



UPC_CFI_1849/2025
Local Division Düsseldorf

ORDER
of the President of the Court of First Instance
in the proceedings before the Local Division DÜSSELDORF
pursuant to R. 323 RoP (language of the proceedings)

Issued on 20/03/2026

HEADNOTE:

- When deciding on a request to change the language of the proceedings to the language of the patent on grounds of fairness, all relevant circumstances – in particular those related to the case and the respective position of the parties – shall be considered. If the outcome of balancing of interest is equal, the position of the defendant is the decisive factor.
- Efficient communication among defendants without the need to rely on translations, which represents a significant disadvantage in terms of costs and delays, is all the more important in the context of accelerated proceedings.

KEYWORDS:

Change of the language of the proceedings – Art. 49 (5) UPCA and R. 323 RoP

APPLICANT AND DEFENDANT IN THE MAIN PROCEEDINGS:

HyGear B.V.

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Represented by: Ricardo Dijkstra - Vondst advocaten

OTHER PARTIES (DEFENDANTS IN THE MAIN PROCEEDINGS):

SYPOX GmbH

Am Waldrand 3, 85354, Freising - DE

Represented by: Matthias Hülsewig – Preu Bohlig

Josef Kerner Energiewirtschafts GmbH

Papst-Viktor-Str. 27, 91795, Dollnstein - DE

Technical University of Munich (Technische Universität München)

Arcisstraße 21, 80333, Munich - DE

Represented by: Christian Markowsky – metaCom

RESPONDENT (APPLICANT IN THE MAIN PROCEEDINGS):

Topsoe A/S

Haldor Topsøes Allé 1, DK-2800, Kgs. Lyngby - DK

Represented by: Christine Kanz – Hoyng Rokh Monegier

PATENT AT ISSUE: EP3802413

SUMMARY OF FACTS AND PARTIES' REQUESTS:

By an application dated 04 December 2025, Topsoe A/S requested that the Court order an inspection and measures to preserve evidence pursuant to R. 192, 199 et seq. RoP against SYPOX GmbH, HyGear B.V., Josef Kerner Energiewirtschafts GmbH and the Technical University of Munich, based on EP3802413 titled "*hydrogen production by steam methane reforming*".

The respective order was issued on 10 December 2025 and an application for review and suspension of enforcement was filed by SYPOX GmbH on 17 December 2025.

Represented parties were therefore summoned to the oral hearing initially scheduled on 23 March 2026 by videoconference. HyGear acquired representation's status on 12 January 2026 and by statement dated 15 January 2026, requested the Court to:

- review the abovementioned order.
- allow its participation to the scheduled hearing.
- change the language of the proceedings from German to the language in which the patent was granted, namely English (hereinafter "the Application").

Regarding the latter, the Application was forwarded to the President of the UPC Court of First Instance pursuant to R. 323.1. RoP. Topsoe A/S and all other represented Parties were subsequently requested, in accordance with R. 323.2 RoP, to state within 10 days their position on the admissibility of the Application and on the use of the language in which the patent was granted, namely English, as language of the proceedings.

Topsoe A/S and Sybox GmbH submitted their written comments on 6 March 2026 and 12 March 2026 respectively. They both indicated that they have no objection to the requested change of the language of the proceedings to English.

The Technical University of Munich commented on the Application by statement dated 12 March 2026 and requested that it be dismissed.

The panel of the LD Düsseldorf has been consulted in accordance with R. 323.3 RoP.

POINTS AT ISSUE:

HyGear. B.V. requests the Court to declare the Application admissible and change the language of the proceedings from German to English in accordance with Art. 49 (5) UPCA and R. 323.1 RoP, for the following reasons:

- According to the consistent case law, R. 323.1 RoP refers to Art. 49 (5) UPCA which does not specify any timeframe for a request to change the language of the proceedings. It shall therefore be interpreted as permitting that such Application may be filed at any stage in accordance with the general aim of flexibility.
- As HyGear is a Dutch company domiciled in the Netherlands, they most likely cannot understand all that is submitted on their behalf and must incur considerable translation costs. Beyond the financial burden, it will affect their reactivity during the proceedings compared to their German counterparts.

- These adverse effects are not applicable regarding Topsoe which has its registered offices in Denmark. Topsoe's nationality and domicile don't inherently favor English or German as suitable language of the proceedings and it operates at least in part in English, as reflected by its website. Even though the other Defendants are domiciled in Germany, they evidently use English as corporate language.
- A considerable proportion of exhibits submitted by the Applicant in the main Application is in English.
- the language predominantly used in the field of technology involved – i.e. hydrogen plants – is English as demonstrated by all parties' websites.
- As regards the procedural impact of the requested change, R. 323.2 would allow that the respective order be issued within a suitable timeframe while the use of German in accelerated proceedings disadvantages HyGear forced to defend itself in this language. The balance of all interests is therefore in favor of the Applicant.

The Technical University of Munich state that the proceedings should continue in the language primarily chosen – namely German – for the following reasons:

- The Applicant in the main proceedings has chosen the official language of the Member State hosting the Division pursuant to R. 14.a RoP.
- HyGear is the only Defendant registered outside Germany and its request is submitted without convincing grounds justifying the requested change, with regard to all respective interests to be weighted up in the present case.

