

ORDER
of the Court of Appeal of the Unified Patent Court
concerning an application for suspensive effect (R. 223 RoP)
issued on 26 May 2026

APPELLANT AND APPLICANT (DEFENDANT IN THE INFRINGEMENT PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

1) Xingi Technology CO.,Ltd., No. 26 Xianghai Road, Yangkou Town, Rudong Country, 226407, Nantong City, Jiangsu Province, CN

2) Jiangsu Jiuzhou Xingji High-Performance Fiber ProductsCo., Ltd., No. 128 JialingJiang Road, Rudong Economic Zone, 226400, Jiangsu, CN

represented by Michael Rüberg and Lars Oliver Eggersdorfer, Boehmert & Boehmert

RESPONDENT (CLAIMANT IN THE INFRINGEMENT PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Avient Protective Materials B.V., Urmonderbaan 22, Building 200, 6167 RD, Geleen, NL

represented by Tjibbe Douma, Laurens Buijtelaar, Philippa van Henge and Andreas Obermeier, Bird & Bird

PATENT AT ISSUE

EP 2 791 402

PANEL

Panel 1b

Klaus Grabinski, presiding judge and president of the Court of Appeal

Paolo Catalozzi, legally qualified judge and judge-rapporteur

Emmanuel Gougé, legally qualified judge

DECIDING JUDGE

This order has been issued by the panel

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Court of First Instance of the Unified Patent Court, The Hague Local Division, dated 11 May 2026

Numbers attributed by the Court of First Instance: UPC_CFI_478/2025 and 585/2026

SUMMARY OF FACTS

1. Within the framework of the infringement action brought on 13 June 2025 by the respondent against the appellants before The Hague Local Division in relation to the patent at issue, the judge-rapporteur, by the impugned order, ordered the defendants (appellants herein), pursuant to Rule 190 'RoP', to produce within two weeks of the issuing of the order the following evidence:
 - i. At least 30 kg each of UD Fabric/ballistic sheets of J300_120H_2UD and J300_130S_4UD, or samples of commercially equivalent available variants;
 - ii. The English version or versions of the Introduction Video that was/were available online via the Xingi Group's website on or after 28 November 2018, subject to a recurring penalty of EUR 1,000 for each day of delay.
2. The impugned order notes that the claimant's application for production sought, with respect to the products under item i., internal technical documentation consisting of all ballistic test reports, $\$V_{50}$ test results, and $\$E_{abs}$ (absorbed energy) calculations within the defendants' control for each panel type manufactured from those sheets and, with respect to the video under item ii., internal communications relating to the decision to remove or replace the video, including communications specifically concerning the removal of the world map and the European arrow.
3. The order further states that the claimant justified the necessity of the production order by arguing, with respect to the physical samples under item i., that they could not be purchased on the market given that UD fabrics are intermediate products in a B2B (Business-to-Business) supply chain and are unavailable through ordinary commercial channels, and that the yarn samples already in its possession were insufficient to assemble the full ballistic panels required to perform the testing specified in the patent claims. They argued that this evidence is needed to prove the infringement of patent claims 13, 14, and 15 (relating to areal density and ballistic performance) through actual testing. Regarding the video under item ii., of which the claimant was only able to preserve a hyperlink and a snippet, it allegedly displays a world map with an arrow pointing explicitly to Europe, thereby constituting direct evidence of a commercial offer directed at a European audience.
4. The judge-rapporteur of The Hague Local Division found that the preliminary requirements under Rule 190 RoP were satisfied. She highlighted, first, that the entitlement to and validity of the patent did not appear to be reasonably disputed, that there was a sufficient prima facie case

of infringement of claims 13–15 based on the evidence already produced for claims 2–4 and 8–10, and that, as noted by the defendants themselves, the alleged infringement could only be established through "actual testing". She further observed that the requested evidence (UD fabric samples and the video) was sufficiently specified and was indubitably within the defendants' control or availability. Regarding the requirement of necessity, proportionality, and equity, she considered it appropriate to limit the production order solely to the two types of fabric requested in the alternative (J300_120H_2UD and J300_130S_4UD), or their current commercial equivalents if no longer available, while confirming the quantity of 30 kg per type. Conversely, she deemed the production of the defendants' internal test data and calculations unnecessary, given that they were not performed under the specific conditions required by the patent and were consequently not useful for resolving the dispute. As for the video, she granted the application for production of the company introduction video, but excluded the internal communications regarding its removal, as this was considered unnecessary and disproportionate at that stage of the proceedings. She, finally, deemed that there were no confidentiality issues that need to be considered, as these were substantiated by the defendant only with respect to their internal documentation whose request for the exhibition was entirely dismissed.

