Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Düsseldorf Local Chamber

UPC_CFI_1696/2025

Order

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

GUIDING PRINCIPLES:

1. There is a basis for concern regarding an expert's impartiality if 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. If the concern regarding bias is based on the performance of the expert's assignment itself, it must be taken into account that the content of the expert opinion as such is not sufficient to raise doubts about the expert's impartiality. Even an erroneous expert opinion 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 witness; Inspection and preservation of evidence; Examination proceedings

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

PETITIONER:

Topsoe A/S, represented by its CEO Roeland Baan, Haldor Topsaes AIlé 1, DK-2800, Kgs. Lyngby, Denmark

represented by:	Attorney Dr. Christine Kanz, Attorney Klaus Haft, Attorney Dr. Alexander Bothe, Attorney Antonia Wilhelm, Attorney Thomas Pfeffermann, HOYNG ROKH MONEGIER, Steinstraße 20, 40212 Düsseldorf, Germany
Electronic service address:	christine.kanz@hoyngrokh.com

RESPONDENTS:

1. SYPOX GmbH, represented by Managing Director Gianluca Pauletto, Am Waldrand 3, 85354 Freising, Germany

2. **Josef Kerner Energiewirtschafts-GmbH,** represented by Managing Director Josef Kerner, Papst-Viktor-Str. 27, 91795 Dollnstein, Germany

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

EUROPEAN PATENT NO. EP 3 802 413 B1

DECISION-MAKING BODY/CHAMBER:

Panel 1 of the Düsseldorf Regional Board

JUDGES:

This decision was issued by Presiding Judge Thomas, legally qualified Judge Dr. Schumacher as rapporteur, and legally qualified Judge Agergaard.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: R. 197.3 VerfO — Review of an order for inspection and preservation of evidence; Recusal of the expert witnesses due to concerns regarding bias

ORAL HEARING: March 23, 2026

BRIEF STATEMENT OF THE FACTS:

1. The applicant is the owner of European Patent EP 3 802 413 B1 (Annex HRM 4a; hereinafter the "patent in suit"), which was filed on May 15, 2019, claiming the priorities of DK PA201800249 and EP 18175366 dated May 31, 2018, as well as DK PA201800636 dated September 25, 2018, with English as the language of the proceedings. The grant of the patent-in-suit was published on July 5, 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 November 21, 2025.

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

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

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

5. Claim 1 is formulated as follows in the English 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 catalyzing 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 English version of the specification:

> "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 catalyze 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:

pressurizing said feed gas to a pressure of between 5 and 200 bar, supplying said pressurized 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 to produce 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 production plant for producing hydrogen, wherein the hydrogen production 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 arranged to catalyze 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 to heat 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 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."

8. Claim 22 reads in English:

"A method for producing hydrogen from a feed gas comprising hydrocarbons in a hydrogen production plant, wherein the hydrogen production 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 arranged to catalyze 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:

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

feeding the pressurized feed gas to the reforming reactor system,

allowing the steam reforming reaction of the feed gas to occur 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 that connect 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,

introducing 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 said water in a flash separation step, thereby providing a dry water-gas shift product gas, and

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

9. On November 21, 2025, the petitioner filed a motion for an order to conduct an inspection and preserve evidence at the headquarters and production facility of Respondent 1, as well as at the headquarters and premises of Respondent 2.

10. The Düsseldorf Local Chamber subsequently issued the following order on November 25, 2025:

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

1. The petitioner is permitted to have an expert and a bailiff inspect the following documents and records, which includes, in particular, the making of physical and/or digital copies, located at the sites of Respondent 1 (Waldrand 3, 85354, Freising, Germany, and Eichenstraße 9, 85416 Langenbach, Germany) and at the premises of Respondent No. 2 (Papst-Viktor-Str. 127, 91795 Dollnstein, Germany, and Beim Weiher 1, 91795 Dollnstein, Germany). In particular, inspection of the following documents is permitted:

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

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

the structure and components of the reactor;

the reactor's 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 inside the reactor and its positioning relative to the aforementioned catalysts and all electrically conductive parts;

3. *Photos, presentations, or comparable documents showing the following:*

the aforementioned hydrogen production plant in a fully assembled state or in a preliminary assembly/construction phase (e.g., in so-called pre-installation photos);

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 accessible from the inspected locations.

II. *In the alternative to I., if none of the documents listed under I. 1. to 3. are made available by the respondents:*

The petitioner is entitled to remove all computers and/or laptops from the respondents' premises in order to analyze whether documents pursuant to I. 1. through 3. are stored on them, and to make digital copies of these documents. The respondents are requested to provide all necessary passwords or other means of accessing these documents.

III. *The petitioner is permitted to inspect the electrically heated hydrogen production plant located at the production facility of Respondent 1 (Waldrand 3, 85354, Freising, Germany) and at the business premises of Respondent 2 (Beim Weiher 1, 91795 Dollnstein, Germany), which is normally designated by the model name SYPOXH-200 or SYPOX H-400, by an expert and a bailiff, which includes the taking of photographs and video recordings, and in particular:*

1. *visually inspecting 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 lines and valves, instruments, and auxiliary equipment such as pumps, compressors, and/or heat exchangers;

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

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 such data.*

V. *In the alternative to III., if the inspection (in particular of the interior of the reactor of the electrically heated hydrogen production plant, which is 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 obligated 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. Upon notification by Respondent 1 or Respondent 2 that the plant has been shut down, the inspection must take place immediately.*

VI. *The experts shall, within a period of three weeks, provide a detailed"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 for assessing the infringement of the patent in suit."*

The detailed description to be prepared by the experts and all other findings from the inspection and preservation of evidence may only be used in the main proceedings against Respondent 1 and/or Respondent 2.

