Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Local Division Düsseldorf
UPC_CFI_219/2026
UPC_CFI_2942/2026

Procedural order

of the Court of First Instance of the Unified Patent Court
issued on 19 November 2026
concerning EP 3 212 586 B1

CLAIMANT (CFI_219/2026) AND COUNTERDEFENDANT 1 (CFI_2942/2026)

King's Metal Fiber Technologies Co. Ltd., No. 2-9, Quanzhou Rd., Houli District, Taichung City 421002, Taiwan

COUNTERDEFENDANT 2 (CFI_2942/2026)

[redacted]

Claimant and counterdefendants represented by:

Attorney at law Kirian Claeyé, Altius De Clercq, Havenlaan 86C B414, 1000, Brussel, Belgium

DEFENDANTS (CFI_219/2026) AND COUNTERCLAIMANTS (CFI_2942/2026)

1. **Foshan Kevdar Textile Co. Ltd.**, No. 2 Guda Roda, Chancheng District, Foshan City, Guangdong Province, China

2. **Foshan Justtar New Material Co Ltd**, 209#, NO.6 Xierjie Bitang, Zhangcha Street, Chancheng District, Foshan city, China

Defendants and counterclaimants represented by:

Patent attorney Dr. Cornelius Mertzlufft-Paufler, Maucher Jenkins, Urachstr. 23, D79102, Freiburg, Germany

PATENT IN SUIT

European patent no EP 3 212 586 B1

PANEL/DIVISION

Panel 2 of the Local Division Düsseldorf

DECIDING JUDGE

Daniel Severinsson acting as judge-rapporteur

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT OF THE PROCEEDINGS

Patent infringement action and counterclaim for revocation – R. 190 RoP

BACKGROUND

1. King's Metal Fiber Technologies Co. Ltd. ("KMF Technologies") has initiated a patent infringement action against Foshan Kevdar Textile Co. Ltd. and Foshan Justtar New Material Co Ltd (jointly "the Defendants") based on European patent no EP 3 212 586 B1 ("EP 586" or "the Patent"). EP 586 is titled "Use of alumina-chromium alloy in heat treatment" and relates to a method for operating a system for heat treatment of a glass sheet, wherein one or more parts within the system are covered with a cover which is made of a chromium-alumina alloy (para. [0001]).

2. In the Statement of claim KMF Technologies asserts that the Defendants indirectly infringe independent claim 1 and dependent claims 5–7 of the Patent, at least by equivalence, by supplying, or offering to supply, within the territory of the Contracting Member States in which EP 586 has effect to persons who are not entitled to exploit the patented invention, certain high temperature resistant sleeves which are means to an essential element of the patented invention ("Contested sleeves") (Art. 26(1) UPCA).

3. Independent claim 1 of EP 586 reads as follows.

> **1.** A method for operating a system suited for heat treatment of an object of a first material, wherein said object of a first material is a glass sheet, the method comprising: use of a temperature evolution within a portion of said system in terms of predetermined temperature cycles, comprising temperatures higher than 700 degrees Celsius for a duration of at least 1 day, and a plurality of temperature decreases below 400 degrees Celsius while covering one or more parts within the system with a cover made of a second material which is a chromium-alumina material selected for (a) retaining its strength and (b) not being fragile under said predetermined temperature cycles wherein said second material is used at least as cover for one or more supporting elements, supporting said object of a first material when being heat treated, wherein said chromium-alumina alloy material has a Cr content of more than 15 % by weight, a minimum content of Fe of 70 % by weight and a minimum content of Al of 2 % by weight.