5. On 15 May 2026, the appellants lodged an appeal against the impugned order and simultaneously filed an application for suspensive effect under Rule 223 'RoP'. The appellants argue that the judge-rapporteur issued the order without granting the defendants an opportunity to be heard on two decisive issues: first, the claimant's contradictions, given that the claimant, in its Reply to the Statement of defence, admitted to having successfully obtained and tested samples of J300 fabric falling within the patent specifications; and second, the definition of "production", which was unilaterally interpreted by the judge-rapporteur to mean the physical delivery and shipment of the samples to claimant's registered address in the Netherlands.
6. Furthermore, they contend that enforcement within the two-week deadline set by the judge-rapporteur would render the appeal entirely devoid of purpose, forcing the appellants into an untenable double bind: they would either have to violate Chinese export control regulations – since the ballistic materials at issue are subject to strict military-grade export controls in China and obtaining the necessary permits takes approximately 1 to 2 months, exposing the individuals involved to fines and criminal detention of up to 5 years – or violate the court order to comply with Chinese export controls, thereby facing recurring penalty payments and the drawing of adverse inferences in the proceedings on the merits.
7. The appellants further submit that the impugned order suffers from two manifest errors : first, a misapprehension of facts regarding the commercial availability of the fabric on the open market; and second, an ruling *ultra petita*, in that by ordering the samples to be delivered directly to the Netherlands, the judge-rapporteur went beyond the requests originally formulated by the claimant in its application.
8. Finally, they conclude by highlighting that their interest in avoiding severe criminal and administrative penalties in China outweighs the claimant's interest. The claimant would suffer no prejudice from a brief stay, as the next stage of the proceedings on the merits (the interim conference) is scheduled only for October 2026, leaving ample time to conduct any necessary test.
9. On 20 May 2026, the respondent filed its written comments, asserting that the appellants'

argument regarding the impossibility of delivering the ordered samples to the Netherlands within two weeks – due to Chinese export controls – was belated, as it had not been raised during the Rule 190 RoP proceedings. Furthermore, the respondent contended that parties facing a realistic prospect of a court-ordered obligation are expected to take proactive preparatory steps in anticipation of such an outcome, including, where applicable, the initiation of any necessary regulatory processes. The respondent further argued that this submission was inconsistent with the appellants' claim that their products circulate freely within the European B2B market and noted that no documentary evidence regarding the alleged regulatory regime had been produced.

10. The respondent further maintained that there was no violation of fundamental procedural rights, that the enforcement of the impugned order would not render the appeal devoid of purpose, and that the order contained no manifest errors.

GROUNDS FOR THE ORDER

Admissibility.

11. The application is admissible, as it refers to an order against which an appeal was timely filed pursuant to Article 73(2) UPCA and Rule 220(1)(c) RoP. Furthermore, the application sets out the grounds upon which suspensive effect should be granted, alongside the facts, evidence, and legal arguments in support thereof.

Legal framework.