VII. *The following persons are appointed as experts:*

Ms. Annkathrin Solf, patent attorney at the law firm Solf & Zapf, for the on-site inspection at Respondent 1

and

Mr. Philipp Harlacher, patent attorney at the law firm Solf & Zapf, for the inspection at Respondent 2

, both of whom are based 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,*

bailiff Reinhard Hierl (for the registered office of Respondent 1 in Freising),

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

and

bailiff Verena Späth (for the registered office and business premises of Respondent 2 in Dollnstein)

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

IX. Attorney Klaus Haft, Attorney Christine Kanz, Attorney Alexander Bothe, Attorney Antonia Wilhelm, and Attorney Thomas Pfeffermann, all EPG representatives and legal representatives of the petitioner in this matter from the law firm HOYNG ROKH MONEGIER, Steinstraße 20, 40212 Düsseldorf, to be present during the measures requested under Sections I through V, whereby another attorney 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 locations of Respondent 1, only one of the aforementioned legal representatives of the Petitioner may be present at any given time. The same applies to the inspection and preservation of evidence at both locations of Respondent 2. Here, one additional one of the aforementioned legal representatives of the Petitioner may be present.

Representatives 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 preservation of evidence, and in particular the bailiff, the expert, and the applicant's legal representatives, are obligated 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, the aforementioned persons may not, until an order of release is issued by the Unified Patent Court, 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 seized documents, or the detailed description to be prepared by the expert.

XI. The respondents shall be requested to comment on their potential confidentiality interests after the experts have submitted the detailed description. The legal representatives of the petitioner, who are present during the inspection and preservation of evidence, shall be heard. Only thereafter shall the court decide whether and to what extent the detailed description shall be personally disclosed to the petitioner and whether the duty of confidentiality for the petitioner's representatives shall be lifted.

XII. The respondents are required to cooperate in the implementation of the measures requested under items I through 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 (whether in physical or digital form), in particular to remove any obstacles to access (which specifically includes 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 managing 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 violation of this order, the court may impose a penalty payment for each violation by each party, the amount of which the court may determine taking into account 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 preliminary measures and instructions for accessing the proceedings in the CMS," immediately upon the execution of the measures. The service of these documents shall be carried out in cooperation with the bailiff present at the time.

XV/. The applicant is obligated 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 at the request of the respondents or shall otherwise lapse if the petitioner, within a period of no more than 31 calendar days or 20 working days, whichever is longer, after the detailed description to be prepared pursuant to Section VI has been disclosed to the petitioner, or the court has decided by a final decision not to grant access to this description, has filed a lawsuit against Respondent 1 or Respondent 2.

XVIII. The order is immediately enforceable.

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

11. On the same day, November 25, 2025, the applicant filed a motion to correct this order because the original motions contained inaccuracies that were reflected in the operative part of the order.

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

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

1. On page 15, paragraph 1 reads:

'... at the locations of Respondent 1 (Waldrand 3, 85354, Freising, Germany, and Eichenstraße 9, 85416 Langenbach, Germany) and at the locations of Respondent No. 2 (Papst-Viktor-Str. 127, 91795 Dollnstein, Germany, and Beim Weiher 1, 91795 Dollnstein, Germany) ..."

now:

". . . at the locations of the first respondent (Am Waldrand 3, 85354 Freising, Germany, and Eichenstraße 9, 85416 Langenbach, Germany) and at the 3 locations of Respondent No. 2 (Papst-Viktor-Str. 27, 91795 Dollnstein, Germany, and Beim Weiher 1, 91795 Dollnstein, Germany) ...".

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

"... at the production facility of the first respondent (Waldrand 3, 85354 Freising, Germany) ..."

it now reads:

"... located at the production facility of the first respondent (Eichenstraße 9, 85416 Langenbach, Germany) ..."

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

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

14. The expert Harlacher, assisted by Senior Bailiff Späth, conducted the inspection and preservation of evidence on the premises of Respondent 2 (see enforcement record, Exhibit HRM 16). Dr. Gianluca Pauletto, managing director of Respondent 1, was present on site. Expert Harlacher found the following facilities on the premises of Respondent 2:

A facility in the wood-paneled container shown below, hereinafter referred to as "Pilot 0" (see the expert's detailed report dated December 30, 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 dated December 30, 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 exterior wall. During the inspection and preservation of evidence on November 26, 2025, the expert Harlacher initially expressed doubt as to whether this facility was covered by the order of November 25–26, 2026. Following an on-site assessment he conducted, the expert determined that, in his opinion, the facility was covered by the order and, among other things, took photographs of the facility and secured relevant documents. In a letter dated December 1, 2025, the petitioner stated that, in her view, the inspection of this additional facility was not covered by the order. The petitioner further explains that, according to the persons present on site, while the reformer belonging to Respondent 1 was installed in this facility, the facility itself apparently originated from Hygear in the Netherlands.

16. The expert witness Soll conducted the inspection and preservation of evidence on the premises of Respondent 1.

17. She found a system in the gray container shown below, which is hereinafter referred to as “Pilot 1” (see the expert’s detailed description dated December 30, 2025, p. 62):

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

18. In a written submission dated December 25, 2025, the first respondent filed a motion to review the order for inspection and preservation of evidence pursuant to Rule 197.3 of the Rules of Procedure.

