Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Reference no:

UPC-COA-57/2026

ORDER

of the Court of Appeal of the Unified Patent Court issued on 29 June 2026

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

Polytechnik Luft- und Feuerungstechnik GmbH, Hainfelderstraße 69, A-2564 Weißenbach, Austria

represented by Rainer Schultes, GEISTWERT Kletzer Messner Mosing Schnider Schultes Rechtsanwälte OG

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

Dall Energy ApS, Agern Allé 24, st., DK-2970 Hørsholm, Denmark

represented by Soren Chr. S. Andersen, Accura Advokatpartnerselskab

PATENT AT ISSUE

EP 2 334 762

DECIDING PANEL

Panel 1b
Klaus Grabinski, presiding judge and president of the Court of Appeal
Paolo Catallozzi, legally qualified judge and judge-rapporteur
Emmanuel Gougé, legally qualified judge

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, Copenhagen Local Division, dated 10 April 2026

Number attributed by the Court of First Instance: UPC_CFI_513/2025

SUMMARY OF FACTS AND PARTIES' REQUESTS

1. In the context of patent infringement proceedings brought by Dall Energy ApS against Polytechnik Luft- und Feuerungstechnik GmbH before the Copenhagen Local Division, the present appeal concerns an order for the production of evidence issued by the judge-rapporteur.

2. The patent in suit concerns a method for the production of a clean hot gas based on solid fuel. The Claimant alleges that the Defendant indirectly infringes claim 1 of the patent by offering and supplying a gasification and gas combustion furnace marketed under the designation Polyheld (see brochures Accura 2 and Accura 21). In support of its allegations, the Claimant relies, inter alia, on an expert report by Mr. Ulrik Henriksen (Accura 22).

3. The Defendant contests infringement, arguing that the Polyheld furnace is not suitable for carrying out the claimed method, in particular with regard to two features of claim 1. As regards features F7 and F7.1, the Defendant submits that the gas combustion stage of the Polyheld furnace is not located above the updraft gasifier and does not permit the transfer of heat to the upper layer of fuel. Rather, it is arranged laterally and at a distance from the gasifier, so that such heat transfer cannot occur (see Exhibit Geistwert 3). As regards feature F2.1.2, the Defendant further contends that the temperature reached during the drying stage does not exceed 300°C and therefore remains below the level required by the claim.

4. The Claimant disputes these submissions, relying in particular on the Polyheld brochure, which refers to an updraft gasifier and to an upper compartment lined with refractory material. According to the Claimant, these characteristics indicate that the furnace is capable of reaching substantially higher temperatures and of operating in a manner consistent with the claimed method (see Accura 25, p. 5).

5. In light of these competing technical positions, the Claimant sought the production of internal technical documentation held by the Defendant, submitting that such material is necessary in order to substantiate its infringement allegations and to rebut the Defendant's technical defence. The requested documents were said to be relevant in particular to the structural configuration and operational characteristics of the furnace underlying the disputed features.

6. Following the interim conference, the judge-rapporteur issued an order dated 10 April 2026 by which the Defendant was ordered, within two weeks of publication and subject to a penalty payment of up to EUR 1,000.00 for each day of delay, to produce the following documents, regardless of format, including but not limited to emails and other electronic documents:

    a. Complete construction drawings of the furnace at the Oberpullendorf site (Exhibit Geistwerk ./3, page 4);

    b. Complete construction drawings of Polyheld furnaces supplied to other sites;
    c. Operation and Maintenance (O&M) manuals and other materials provided by the Defendant to its customers relating to the Polyheld.

7. The order further provided that access to the requested information would be restricted to the Claimant's legal representatives and their team members, who were required to treat the

information as strictly confidential and to use it exclusively for the purposes of the present proceedings.