12. On the merits, the application is found to be well-founded.
13. As established by the settled case law of this Court, suspensive effect shall only be granted to appealed orders under exceptional circumstances that justify an exception to the principle laid down in Article 74(1) UPCA. This principle applies with particular force to appeals against procedural orders, in view of the necessity to avoid impeding the expeditious conduct of first-instance proceedings. Indeed, while Article 74(3) UPCA provides that an appeal on such matters – including, as in the present case, an appeal against an order to produce evidence – shall not prevent the continuation of the proceedings, it nonetheless stipulates that the Court of First Instance shall not render a final decision in the main proceedings before the Court of Appeal has issued its decision concerning the appealed order.
14. In this regard, it must be examined whether the appellant's interest in maintaining the status quo – namely, in avoiding the immediate effects of the impugned order – until a decision is made on the merits of the appeal, exceptionally outweighs the Respondent's interest in the immediate enforcement of this order.
15. A first category of circumstances justifying the grant of suspensive effect has been identified in cases where, absent such a stay, the appeal would be rendered devoid of purpose or largely ineffective, because the consequences of enforcement of the impugned order cannot be effectively reversed should that Order later be set aside (UPC_CoA_407/2023, Order of 6 November 2023, Ocado v. Autostore, para. 6; UPC_CoA_177/2024, Order of 2 May 2024, Progress Maschinen v. AWM, para. 10; UPC_CoA_301/2024, Order of 19 June 2024, ICPillar v. ARM, para. 7).

16. This criterion reflects a fundamental requirement of effective judicial protection, according to which the availability of an appellate remedy must not be merely formal but practically effective. Where enforcement gives rise to effects that are not fully reversible – whether in legal, economic, or factual terms – the subsequent success of the appeal would not restore the appellant to its original position, thereby depriving the appellate proceedings of their proper function.
17. The power to grant suspensive effect operates as a mechanism aimed at preserving the utility of the process, ensuring that the passage of time and the immediate enforcement of the decision do not frustrate the corrective function of appellate review. In this respect, it is closely linked to the rationale underlying the provisional measures, which seek to prevent situations in which ex post remedies, including monetary compensation, are insufficient to redress the harm suffered. The underlying assumption is that not all consequences of enforcement are fully compensable: certain forms of prejudice may escape complete reparation. In such circumstances, allowing enforcement would confer an irreversible advantage on one party and undermine the equality of arms in the appellate stage. Accordingly, the grant of suspensive effect is justified where it is necessary to ensure that the appeal remains an effective instrument of judicial review, capable of producing concrete and not merely declaratory results.
18. A further category of situations that could justify suspensive effect arises where the impugned Order is manifestly wrong (UPC_CoA_4/2024, Order of 18 January 2024, Meril v. Edwards; UPC_CoA_894/2025, Order of 2 December 2025, Windhager v. Belissa, para. 10; UPC_CoA_44/2026, Order of 24 March 2026, ALPINA v. CUP&CINO, para. 11), i.e., based on factual findings or legal considerations that are clearly untenable, even on the basis of a summary assessment (UPC_CoA_549/2024, Order of 29 October 2024, Belkin v. Philips, para. 60; UPC_CoA_430/2025, Order of 20 May 2025, Chint v. Jingao, para. 12).
19. Within the scope of these situations, the Court may also consider instances where there is an evident breach of fundamental procedural rights, such as the right to a fair hearing, provided that such a breach is liable to affect the outcome of the proceedings (UPC_CoA_549/2024, Order of 29 October 2024, Philips v. Belkin; UPC_CoA_737/2025, Order of 15 August 2025, RiVOLUTION v. Cilag).

Violation of fundamental rights.

20. The applicants assert that their fundamental right to be heard was infringed upon regarding two points. The first concerns a statement made by the respondent in its Reply to the Statement of defence, in which it allegedly acknowledged having sourced certain samples of the J300 UD fabric (J300-130S-4UD) and having determined that its areal density fell within the range specified in claim 14. Consequently, the applicants argue that, had they been given the opportunity to be heard on this matter, it would have demonstrated the contradiction between the request for production and the respondent's own statements, thereby proving that the production order was unnecessary, as the respondent had already secured the material in question and performed the relevant tests.
21. The second point concerns the determination of the location for the production of evidence, which the judge unilaterally designated as the respondent's registered address or to any other address in the Netherlands indicated by the respondent, despite the absence of any such request in the application. The applicants contend that, had they been heard on this point, it would have highlighted that the respondent operates subsidiaries in China – locations in closer proximity to

the applicants' own seats – and that, due to Chinese export control regulations, they could not comply with the order within the imposed timeframe, as it would require obtaining the necessary export authorizations.