19. The experts prepared their detailed description on December 30, 2025.

20. As early as December 4, 2025, the applicant filed a further request with the Düsseldorf Local Chamber for an order for inspection and preservation of evidence concerning the aforementioned "Pilot 2" facility. On December 10, 2025, the Düsseldorf Local Chamber issued a corresponding order (UPC_CFI_1849/2025). In this regard, an examination procedure pursuant to Rule 197.3 of the Rules of Procedure is also pending.

MAJOR PROCEDURAL STEPS:

Motion for Recusal Against the Experts

21. In a brief filed on February 2, 2026, the first respondent requested that the experts Harlacher and Solf be relieved of their duties due to concerns regarding bias, and that all results of the inspection and preservation of evidence be declared inadmissible and destroyed.

22. In an order dated February 12, 2026, the presiding judge announced that a decision on the motion to recuse the experts and any consequences for the admissibility of the detailed description would be made following the oral hearing.

23. The petitioner has opposed the motions.

24. Expert Solf commented on the recusal motions in a brief dated February 25, 2026, and expert Harlacher in a brief dated February 26, 2026. These were transmitted by the experts to the law firm via Tresorit and

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

25. In briefs dated April 10, 2026, the petitioner and the first respondent each submitted additional comments following the oral hearing, supplementing the motions for recusal and the experts' statements.

Costs of the expert's statement

26. On March 26, 2026, the experts Harlacher and Solf submitted invoices totaling EUR 4,005 (for the services of expert Harlacher) and EUR 1,260 (for the services of expert Solf) to the case file. The billed services relate, at least predominantly, to the preparation of the expert opinions regarding the motion for recusal filed by the first respondent.

27. The reporting judge has given the parties an opportunity to comment on this.

28. In a brief dated April 10, 2026, the petitioner argued that the costs incurred by the first respondent for these additional expert opinions on the motions for recusal should be imposed on the first respondent. These were not costs for the inspection and preservation of evidence pursuant to Section XVI of the Order of November 25–26, 2025. According to the principle of causation applied by the Chamber in the order (see para. 48 of the order), the costs are to be borne by Respondent 1, who, by filing its motion, created the procedural cause of the costs.

29. Respondent 1 emphasized in its brief of April 10, 2026, that the costs of the inspection and preservation of evidence, including the detailed description, pursuant to the order of November 25–26, 2025, are to be borne by the petitioner and that the costs claimed by the experts fall under this category. In her view, however, expert opinions issued in response to motions for recusal do not, as a matter of principle, give rise to reimbursable costs.

Request for release of a redacted version

30. By order dated January 19, 2026, the reporting judge gave the respondents the opportunity to assert confidentiality interests. At the same time, access to the unredacted version of the detailed description dated December 30, 2025, was restricted to the petitioner's legal representatives until a decision was made regarding the respondents' potential confidentiality interests.

31. Respondent 1 asserted confidentiality interests in a brief dated February 2, 2026, and submitted several versions of the detailed description to the record, in which the passages that, in her view, should be redacted are highlighted in gray.

32. In a brief dated February 20, 2026, the petitioner requested an order that the detailed description submitted by the petitioner be made available in a redacted version corresponding to the passages marked by the respondents.

33. Respondent 1 objected to this.

34. In an order dated March 2, 2026, the reporting judge clarified that a decision on the release of the detailed description to the petitioner would be made only after the oral hearing.

Motion to appoint a technical judge

35. With regard to the action for annulment filed with the Central Chamber on March 11, 2026, the first respondent requested in a brief dated March 12, 2026, that a technical judge be appointed pursuant to Rule 33 of the Rules of Procedure (by analogy).

Order for a security deposit in the event of the reactor being opened

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

37. Following the oral hearing, the Chamber subsequently, on the same day, March 23, 2026, the Chamber supplemented the order of November 25–26, 2025, to the effect that, for the time being and pending a decision on the motion for review, the reactor of the hydrogen production plant may only be opened after prior provision of security in the amount of EUR 500,000.

Motion to Stay Enforcement

38. In a brief filed on April 10, 2026, following the oral hearing, the first respondent moved to stay enforcement of the inspection and preservation of evidence order dated November 25–26, 2026.

39. The Chamber rejected the motion by order dated April 14, 2026.

MOTIONS:

Review motion

40. Respondent 1 requests:

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

    The applicant is prohibited from using the findings, documents, and data obtained during the inspection of November 26, 2025, in this or any other proceedings on the merits. The secured documents, records, and/or data 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) regardless 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 obligated to post 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 after the security referred to in Section 11.2 (above) has been fully deposited/provided.

41. The applicant requests:

I. The order of November 25, 2025, be upheld without modification.

II. The respondents shall bear the costs of the

proceedings. Motion for Recusal

42. In a brief filed on February 2, 2025, Respondent No. 1 requested:

1. that the experts Dipl.-Ing. Philipp Harlacher and Dipl.-Ing. Annkathrin Solf be relieved of their duties due to concerns regarding bias;

2. to declare that the expert opinion and detailed description dated December 30, 2025, prepared with the participation of the experts Dipl.-Ing. Philipp Harlacher and Dipl.-Ing. Annkathrin Solf, as well as all findings based thereon, are 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 regarding the "Pilot 1" and "Pilot 2" facilities— in full and irrevocably from all data storage media, to destroy physical documents, and to provide written proof of the implementation of these measures to the court within a period to be determined by the court, by submitting a deletion log and an affidavit.

43. The petitioner requests:

that the motions for recusal against the expert witnesses Harlacher and Solf be dismissed.