4. Claim 1 can be broken down in the following features, which has not been disputed by the parties.

Claim 1	
1.1	*A method for operating a system suited for heat treatment of an object of a first material, wherein said object of a first material is a glass sheet,*
1.2	*the method comprising*
1.21	*use of a temperature evolution within a portion of said system in terms of predetermined temperature cycles, comprising temperatures higher than 700 degrees Celsius for a duration of at least 1 day, and a plurality of temperature decreases below 400 degrees Celsius*
1.22	*while covering one or more parts within the system with a cover made of a second material*
1.221	*which is a chromium-alumina material selected for (a) retaining its strength and (b) not being fragile under said predetermined temperature cycles*
1.222	*wherein said second material is used at least as cover for one or more supporting elements, supporting said object of first material when being heat treated,*
1.223	*wherein said chromium-alumina alloy material has: (a) Cr content of more than 15 % by weight, (b) a minimum content of Fe of 70 % by weight and (c) a minimum content of Al of 2 % by weight.*

5. The Defendants have filed a Statement of defence in which they inter alia dispute that the Contested sleeves indirectly infringe EP 586 either literally or by equivalence. The Defendants have further filed a counterclaim for revocation in which they assert that EP 586 is invalid and should be revoked.

6. KMF Technologies has filed a Reply to the Statement of defence and a Defence to the Counterclaim for revocation in which it makes an R. 190 RoP request.

REQUESTS AND ARGUMENTS OF THE PARTIES

7. KMF Technologies requests that the Court, should it consider further evidence necessary to establish that the Contested sleeves meet feature 1.223 of Claim 1 of the Patent, orders the Defendants to produce the material specifications and technical data sheets applicable to the Contested sleeves, together with supplier certificates of composition and existing compositional quality-control results relating to the material used for the Contested sleeves.

8. KMF Technologies has in summary held that it maintains that the already submitted evidence establishes that the Contested sleeves satisfy feature 1.223. KMF Technologies has obtained a Contested sleeve and submitted it to the independent SGS laboratory for analysis. That analysis established an Fe result of 69.0 wt% subject to an analytical spread reaching approximately 70 wt%, while the same report leaves 5.42% of the analysed "as received" sleeve without compositional attribution. The Defendants, who manufacture and supply the product and possess its specifications, supplier certificates and quality-control information, provide no compositional evidence of their own showing that the chromium-alumina alloy material in the Contested sleeves contains less than 70 wt% Fe. This does not reverse KMF Technologies' ultimate burden of proof. It is nevertheless relevant to the Court's assessment of the evidence, particularly where KMF Technologies has obtained and independently tested the product available to it, whereas the definitive product-composition records lie exclusively within the Defendants' sphere of knowledge. The absence of any contrary specification or analysis is particularly significant given that the Defendants seek to derive a precise non-infringement conclusion from the very SGS report result whose stated analytical precision and compositional basis do not support such precision. KMF Technologies obtained and independently tested the product, thereby submitting the evidence reasonably available to it. The requested records concern the identified product and the precise compositional issue raised in the Statement of defence. Their production would allow the SGS analysis to be assessed against the composition specified and controlled in manufacture and would directly

establish the composition of the chromium-alumina alloy material to which feature 1.223 applies.

9. The Defendants request inter alia that the Court dismisses KMF Technologies request for production of evidence or, in the alternative, limit any order [as set out in Section X of its reply to the R. 190 RoP request] and make any production subject to confidentiality measures under R. 262A RoP, after hearing the Defendants.

10. The Defendants have in summary held that the R. 190 RoP application does not concern a substantiated fact but seeks to establish whether such a fact exists. The only iron content KMF Technologies has pleaded as a fact is 69 wt%. Feature 1.223 requires at least 70 wt%. The value of 69.0 wt% reported by SGS is undisputed. In the Statement of defence, the Defendants challenge only the further conclusions KMF Technologies seeks to draw from the SGS report. Neither the undefined analytical "spread of approximately 1%" nor the now claimed arithmetical difference of 5.42 percentage points between the four reported values and 100% is a positive analytical finding of at least 70 wt% iron. Both are mere (theoretical) possibilities. KMF Technologies could have investigated both possibilities by further analysing its own sample. It does not explain why it did not, or could not, do so. R. 190 RoP is not intended to replace a further analysis of evidence already in the hands of the party bearing the burden of proof. Nor does it serve to remedy the limits of an analysis KMF Technologies itself commissioned. The relevance of the requested documents depends on identifying the product, batch, period and method. KMF Technologies identifies none of these. Specifications and data sheets state nominal or permissible values, not the actual composition of a given sleeve or batch. Supplier certificates relate to particular raw-material batches. Quality-control results may concern raw material, intermediate or final products and different methods and parameters. The request is also disproportionate. It extends to technical and commercial records across unidentified periods, suppliers and batches, which contain confidential information on sourcing, specifications, tolerances and quality control. Since KMF Technologies application does not meet the requirements of Art. 59 UPCA and R. 190 RoP it must be dismissed.