22. As is well established, the right to be heard is a fundamental component of the right to a fair trial (Art. 6 ECHR; Art. 47 of the Charter of Fundamental Rights of the European Union). It ensures that every party has the opportunity to present its arguments, both in fact and in law, thereby participating effectively in the judicial decision-making process and addressing any element deemed relevant to the proceedings.
23. In the present case, the impugned Order originated from an application filed by the respondent pursuant to Rule 190 RoP on 27 March 2026. Following an invitation from the judge-rapporteur, the current appellants submitted their written observations on 2 April 2026.
24. Regarding the applicants' claim that the statements contained in the Reply to the Statement of defence were overlooked, this argument is unfounded. Those statements pertained to events that occurred subsequent to the filing of the Rule 190 RoP application, and the facts described therein were not considered by the judge-rapporteur in the impugned Order. Consequently, there has been no violation of the right to be heard. The matter at hand is merely the emergence of a subsequent fact which, if submitted to adversarial debate, might have led the judge to a different assessment. However, the judge-rapporteur performed the evaluation based on the factual and legal circumstances existing at the time the application was filed, and the current applicants were afforded ample opportunity to be heard on those specific circumstances.
25. Regarding the claim that the applicants were not heard on the location where the evidence was to be physically deposited, this argument is likewise without merit. Pursuant to Rule 190(4)(a) RoP, an order to produce evidence must specify, inter alia, "under which conditions, in what form and within what time period the evidence shall be produced". This implies that the application for the production of evidence and the subsequent adversarial process mandated by the judge-rapporteur under Rule 190(3) RoP encompass the modalities for the execution of said order, including the location at which the party burdened with production is to deposit the evidence specified therein. Consequently, the current applicants had the opportunity to submit their arguments on this point when the judge invited them to respond to the Rule 190 RoP application and, therefore, no violation of the right to be heard can be identified in this regard.

Enforcement would render the appeal largely devoid of purpose.

26. The applicants submit that, in the absence of suspensive effect, they would be placed in an untenable position, being effectively compelled to choose between two mutually conflicting obligations: (a) complying with the impugned order by dispatching the samples without delay, thereby violating applicable Chinese export control regulations and exposing themselves and their representatives to significant administrative fines and potential criminal sanctions; or (b) complying with those regulations, and thus breaching the court order, with the consequence of incurring the penalties provided for in para. 2 of the operative part of the impugned order, as well as the adverse procedural consequences referred to in para. 4 thereof.
27. In this context, the applicants further state that the procedure required to obtain the necessary export permits from the competent Chinese authorities typically requires between one and two months. They also submit that exporting the samples without such permits would entail severe repercussions, including significant fines and criminal detention of up to five years. In support of

these assertions, the applicants rely on a written witness statement from Mr. Jackey Xu, head of the foreign trade department of Applicant 1 (Exhibit App-A 12).

28. At this stage of the proceedings, which involves a summary assessment, this Court finds no sufficient grounds to call into question the credibility of the witness evidence produced by the applicants. Accordingly, the Court accepts, on a *prima facie* basis, the factual and legal framework as presented, namely that: the export of the materials covered by the order to produce evidence is subject to the export control regime by People's Republic of China; compliance with that regime requires the completion of administrative procedures whose duration is incompatible with the time limit set by the judge-rapporteur; non-compliance exposes the applicants to serious consequences, including significant financial penalties and potential restrictions on personal liberty for the individuals involved.
29. This assessment is, however, without prejudice to a full examination of the matter in the appeal proceedings, in which the parties will be required to adduce further evidence on these issues, and the Court will reach its decision on the basis of a complete evidentiary record.
30. In those circumstances, the Court considers that, absent a grant of suspensive effect, the appeal would risk being rendered largely ineffective. While a successful appeal could, in principle, lead to the exclusion of the evidence at issue from the case file, it would not be capable of remedying the further adverse consequences arising from compliance with the impugned order, in particular the sanctions likely to be imposed by the Chinese authorities. Such consequences are, by their nature, not fully reversible and are therefore liable to cause irreparable harm. It follows that, if enforcement were to proceed, the subsequent outcome of the appeal would be deprived, to that extent, of any practical effect, thereby undermining the very purpose of appellate review.
31. The respondent contends that it had identified TNO, an institution based in the Netherlands, as a potential testing facility, and further indicated its own internal testing facility, likewise located in the Netherlands. According to the respondent, the appellants were therefore aware of the realistic possibility that an order to produce samples in that jurisdiction might be issued. Notwithstanding this, the respondent asserts that in their submission in response to the Rule 190 RoP application the applicants did not raise any concerns relating to Chinese export restrictions, nor did they contest the 14-day time-limit proposed for compliance.
32. The Court observes, however, that while the applicants could reasonably have foreseen that the judge-rapporteur might grant the application under Rule 190 RoP and order the production of samples within the European Union, such foreseeability did not give rise to any obligation to initiate – in advance and purely as a precautionary measure – the relevant administrative procedures for the exportation of said materials. The appellants' decision to await the outcome of the judicial determination cannot be regarded as unreasonable, particularly in light of the potential costs and administrative burdens associated with such procedures, which would have proved unnecessary had the application been dismissed.