FACTS AND LEGAL ISSUES:

Review of the motion

Dual-use nature of the facilities

44. Respondent 1 argues:

45. The contested order is based on the assumption that the facilities 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 technology is technically designed to produce methanol or, for example, synthetic natural gas (SNG) through methanation. The patent in suit exclusively protects 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 suit.

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 submitted Annex HRM 2 to the court, it failed to highlight or even concealed the important reference to the methanol option in the statement of claim, even though, according to its own submission, the ability to produce methanol constitutes general technical knowledge.

47. The petitioner, on the other hand, is of the opinion that the alleged dual-use character 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 also follows beyond doubt 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). Thus, the reactor serves at least in part to produce hydrogen, especially since the remaining components for constructing 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 in the field 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 (H2). In subsequent reaction steps, hydrogen can be extracted from this syngas or methanol (CH3OH) can be formed. Methanol production would require different technical components than 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 multiple occasions (see HRM 8 and 14).

Attorney-Eyes-Only-Club

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

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

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

50. It should be noted that the expert did not selectively secure documents relevant to the audit, but rather copied the entire "Engineering Folder" and "R&D Folder" of Respondent 1 in their entirety. The data volume amounts to over 30 gigabytes. These folders contained not only information on the contested plant, but also the entire technical know-how of the first respondent, 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 involved, not commercial information requiring internal processing and analysis. The petitioner is not dependent on personally reviewing technical information to pursue its legal claims.

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 the design 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 determination of infringement, the relevant passages could be redacted prior to disclosure. A transfer of know-how is therefore not to be feared.

Legal Background

53. After the first respondent filed an action for nullity against the patent-in-suit with the Central Chamber on March 11, 2026, it further argued in a brief dated March 12, 2026, as follows:

54. The situation at hand is as referred to in paras. 43–44 of the Court of Appeal's order of July 15, 2025, in the case of Maguin v. Tiru (UPC_CoA_327/2025).

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

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

Security

57. Respondent 1 considers the order to provide security to be indispensable. The court's reasoning for refraining from ordering security, according to which "at most minor damage" is threatened, constitutes a departure from the general rule under Rule 196.6 of the Rules of Procedure. The petitioner has argued incorrectly in this regard.

58. Due to the disclosure of the design data and process parameters, the first respondent faces the risk of losing its technological lead in the patent-free methanol market. Should the patent at issue prove to be invalid or not infringed in the main proceedings—which, in light of the methanol option, cannot be ruled out—the applicant must at least be liable for the (competitive) harm that has arisen or would arise from the disclosure of the "dual-use" technology. The applicant is not domiciled in Germany, which creates additional hurdles in the enforcement of claims for damages and reimbursement of costs. Furthermore, it cannot be expected that the first respondent bear the risk of the applicant's insolvency.

59. Furthermore, Section 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 petitioner did not have the opportunity to cause such destruction during the inspection on November 26, 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 substantial litigation costs in the EPG proceedings, security of no 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 a security deposit in the event of a false statement made in advance due to a "procedural oversight" would trigger an intolerable incentive effect.

62. The applicant is of the opinion that there is no need to order a security deposit.

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 patent 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 November 26, 2025, and has been completed. The experts were able to view the interior of the reactors there without it being necessary to fully open them, which could have led to damage. Furthermore, the risk of damage to the reactor is not sufficiently substantiated, especially since, according to the first respondent's own submission, the Pilot 1 plant is not even of the same design as the plants relevant to the present proceedings. Furthermore, it is disputed that, in the case of Plant 1, massive cracking and material spalling of the refractory lining occurred solely due to the mechanical stress of the opening process. Rather, it is plausible that the reactor was opened improperly.

65. In any case, the amount of the security deposit should be

set at a low level. Motion for Recusal

66. In its brief of February 2, 2026, Respondent 1 objected to the experts Harlacher and Solf on the grounds of concern regarding bias. It argues as follows:

Expert Harlacher

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

68. The justification for the search of "Pilot 2," according to which this facility was not expressly excluded, demonstrates the zeal to incriminate and the arbitrary investigation. Anyone acting as a court-appointed expert under the premise "What is not expressly prohibited, I inspect and take with me" departs from 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 unauthorized investigations violates his duty of neutrality.

70. The attempted access to the private smartphone of Dr. Pauletto, the managing director of Respondent 1, also demonstrates the expert's bias. Privately used mobile phones belonging to officers of Respondent 1 were not listed in the order. The fact that the managing director of Respondent 1 does not have a separate company cell phone does not make his private device a suitable subject of enforcement by way of a procedural "substitute execution." Any expert who believes he may disregard the clear wording of the order demonstrates his lack of commitment to the court's mandate as set forth 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—one not covered by the inspection order at all—as a "quid pro quo." Furthermore, he had negatively assessed Dr. Pauletto's legitimate refusal in his description.

71. With regard to "Pilot 0" as well, the expert had exceeded his authority under the inspection order. He had himself stated in the expert opinion 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 evident from the dimensions of the piping, the pressure vessels, and the gas supply that "Pilot 0" had completely different dimensions than the H-200/H-400 plants described in the petition. It was clear to the expert that he was not inspecting the H200/H-400 hydrogen production plant, but rather a different plant. Nevertheless, he did not refrain from conducting the inspection, which once again demonstrates his eagerness to incriminate.