8. In its reasoning, the judge-rapporteur found that the Claimant's Statement of claim and Reply to the Statement of defence provided reasonably available and plausible evidence of infringement. Regarding feature F7, the Claimant relied on the Defendant's own marketing materials. Although the Defendant submitted an affidavit (Geistwerk 2) claiming its marketing materials were technically inaccurate – providing a corrected technical explanation (Geistwerk 3) – the Court deemed the requested disclosure essential for the Claimant to effectively rebut the Defendant's new technical narrative.

9. Consequently, the Local Division held that the production of construction drawings and manuals was reasonable, proportionate, and relevant to the determination of infringement, granting the request in accordance with the operative part of the Order.

10. On 20 April 2026 the Appellant filed an appeal against this Order and concurrently sought the suspension of its effect which was denied by order issued on 24 April 2026.

11. With the Statement of grounds of appeal filed on 23 April 2026 the Appellant submits that the contested order is disproportionate as, concerning "complete construction drawings", it encompasses also several drawings which are of no relevance for the question whether or not the Polyheld makes use claim 1 of the patent in dispute.

12. The Appellant further contends that the Local Division misapplied the requirement of necessity under Article 59 UPCA, as it ordered extensive disclosure without providing a fact-specific justification as to why construction drawings and manuals would be suitable to establish the disputed process parameter (Feature F2.1.2), nor why less intrusive means of evidence would be insufficient, particularly in relation to the alleged operating temperature.

13. Moreover, the Appellant submits that the order for disclosure of construction drawings of all Polyheld furnaces compels the advance production of sensitive, accounting-relevant and customer-specific information, thereby improperly anticipating post-liability remedies, in breach of the principle of separation between infringement and accounting, in a manner that is irreversible and disproportionate, particularly in light of applicable confidentiality obligations vis-à-vis third-party customers.

14. The Appellant further notes that the disclosure order under Art. 59 UPCA improperly disregards the privilege against self-incrimination, unduly alleviates the Claimant's burden of proof, and fails to conduct the mandatory proportionality assessment – particularly as to the excessive burden imposed – thereby amounting to an excess of discretion through the application of an incorrect standard equating mere usefulness with necessity.

15. Finally, the Appellant contends that the contested order infringes Art. 58 and 59 UPCA and Rule 262A RoP by granting overbroad access to highly confidential technical and commercial information without adequate safeguards, by incorrectly relying on the opposing counsel's professional duties as sufficient protection, by failing to conduct a proper balancing of interests as required by the case law, and thereby exposing the Defendant to irreversible harm in breach of the applicable standard for the protection of trade secrets.

16. In its Statement of response, filed on 11 May 2026, the Respondent requests that the Court of Appeal principally rejects the appeal and upholds the order of the Court of First Instance dated

10 April 2026, alternatively sets the order of the Court of First Instance aside as far as it is appealed, substituting its own order on the Appellant to produce evidence.

17. The Respondent submits that the appellant fails to make adequate submissions, that its new submissions on appeal concerning the confidentiality measures should be disregarded as late filed and that the Court of First Instance has correctly exercised its discretion.

Grounds for the Order

Admissibility

18. The Appeal is admissible, as it refers to an Order against which an appeal was timely filed pursuant to Art. 73(2) UPCA and R. 220.1(c) RoP.

Legal framework

19. R. 190 RoP, read in conjunction with Art. 59 UPCA and the broader framework of the Rules of Procedure, empowers the Court to order the production of specified evidence which lies in the control of the opposing party or of a third party, provided that the requesting party has presented reasonably available evidence supporting the plausibility of its claims. In exercising this power, the Court must duly take into account the confidential nature of the information concerned, as well as the interests of any third party involved.

20. This mechanism forms part of the broader framework of access to evidence within the UPC, which is designed to ensure that the Court may, where necessary, obtain factual elements that are not readily accessible to the requesting party. In patent litigation, such measures are of particular importance because relevant technical or commercial data often reside exclusively within the sphere of the opposing party or third parties.