GROUNDS FOR THE ORDER

11. It follows from R. 190 RoP, read in conjunction with Art. 59 UPCA, that the Court may order the production of specified evidence which lies in the control of the opposing party or of a third party, provided that the requesting party has presented reasonably available evidence supporting the plausibility of its claims.

12. According to the case law developed by the Court of Appeal production of evidence is not unlimited and is subject to the following cumulative constraints (UPC_CoA_76/2026, Xingi v. Avient, order of 27 August 2026, paras. 24–27).

13. The first requirement is that such measures may only be granted on the basis of specific and substantial allegations and cannot serve exploratory or speculative purposes as R. 190 RoP does not permit fishing expeditions but requires a concrete link between the requested measure and the facts relied upon by the requesting party. This reflects the structured nature of the UPC system, which does not provide for general disclosure or discovery, but only for targeted and justified access to specific evidence.

14. Secondly, the requested evidence must be strictly necessary (i.e. relevant) to the issues in dispute. The taking of evidence serves the adjudication of the case and must not give rise to unnecessary procedural dispersion or delay; accordingly, only those evidentiary measures that are genuinely necessary for the resolution of the dispute should be ordered. In this context, the Court exercises an active role in the management of the proceedings, ensuring that evidentiary measures are limited to what is necessary for the proper resolution of the dispute.

15. Thirdly, the requested measure must be proportionate, in the double sense that the evidence cannot reasonably be obtained by the requesting party through less burdensome means and that the burden imposed on the responding party be justified in the light of the interests at stake.

16. Finally, the Court must ensure a fair balance between competing rights, including the protection of confidential information, trade secrets and personal data. In that regard, the Court of Justice of the European Union has held that the instruments provided for by Directive 2004/48/EC must not be used abusively and must remain subject to safeguards ensuring that they are justified, proportionate and non-abusive (see case C-597/19, Mircom, Judgment of 17 June 2021, EU:C:2021:492).

17. In the present case KMF Technologies has explicitly made the request for an order to produce evidence “in the alternative”, and only should the Court consider further evidence necessary [to establish that the Contested sleeves meet feature 1.223 regarding the iron content]. This means in practice that the request is conditional with respect to the Court’s assessment of whether KMF Technologies’ existing evidence is sufficient in this regard or whether further evidence is necessary to establish infringement. Such an assessment by the Court is normally made in the decision on the merits after hearing the parties at the oral hearing (cf. Arts. 43 and 76(2) UPCA and, regarding conditional appeals, UPC_CoA_76/2026, order of 27 August 2026, Xingi v

Avient, paras. 79–86). KMF Technologies has not substantiated why the Court should assess whether further evidence is necessary already at the present (written) stage of the proceedings. Generally, there is no room for conditional R. 190 RoP-requests. Already for this reason KMF Technologies' request to produce evidence should be rejected, and it can be left open whether the substantive requirements for granting the request are met.

ORDER

KMF Technologies' request for an order to produce evidence is rejected.

INFORMATION ABOUT PANEL REVIEW

Any party may request that this order be referred to the panel for a review pursuant to R. 333 RoP.

Issued on 19 November 2026

Sven Daniel Severinsson

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Daniel Severinsson
Judge-rapporteur