72. In its brief of April 10, 2026, the first respondent further points out that the expert exceeded the discretion granted to him to her detriment and that the inconsistency of his approach is evident in the expert opinion itself. For while he acknowledges on the one hand that the "Pilot 2" facility was in any case not physically covered by the order, he nevertheless evaluates the design documents (D1–D12) in great detail. The division of the court order he constructed for this purpose—according to which the physical facility was not covered, but the detailed documents of exactly the same facility were—is untenable and inherently contradictory. The expert is thus not acting neutrally, but as a proactive investigator for the petitioner. The expert's justification, citing the aspect of "third-party ownership," also demonstrates his bias, because he became aware of this aspect no earlier than the suspension of enforcement on December 18, 2025, in the parallel proceeding 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 he only learned two and a half weeks later is fabricating justifications to justify his conduct, which serves the applicant's interests exclusively. 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 inquiry addressed by the expert to the Chamber also reveals his motives. Since the Chamber's order did not provide for a specialized company to open the

reactor, and since the “Pilot 2” reactor could not have been opened at all from a purely practical standpoint, an alternative method obviously had to be found to accomplish this. Since no request for document inspection had been made in the second proceeding (UPC_CFI_1849/2025), the documents (D1-D12) illegally obtained during the first inspection regarding “Pilot 2” were apparently intended to be somehow squeezed into the expert report for the first order.

Sachverständige Solf

73. The expert Solf acted inappropriately during the inspection of “Pilot 1.” The facility was clearly marked as a test facility 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 explicitly required the existence of a “complete plant,” namely a hydrogen production plant. Such a plant must cumulatively include, among other things, a water-gas shift unit and a gas separation unit; otherwise, it is precisely not a hydrogen production plant. If the expert on site determined, and was also expressly informed by Mr. [Name], that these essential components were missing, it is clear that the inspection of this facility could not have been covered by the inspection order. The inspection should then have been omitted. Instead, the expert invasively examined the research reformer with a rod camera and “seized” detailed engineering know-how, particularly regarding 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 respect to claims 1 and 22 of the patent application. The description is objectively suitable for disclosing the most comprehensive technical information possible regarding a single plant component, even though this component is not mentioned in a manner relevant to patent law in the present context. This reinforces the impression of an excessive examination by the expert that is not limited to the purpose of preserving evidence.

75. In the brief dated April 10, 2026, the first respondent points out that the expert Solf also gives rise to concerns of bias by negating her own scope of duties in the opinion dated February 25, 2026. By asserting 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 expert Solf did so with respect to approximately three purely laboratory facilities, which she assessed as irrelevant. Added to this is the untenable suggestion, also contained in expert Solf’s opinion, that the wording “normally” in the order should be equated with
“optional.”

Joint Liability

76. By jointly signing the detailed description, the experts had mutually endorsed the misconduct. Expert Harlacher approved the violation in "Pilot 1," while Expert Solf approved the violation and the de facto circumvention of the stay of execution in "Pilot 2." Taken as a whole, this conduct demonstrates that the experts understood their role not as neutral assistants to the court, but as "investigators" for the petitioner, displaying a clear zeal to incriminate.

77. This paints a picture of experts who, by dividing up the work, ignored the legal boundaries and restrictions of the underlying order in order to serve the petitioner in every respect—whether by physically opening a facility other than H-200/H-400 or by utilizing documents not covered by the inspection order. From an objective perspective, confidence in the impartiality of both experts has thus been irreparably destroyed.

Ungeklärter Informationstransfer

78. In its statement of April 10, 2026, the first respondent further argues that the unexplained transfer of information immediately following the inspection also gives rise to concerns regarding bias. In its application for the second proceeding (UPC_CFI_1849/2025), the applicant had used a photograph of the "Pilot 2" container. This photograph was undoubtedly taken during the first inspection on November 26, 2025. Since 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 petitioner for the preparation of further proceedings constitutes a violation of the duty of neutrality as well as Section X of the order, since the expert in this case is acting as a direct investigative assistant to the petitioner. This also gives rise to concerns regarding bias.

79. The petitioner argues:

80. The motion for recusal is unfounded.

Expert Harjacher

81. The expert witness Harlacher acted within the scope of the authority granted to him by the court in the initial inspection order.

82. During the inspection on November 26, 2025, he was entitled to assume that his duties included inspecting not only the unit labeled "Sypox" but also the unit in the white container labeled "www.hygear.com" ("Pilot 2"). The expert attempted to consult with the court. However, the local chamber left the assessment to him. After repeatedly reading the operative part of the order, he concluded that "Pilot 2" was covered by the order. He made the decision to include "Pilot 2" based on 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 as well, the expert had fully complied with the court's order. Since Dr. Pauletto had stated that he did not own a company cell phone, it was natural for Mr. Harlacher to ask for photos on the smartphone. The aim had never been to gain full access to a private smartphone.

85. The first respondent's argument regarding a (non-existent) patent infringement by "Pilot 0" is irrelevant because the present case involves a procedure for the preservation of evidence. It is not the experts' task to independently examine a possible patent infringement.

Expert. No. 1

86. The expert Solf had also adhered to the powers granted to her by the court in the first order.

87. The "Pilot 1" attachment was covered by the operative part of the order. If the attachment bears a name other than that specified in the order, this issue must be clarified based on the totality of the circumstances. In the present case, all the circumstances indicated that this was the case with regard to "Pilot 1."

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

REASONS FOR THE ORDER:

A. Motion for Recusal

89. The motion for recusal filed by Respondent 1 against the experts is unfounded.

I. Principles

90. An expert appointed to conduct the preservation of evidence and inspection as well as to prepare the detailed description must ensure expertise, independence, and impartiality, R. 196.4, 196.5, 199 Verfo.

91. The duties of a court-appointed expert set forth in R. 186 VerfO apply additionally. Pursuant to R. 186.7 VerfO, the expert is primarily obligated to impartially assist the court with respect to matters falling within his or her field of expertise. He or she must be independent and objective and may not advocate for 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 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.