21. This approach reflects the rationale underlying Art. 6 of Directive 2004/48/EC, which provides for judicial measures intended to ensure effective access to evidence, subject to appropriate safeguards. The CJEU has consistently emphasised that the measures, procedures and remedies provided for by that Directive must guarantee a high level of protection of intellectual property rights, while operating within a structured and properly controlled system of judicial enforcement (see CJEU 28 April 2022, C-44/21, *Phoenix Contact*, para. 37, and 25 January 2017, C-367/15, *Stowarzyszenie Olawska Telewizja Kablowa*, para. 22).

22. The function of taking evidence under Rule 190 RoP is to ensure the effectiveness of judicial protection by enabling the party bearing the burden of proof to discharge that burden where relevant evidence lies outside its sphere of control.

23. Such situations give rise to a structural asymmetry of information which may undermine the effectiveness of judicial protection. Rule 190 RoP addresses this problem by providing a mechanism to overcome informational barriers, thereby facilitating access to otherwise inaccessible elements of proof. The taking of evidence thus contributes to the establishment of a sufficiently reliable factual basis for the Court’s assessment, particularly in technically complex patent disputes.

24. In this respect, the instrument also serves to safeguard the principle of equality of arms. It does not merely regulate a procedural power but contributes to rebalancing the position of the parties within the proceedings. The possibility of obtaining the production of evidence held by the opposing party is essential to ensure the effective enforcement of substantive law, in particular in the field of patent law.

25. In this context, the Court notes that, according to the case-law of the CJEU, the system established by Directive 2004/48/EC seeks to reconcile the effective enforcement of intellectual property rights with procedural fairness. Measures for the production of evidence must therefore be capable of mitigating informational asymmetries without imposing excessive evidentiary burdens at the preliminary stage. In particular, the applicant must present reasonably available evidence supporting the plausibility of its claims but cannot be required to provide full proof of the alleged infringement at that stage (see, by analogy, CJEU 27 April 2023, C-628/21, *Castorama Polska*, and 28 April 2022, C-44/21, *Phoenix Contact*).

26. This mechanism does not alter the allocation of the burden of proof, which remains governed by the applicable substantive law, but facilitates its discharge by granting access to evidentiary material otherwise unavailable to the party bearing that burden.

27. The Court's power to order the production of evidence is not unlimited and is subject to cumulative constraints. First, such measures may be granted only on the basis of specific and substantiated allegations and cannot serve exploratory or speculative purposes. R. 190 RoP does not permit fishing expeditions but requires a concrete link between the requested measure and the facts relied upon by the requesting party. This reflects the structured nature of the UPC system, which does not provide for general disclosure or discovery, but only for targeted and justified access to specific evidence.

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

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

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

31. The approach set out above is consistent with analogous principles governing access to evidence under Union law, in particular as reflected in Directive 2014/104/EU on actions for damages for infringements of competition law (see CJEU 29 January 2026, *Meliá Hotels International*, C-286/24). Article 5 of that Directive provides that national courts may order the disclosure of relevant evidence upon reasoned justification, subject to strict conditions of necessity,

proportionality and specificity (see CoA 24 September 2024, UPC_CoA_298/2024, *Guangdong OPPO v Panasonic*, and the CJEU case-law mentioned therein). This confirms that access to evidence is not conceived as a general right to disclosure, but as a controlled mechanism based on judicial oversight and the balancing of competing interests.

32. The discretion conferred on the Court is not unfettered but is governed by objective criteria of justification and rationality. The decision whether to grant or refuse a measure for the taking of evidence must be reasoned in terms of the specificity and substantiation of the allegations, as well as its necessity and proportionality, thereby ensuring that it remains open to review and consistent with the requirements of a fair trial.

Disclosure of "complete" technical documentation

33. With a first ground of appeal the Appellant submits, in essence, that the Court of First Instance erred in ordering the production of complete construction drawings of the Polyheld furnace at the Oberpullendorf site, complete construction drawings of Polyheld furnaces supplied to other sites, and operation and maintenance manuals and other materials provided to customers. The appellant argues that the order is excessively broad and insufficiently targeted, in that it compels the disclosure of extensive technical documentation far beyond what could be regarded as strictly necessary for the determination of the contested issues, namely the infringement of features F2.1.2, F7 and F7.1 of claim 1. The Appellant further submits that the impugned order fails to explain why less intrusive means of evidence, such as targeted extracts, functional descriptions or other limited categories of documents, would not have been sufficient.