Manifest errors.

33. The applicants contend that the court's order is manifestly erroneous, insofar as it incorrectly held as "uncontested" a fact – namely, the impossibility of procuring sufficient quantities of fabric on the market for ballistic testing – which, conversely, had been explicitly challenged in the response to the Rule 190 RoP application.

34. The applicants' argument is incorrect. It is evident from the very passages of the pleadings cited by the applicants that they merely asserted that "the accused products are commercially available on the market" and that "Claimant was therefore in a position to obtain samples and conduct its own testing prior to initiating proceedings". The judge-rapporteur did not ignore this contention – which, incidentally, pertains to a fact acknowledged by the claimant itself – and expressly recognized the availability of the product on the market. However, the judge-rapporteur concluded that the performance of accurate testing required quantities of the product exceeding those available on the open market. This circumstance – namely, the impossibility, or at the very least the extreme difficulty, of acquiring the product in the quantity deemed necessary – does not seem to have been effectively challenged by the applicants. Therefore, it appears that the claimed manifest error of the impugned order is not present.
35. Finally, the applicants argue that the judge-rapporteur breached the principle of *ne ultra petita* by ordering that the evidence be produced at the claimant's registered address or to any other address in The Netherlands indicated by the claimant, despite the absence of any specific request to that effect in the application pursuant to Rule 190 RoP.
36. This argument is likewise untenable. While it is true that the court is bound by the parties' requests and cannot grant relief beyond what has been sought – due to the principle of party disposition, the right of defence, and the court's requirement of impartiality – the judge-rapporteur is nonetheless mandated, upon an application under Rule 190 RoP, to specify "under which conditions, in what form and within what time period the evidence shall be produced." This obligation serves to define the procedural modalities of the production order and to tailor them to the specific circumstances of each case. As such, these conditions must be established whenever the measure is granted, regardless of the applicant's specific proposals, without infringing upon the principle of correspondence or, more specifically, the prohibition of *ultra petita* rulings. Therefore, also with respect to this point the impugned order does not seem to be manifestly erroneous.

Conclusions

37. In light of the foregoing, the Court finds that the balancing of the parties' competing interests warrants an adjustment of the time limit originally set by the judge-rapporteur for compliance with the order. In particular, it is appropriate to take into account the time reasonably required for the applicants to obtain the export authorisations under the applicable national law.
38. To that end, the relevant time period shall be calculated as from 12 May 2026, being the date on which the order was notified to the applicants, and they thereby became aware of the obligation to comply. The time limit for compliance is accordingly extended until 15 July 2026.
39. The applicants remain under a duty to act with all due diligence in pursuing the necessary administrative procedures. Save where exceptional and duly substantiated circumstances are established, any delay exceeding the time reasonably required for that purpose shall be regarded as unjustified and attributable to the applicants.

ORDER

The application for suspensive effect is partially granted, in that the time limit for compliance with the order of the Court of First Instance, The Hague Local Division, dated 11 May 2026, is extended

until 15 July 2026.

This order was issued on 26 May 2026.

Klaus Grabinski, presiding judge and President of the Court of Appeal

Paolo Catalozzi, legally qualified judge and judge-rapporteur

Emmanuel Gougé, legally qualified judge