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

II. Examination on a Case-by-Case Basis

94. Measured against this standard, no concern regarding the bias of the experts Harlacher and Solf can be established.

1. Expert Harlacher

a) Pilot 2

95. The deliberate circumvention of the orders by expert Harlacher, as alleged by the first respondent, cannot be established.

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 interpreted the operative part of the order on-site, as documented in the enforcement record of Senior Bailiff Späth dated November 26, 2025 (Exhibit HRM 25, p. 4). It states:

> *"... After discussion and repeated reading of the operative part of the preliminary injunction, it was decided that the facility at the business premises, as named in the operative part, is thus not expressly excluded in the preliminary injunction and shall therefore be inspected, and an inspection by Mr. Harlacher (SV) may take place."*

97. The Chamber cannot determine that this assessment by the expert was influenced by irrelevant considerations or that it gives rise to doubts regarding 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 record—namely, that the facility is "not expressly excluded"—as an expression of excessive zeal, in particular. Rather, this clearly refers to the fact that, in the operative part of the order of November 25–26, 2025, under Section III, the inspection of the "electrically heated hydrogen production plant located at the business premises of the second respondent … "which is normally designated by the model name SYPOX H-200 or SYPOX H-400." That questions of interpretation arise if more than one plant is found on the premises of the second respondent to which, based on outward appearances, the wording in Section III of the order may apply,

is understandable from an objective perspective. Regardless 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 December 1, 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 February 26, 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 on-site inspection—i.e., Section III of the order—and not the documents held by the respondents—i.e., Section I of the order. Since the petitioner expressly refers to the inspection of the second facility in her letter of December 1, 2025, and justifies this with the ownership structure of the facility, an objective observer would not view the expert's assessment as influenced by non-objective considerations.

99. The Chamber does not share the view of Respondent 1 that the expert altered his interpretation at the applicant's request and justified this with facts that had only become known to him two and a half weeks later upon the discontinuation of enforcement in the second proceeding UPC_CFI_1849/2025. The reference to the ownership structure was already included in the applicant's statement of December 1, 2025 ("However, the equipment apparently originates 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 became known only subsequently to justify it.

100. Nor does the fact that the expert, in his statement of February 26, 2026, made the following remarks regarding the designation of the system in the operative part of the order (para. 4 et seq.) suggest, from an objective perspective, that he was biased:

> *"Pursuant to Section I, the order covers the inspection of documents, including the creation of digital copies, for an electrically heated hydrogen production plant that is 'normally' designated by the aforementioned model number.*
>
> *Thus, due to the use of the term "normally," the order is only optionally linked to a specific designation and, in the expert's understanding, extends to documents available at the aforementioned locations of Respondents 1 and 2 that pertain to the electrically heated hydrogen production plants."*

101. Respondent 1 objects to this assessment by the expert as untenable. She argues that the addition of "normally" in sections I and III of the order of November 25–26, 2025, is intended merely 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 expansion of the authority to
"all facilities." However, even if this were true and the expert's assessment were incorrect, this does not imply that the expert holds a biased 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 refers to the statements 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 about the reactor's internal structure without having to open the reforming reactor, at least partially. In his statement dated
February 26, 2026, the expert witness Harlacher explained that Dr. Pauletto had made several phone calls from the smartphone in connection with the inspection, giving him, the expert witness, the impression that it was a smartphone used for professional purposes. After Dr. Pauletto explained that it was his personal smartphone and that he had no access whatsoever to photos of a hydrogen production plant via it, no further inquiries were made.

103. A knowledgeable and reasonable observer would not interpret the inquiry as a threat, as the first respondent claims. Rather, it appears to be a reasonable approach to avoid having to open the reactor by using existing photos of its interior.

104. Contrary to the view of Respondent 1, the expert Harlacher did not negatively assess the refusal of Respondent 1's managing director in his detailed description. The statement on page 5 ("In response to this request, Dr. Pauletto expressly refused to provide photos from his smartphone.") is a neutral account of the sequence of events.

c) Unrestricted data access/inspection of digital documents

105. The allegation of an unlimited data harvest, which would suggest a biased stance in favor of the petitioner, is also not justified from the perspective of a knowledgeable and reasonable observer. In his opinion dated
February 26, 2026, the expert noted that an individual review of all files on-site was 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 performed, 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 overly extensive data backup does not give rise to concerns of bias. In particular, a knowledgeable and reasonable observer would not expect the expert to review all data for relevance on-site during a single inspection and evidence preservation session.

d) Pilot Q

106. With the allegation that the expert should have refrained from inspecting the "Pilot 0" facility because he recognized or should have recognized that essential components of a hydrogen production plant were missing, the first respondent does not demonstrate an error in the expert's assessment. The question of whether all features of the patent claims are realized is precisely the subject of the detailed

description. In any case, it is not apparent that any misjudgment on the part of the expert is based on a biased attitude and could thus give rise to concerns of partiality.

e) Unresolved Transfer of Information

107. Nor is any concern regarding the expert's bias substantiated by the statements of the first respondent in its brief of April 10, 2026, according to which the photograph of the "Pilot 2" container used by the applicant in the second proceeding (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. Respondent 1 has not provided any concrete evidence of this process, nor, in particular, of the expert's alleged intent. The mere fact that, in Respondent 1's view, the applicant's representatives were not permitted to take photographs is insufficient to support this claim.

