alternative, that access to the unredacted Investment Agreement be granted to Topsoe's legal representative and [redacted] Senior Patent Counsel at Topsoe. Since [redacted] is on annual leave until 3 August 2026 Topsoe additionally requested that the Court permit any submissions addressing the Investment Agreement be included with the rejoinder.

Sypox finally requested inter alia that the Court
1) take note of the withdrawal of the unredacted version of the Investment Agreement, D36, and order that it be treated as not submitted, that its content shall not be taken into account by the Court in its decision-making and shall not be used by Topsoe within or outside these proceedings, that no access to it be granted to Topsoe, and that its classification as Highly

Confidential (“HC”) in the CMS be maintained, including with respect to any request under Rule 262.1(b) RoP,

2) take note that the Sypox’s confidentiality request vis-à-vis the public pursuant to Rule 262.2 RoP of 25 June 2026 is maintained and, to the extent necessary, expressly extended to D36R,

3) dismiss Topsoe’s requests as stated above,

4) in the alternative, should the Court consider that, notwithstanding the withdrawal, the unredacted version of D36 remains part of the proceedings and that access to it must be granted to Topsoe: restrict such access to Topsoe’s legal representative and [redacted] Senior Patent Counsel at Topsoe, and impose certain protective conditions [omitted here], and

5) order that any further submissions by Topsoe concerning the redacted version D36R be limited to the issue of the temporal limitation of European Energy’s additional consent right and be filed with the rejoinder at the latest.

Topsoe has held that Sypox’s Rule 262A RoP request is invalid because the Investment Agreement was uploaded to the CMS without a proper Rule 262A RoP confidentiality request. Should the Court issue a Rule 262A RoP order Sypox has itself acknowledged that the Investment Agreement contains information concerning financing, valuation, prospective orders, commercial terms and intellectual property arrangements. Such information has the potential to contribute to the consideration of Sypox’s alleged SME status. Whether Sypox is relying on these additional contents of the Investment Agreement is not decisive as there may be arguments against the alleged SME status in the redacted parts, in particular if these provisions foster the impression of control by a third party. Access to the unredacted Investment Agreement should therefore at least be granted to both Topsoe’s legal representative and its’ Senior Patent Counsel [redacted]

Sypox has held that it withdraws the unredacted version of the Investment Agreement (D36) but that it continues to rely on the redacted version of the Investment Agreement (D36R), which discloses in full every contractual provision relied upon for the SME issue. With the withdrawal, the unredacted version D36 is to be treated as not submitted and is no longer part of the evidence in these proceedings. There is accordingly nothing to which Topsoe could be granted access, and Topsoe’s requests to get such access are devoid of purpose. The withdrawal deprives Topsoe of nothing. Topsoe has never had access to the unredacted version of D36, Sypox has never relied on any information contained only in it, and every provision relied upon for the SME issue remains in evidence in the redacted version D36R, on which Topsoe retains a full opportunity to comment.

GROUNDS FOR THE ORDER

Sypox has declared that it withdraws the unredacted version of the Investment Agreement (D36) and that it relies only on the redacted version D36R. The Court will therefore base any order or decision only on D36R and will disregard any information which is only contained in the unredacted version D36 (cf. Art. 76(2) UPCA and UPC_CoA_301/2024, order of 26 July 2024, ICPillar/ARM, para. 8). D36 will remain in the case file with the CMS confidentiality code "HC".

Topsoe's assertion that the unredacted version of the Investment Agreement may contain arguments against Sypox's alleged SME status is not duly substantiated in view of Sypox's statement that it only relies on information which is contained in the redacted version. In any event, the interests of Sypox in keeping the redacted information confidential significantly outweigh the interests of Topsoe in getting access to the full Investment Agreement.

Against this background Topsoe does not have a sufficient legal interest to be granted access to the unredacted version of the Investment Agreement and Topsoe's requests in this regard should be dismissed.

Since Topsoe has not been granted access to the unredacted version D36 there is no need for an order that its content must not be used by Topsoe within or outside of these proceedings.

ORDER

1. The unredacted version of the Investment Agreement (D36) will be disregarded by the Court in these proceedings and Sypox may rely on the redacted version D36R only.

2. A decision on Sypox's confidentiality requests regarding access of the public to D36 and D36R is deferred until access to any of these documents is requested by a member of the public.

3. Topsoe's requests are rejected.

4. Topsoe is invited to comment, by 7 August 2026, on Sypox's submissions of 15 and 25 June 2026.

Issued on 27 July 2026

Sven Daniel
Severinsson

Digitally signed by Sven Daniel
Severinsson
Date: 2026.07.27 13:15:07 +02'00'

Daniel Severinsson

Judge-rapporteur