Further facts and arguments as raised by the parties will be addressed below if relevant for the outcome of this Order.

GROUNDS FOR THE ORDER:

According to Art. 49(1) UPCA, the language of the proceedings before a local division must be an official language of its hosting Member State or alternately the other language designated pursuant to Art. 49 (2). It is further provided by R. 323 RoP that "1. If a party wishes to use the language in which the patent was granted as language of the proceedings, in accordance with Article 49(5) of the Agreement (...) [t]he President, having consulted [the other parties and] the panel of the division, may order that the language in which the patent was granted shall be the language of the proceedings and may make the order conditional on specific translation or interpretation arrangements".

Regarding the criteria that may be considered to decide on the Application, Art. 49 (5) UPCA specifies that “(...) the President of the Court of First Instance may, on grounds of fairness and taking into account all relevant circumstances, including the position of parties, in particular the position of the defendant, decide on the use of the language in which the patent was granted as language of proceedings (...)”.

By an order dated 17 April 2024, the UPC Court of Appeal (hereinafter “CoA”) ruled that when deciding on a request to change the language of the proceedings to the language of the patent for reasons of fairness, all relevant circumstances – relating to the specific case, such as the language most used in the relevant technology, and to the position of the parties, including their nationality, domicile, respective size, and how they could be affected by the requested change – should be considered (UPC_CofA_101/2024, Apl_12116/2024, para. 22-25). It was furthermore stated that the internal working language of the parties, the possibility of internal coordination and of support on technical issues must be taken into account (UPC_CoA_354/2024, Apl 38948/2024, Order dated 18 September 2024, para. 26-27).

In the event that the result of the balancing of interests is the same in the context of this overall assessment, the CoA found that the emphasis placed “in particular” on the position of the defendant under Art. 49 (5) UPCA is justified by the flexibility afforded to the claimant which frequently has the choice of where to file its action and can choose its most convenient timeframe to do so, while the defendant is directly bound by strict deadlines. The position of the defendant(s) is consequently the decisive factor if both parties are in comparable situations.

In the same decision, the CoA also held that “for a claimant, having had the choice of language of the patent, with the ensuing possibility that the claimant/patentee may have to conduct legal proceedings in that language, as a general rule and absent specific relevant circumstances pointing in another direction, the language of the patent as the language of the proceedings cannot be considered to be unfair in respect of the claimant” (para. 34).

The admissibility of the Application is not disputed by the Respondents. According to the consistent case law, a request pursuant to R. 323 RoP should preferably be filed at an early stage of the proceedings before the Statement of Defence is lodged (UPC_CoA_207/2024 - APL_24598/2024 – Order dated 5 September 2024 – Parag 19-20).

Considering the above, the Application shall be granted for the following reasons.

Regarding the situation of the parties, HyGear B.V. is a company registered in the Netherlands and using English and Dutch as working languages for its business activities. The same applies to the Claimant in the main proceedings and the other Defendant Syfox – having not objected to the requested change – which operate in English in addition to Danish and German, respectively.

The proportion of practically all evidence submitted in this language reflects the predominant use of English in the relevant field of technology addressed by the patent in question, which relates to hydrogen plants.

As their respective size and subsequent resources are not indicated to be relevant factors in the present case, the Claimant and operating entities involved as Defendants shall be considered to be in a comparable situation (the implication of the Technical University of Munich is not further described by HyGear for the purpose of the present Application).

In support of its objection to the use of English as language of the proceedings, the latter merely refers to the general principle according to which the Claimant is given the right to choose either German or English, which is the other language designated pursuant to Art. 49.2 UPCA, and to the fact that only one Defendant has its registered offices outside Germany. It is not referring to any specific reason why it would be negatively affected by the requested change.

On the other hand, Hygear BV – which is reproached with pursuing the allegedly infringing acts of commercialisation and development alongside Syfox, according to its statement – should be able to communicate efficiently with the other parties in view of its Defence without having to rely on translations, which represent a significant disadvantage in terms of costs and delays. This is all the more validly put forward in the context of accelerated proceedings such as those at hand.

It follows from the above that the balancing of the respective interests appears to be in favour of the Applicant, despite the objection raised by one of the Defendants and the domicile of three out of five parties involved in the dispute.

Finally, it should be noted that the course of the proceedings – which has already been slowed down by issues encountered in the service of the Application and representation – is not likely to be further impacted by the adoption of English. This absence of negative impact is of importance in deciding on the Application to change the language initially chosen (CoA_101/2024 – APL_12116 – order dated 17 April 2024 – para. 25).

The Application shall consequently be granted without further specific translation or interpretation arrangements, which have not been requested.

ON THESE GROUNDS

- 1- The language of the proceedings shall be changed to the language in which the patent was granted, namely English.
- 2- The present order shall not be conditional on specific translation or interpretation arrangements.
- 3- An appeal may be brought against the present order within 15 calendar days of its notification pursuant to Art. 73. 2 (a) UPCA and R.220 (c) RoP.

ORDER

Issued on 20 March 2026

NAME AND SIGNATURE

Florence Butin
President of the UPC Court of First Instance

FLORENCE ANNE BUTIN Signé numériquement par
FLORENCE ANNE BUTIN
Date : 2026.03.20
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