2. Expert Opinion!

108. Insofar as the first respondent objects that the examined "Pilot 1" facility does not feature essential elements of the patent in suit and that the expert Solf should therefore have refrained from conducting an examination, the remarks concerning the expert Harlacher regarding "Pilot 0" apply mutatis mutandis.

109. By alleging that "Pilot 0" was clearly a research facility, the first respondent raises the issue of a possible lack of patent infringement for this reason ("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 also cannot agree with the view of the first respondent that, in her opinion of February 25, 2026, the expert attempted to shield the basis of her decision from review. The first respondent refers in this regard to the wording on page 2 of expert Solf's opinion, 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 exists or not."*

111. The relevant statements clearly do not refer to the question of whether the facility is even covered by the operative part of the order, but exclusively to whether it was a pure research facility or not.

112. Nor does the first respondent demonstrate an unobjective attitude 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 be established from an objective perspective that

any misjudgment was caused by circumstances suggesting bias.

113. Insofar as the first respondent objects to the level of detail in the detailed description, which is not commensurate with its relevance, this likewise cannot, upon objective examination, support a concern regarding bias. The preparation of a detailed description was precisely the task of the expert.

3. Overall Assessment

114. Since there is no concern regarding bias with respect to either the expert Harlacher or the expert Solf, any potential mutual attribution resulting from the joint signing of the detailed description is irrelevant.

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

III. No Inadmissibility and Destruction of the Findings

116. The further motions filed by Respondent 1 on February 2, 2026, seeking a declaration that the detailed description and all findings based thereon are inadmissible (Motion 2) and for the complete and irrevocable deletion of all data collected during the inspection and the destruction of all documents (Motion 3) are justified by Respondent 1 solely on the grounds of concern regarding the experts' bias. Since, as explained, this concern is unfounded, the remaining motions are also without merit.

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

117. The costs incurred as a result of the experts' statements regarding the motions for recusal shall be borne by the petitioner in accordance with Section XVI of the order dated November 25, 2025.

118. Accordingly, the petitioner is obligated to bear the costs of the inspection and preservation of evidence, including the detailed description. This provision does not impose any restriction on the conduct of the on-site inspection and preservation of evidence or the preparation of the detailed description. The motion for recusal was filed in the examination proceedings pursuant to Rule 197.3 of the Administrative Procedure Code and is thus still part of the proceedings for 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 para. 48 of the order. That provision states that the applicant must bear the costs in any event until further notice, since she is requesting the inspection. However, it cannot be inferred from this that the requesting party must always bear the costs.

120. A different obligation to bear costs may, if necessary, have been ordered in a possible main proceeding, which is also made clear by the phrase "at least until further notice."

B. Motion for Review

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

I. Admissibility of the motion for review

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

123. Pursuant to Rule 197.3 of the Rules of Procedure, the motion to review the order for preservation of evidence must be filed 30 days after the measure was executed. The preservation of evidence and inspection took place on November 26, 2025. Respondent 1 filed the motion for review on
December 25, 2025, and thus within the time limit.

II. §Unfoundedness of the Review Application

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

1. Grundsätze

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

126. The Düsseldorf Local Chamber concurs with the principles established by the Brussels Local Chamber in the order of November 12, 2025 (UPC CFI 407/2025 — Organon Heist v. Genentech) (see also UPC CFI 834/2025 (Düsseldorf Local Chamber), Order of December 19, 2025, para. 34 et seq. — Ecovacs Robotics v. Roborock). Accordingly, the Court must conduct a two-part review within the framework of the examination under Rule 197.3 of the Rules of Procedure:

127. First, the court must examine whether it was correct in deciding to issue an ex parte order for inspection and preservation of evidence (Rule 194.1(d) in conjunction with Rule 194.2 of the Rules of Procedure). In making this assessment, the court must consider the facts and evidence (i) that were presented in the motion for an order for inspection and preservation of evidence, and (ii) that, if not disclosed to the court, are either publicly known or are deemed to be reasonably known to the applicant. If facts and evidence have not been disclosed, the court must determine whether this failure constitutes a breach of the applicant's duty under R. 192.3 (Procedure). Under this provision, the applicant must disclose all facts known to him that could influence the court's decision on whether to issue an order without a hearing of the respondent.

128. The court must then determine whether the order for inspection and preservation of evidence should be modified, revoked, or confirmed, R. 197.4 Verfo. In making this determination, the evidence to be considered is not limited to that which is either publicly available or reasonably known to the applicant. Rather, this review encompasses all facts and evidence presented by the parties,
R. 197.3(b) VerfO. The assessment relates to the substantive review of the

requirements for issuance (Art. 60(1) and (3) EPGÜ) as well as the scope and conditions set forth in the order for inspection and preservation of evidence.

129. The aforementioned assessment steps must be carried out as of the date of issuance of the order to be reviewed.

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

2. Review/in the individual case!!

131. The first respondent has failed to demonstrate such errors.

a) Dual-use character

132. The possibility of using the plant for the production of methanol is irrelevant to the possibility of a patent infringement and thus also to the legality of the issued order for inspection and preservation of evidence. Respondent 1 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 regard.

b) Validity of the Patent in Question

No Need to Consult a Technical Judge

134. It must first be noted that the involvement of a technical judge was not required in the examination proceedings by analogy with Rule 33 of the Rules of Procedure.

135. Rule 33 of the Rules of Procedure applies only to infringement proceedings. The provisions concerning the preservation of evidence and inspection contain no corresponding provision. The first respondent also assumes this.

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

137. The purpose of a request for inspection and preservation of evidence differs from that of an action on the merits (see UPC_CoA_239/2025, Order of May 28, 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 R. 196.2, 199.2 of the Rules of Procedure), which also includes the use of such evidence to determine whether proceedings on the merits or proceedings for interim measures should be initiated at all (see UPC_CoA_177/2024, Order of
July 23, 2024, Headnote 1 — Progress Maschinen & Automation v. AWM; UPC_CFI_407/2025 (Brussels Division), Order of November 12, 2025, Headnote 4 — Organon Heist v. Genentech). By contrast, the proceedings for preservation of evidence and inspection are not aimed at a final resolution of disputed issues between the parties (see also UPC_CFI_1325/2025 (Düsseldorf Division), Order of January 23, 2026, para. 17 — Van Loon Beheer v. Inverquark).

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

A final clarification of technical issues, which would require the involvement of a technical judge, does not take place.

No examination of the merits

139. As the Board has already stated in the order of November 25, 2025, an examination of the validity of the patent in suit is generally not to be conducted within the framework of the proceedings for inspection and preservation of evidence. The opposite may apply only if there are clear indications to cast doubt on the validity of the patent in question, for example as a result of a negative validity decision (see UPC_CoA_327/2025, Order of July 15, 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 objectionable.

140. The fact that an action for nullity has now been filed and the validity of the patent is being challenged does not therefore render the order erroneous. As explained above, what matters is the time at which the order was issued.

141. Apart from that, the filing of an action for annulment and the arguments presented in that regard are in any case insufficient to cast doubt on the validity of the patent within the meaning of the principles outlined above on the basis of clear indications. Respondent 1 relies on 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. To the extent that the first respondent argues that the leakage of design data and process parameters threatens the loss of a technological advantage in the patent-free methanol market, this argument does not hold.

143. Respondent 1 is protected in this regard by the assertion of confidentiality interests to the extent that information is involved that is included in the detailed description and its annexes.

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

Imminent destruction of the equipment upon opening

145. The first respondent has plausibly argued that opening the reactor poses a risk of significant damage. She based this argument on the fact that the opening of another reactor (“Pilot 1”) at an earlier date had resulted in irreversible damage to that reactor. The petitioner has been unable to refute this argument. She has merely pointed out that the opening must have been improper. However, she has not provided any concrete evidence to support this.

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

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 any particular damage was imminent at the time of the order or is now imminent.

d) Attorney-Eyes-Only

148. The first respondent asserts, irrespective of the assertion of specific confidentiality interests (see below under D.), in the context of the motion for review, 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 far as the detailed description and its annexes are concerned, these must be reviewed in accordance with the assertion of confidentiality interests before being released to the petitioner (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 its legal representatives, even after the information contained in the detailed description and its annexes has been released. Pursuant to Section X of the order dated November 25, 2025, the expert is bound to maintain confidentiality regarding all facts that come to his or her knowledge in the course of executing the order (see also R. 186.5 VerfO). This obligation continues even after the conclusion of the proceedings.

C. Disclosure and Protection of Confidential Information

151. Confidentiality interests may be asserted independently of a request for examination under Rule 197.3 of the Rules of Procedure and require a separate assessment (see UPC_CoA_177/2024, Order of July 23, 2024, para. 12 — Progress Maschinen & Automation v. AWM). A separate decision will therefore have to be made following the examination proceedings regarding the scope of disclosure of the detailed description, taking into account the confidentiality interests asserted by the first respondent.

D. Violation of the Confidentiality Order

152. The question of whether the applicant or its representatives violated the confidentiality order contained in the order of November 25, 2025, which is subject to review here, by filing the application in Case UPC_CFI_1849/2025 concerning the "Pilot 2" facility is irrelevant to the present review. It therefore does not require further examination.

ORDER:

1. The motion filed by Respondent 1 on February 2, 2026, to relieve the experts Dipl.-Ing. Philipp Harlacher and Dipl.-Ing. Annkathrin Solf of their duties due to concerns regarding bias, is denied.

2. The remaining motions filed by Respondent 1 on February 2, 2026, seeking a declaration that the detailed description and all findings based thereon are inadmissible (Motion 2) and seeking the complete and irrevocable deletion of all data collected during the inspection and the destruction of all documents (Motion 3) are also denied.

3. It is clarified that invoices No. 26200509 and No. 26200510 dated March 26, 2026, from the experts Solf and Harlacher pertain to costs of the inspection and preservation of evidence within the meaning of Section XVI of the order dated November 25, 2026. These costs are therefore to be borne by the petitioner.

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

5. In all other respects, the motion by Respondent 1 to review the order for an inspection and preservation of evidence, including all ancillary motions, is denied.

6. The motion by Respondent 1 to have a technically qualified judge appointed is denied.

7. The appeal is allowed.

Issued on May 4, 2026
NAMES AND SIGNATURES

Presiding Judge Thomas	Ronny Thomas Digitally signed by Ronny Thomas Date: 04/29/2026 14:40:17 +02:00
Legally qualified judge Dr. Schumacher	Julia Kathrin Schumacher Digitally signed by Julia Kathrin Schumacher Datum:2026.04.29 08:36:40 +02'00'
Legally qualified judge Agergaard	Peter Juul Agergaard Digitally signed by Peter Juul Agergaard Date: 04/29/2002 09:07:20 +02'00'
For the Deputy Registrar	LAURA CHANTAL DANIEL Digitally signed by LAURA CHANTAL DANIEL Datum: April 29, 2026 10:48:42 +02'00'

INFORMATION REGARDING THE APPEAL

The respondent may file an appeal against this order within 15 days of its service (Art. 73(2)(a), 60 EPGÜ, R. 220.1(c), 224.1(b) VerfO).