34. In the impugned order, the Court of First Instance held that the Claimant had presented reasonably available and plausible evidence in support of its claims and that the requested information would be "useful and necessary" in order for the Claimant to respond to the Defendant's arguments. On that basis, it considered it reasonable and proportionate to grant the Claimant's request and ordered the production of the above categories of documents in full, subject to confidentiality restrictions limited to the Claimant's legal representatives and their team members.

35. This Court agrees with the Court of First Instance insofar as it accepted, in principle, that an order for the production of evidence could be justified under Art. 59 UPCA and R. 190 RoP. In the present case, the Claimant had relied, inter alia, on its expert evidence and on the Defendant's own marketing material in support of its allegation that the Polyheld is suitable for putting the patented invention into effect, while the Defendant disputed infringement specifically with regard to features F2.1.2, F7 and F7.1 by referring to the design and operating characteristics of the Polyheld. In such circumstances, a measure directed at obtaining technical material lying in the control of the Defendant was not, as such, excluded.

36. However, the contested order does not, in part, satisfy the requirement that the production of evidence be limited to what is strictly necessary and proportionate for the proof of the specific contested facts. While the order may be justified in so far as it concerns the production of construction drawings relating to the reference installation at the Oberpullendorf site and operation and maintenance manuals relevant to the disputed features, it extends beyond what is necessary by covering furnaces supplied to other sites and by including broadly defined categories of materials not sufficiently linked to those features.

37. The disputed features concern, in substance, the alleged temperature in the drying stage, the location of the gas combustion stage, and the transfer of heat from that stage to the top layer of fuel in the updraft gasifier. These issues may justify access to technical documentation describing the design and operation of the Polyheld furnace, including construction drawings of the reference installation and operation and maintenance manuals. They do not, however, justify the disclosure of construction drawings relating to furnaces installed at other sites.

38. In particular, the impugned order contains no sufficient reasoning as to why construction drawings of Polyheld furnaces supplied to other sites were required. The Claimant did not assert that furnaces installed at different sites present variations relevant to the contested features, nor did it explain why the issues raised by the Defendant's defence could not be assessed on the basis of the Oberpullendorf installation alone. In those circumstances, the extension of the order to furnaces supplied to other sites has not been shown to be strictly necessary and proportionate.

39. Furthermore, the impugned order does not explain, with the required degree of specificity, why less intrusive alternatives would not have been sufficient. In particular, it fails to justify why the disclosure should extend beyond construction drawings of the Oberpullendorf installation and operation and maintenance manuals, rather than being confined to that circumscribed body of material.

40. Finally, the category of "operation and maintenance manuals and other materials provided by the Defendant to its customers" is, in part, formulated in terms that are too broad. While operation and maintenance manuals may constitute an appropriate source of evidence in so far as they describe the operation of the Polyheld furnace and are relevant to the disputed features, the addition of "other materials" leaves the scope of the order indeterminate and insufficiently linked to the issues in dispute. The Claimant has not demonstrated that access to further categories of materials is necessary, nor that such materials would provide evidence beyond what may be derived from the relevant technical parts of the operation and maintenance manuals. Such an open-ended category is therefore incompatible with the requirement that disclosure be confined to what is specifically and demonstrably necessary.

41. This Court is not persuaded by the Claimant's submissions to the contrary, in so far as they seek to justify the disclosure in its full breadth. Those submissions do not convincingly explain why the disclosure should extend beyond technical material relating to the design and operation of the Polyheld furnace as relevant to the disputed features.

42. In particular, they move from the correct proposition that certain internal technical documentation may be necessary to the broader conclusion that disclosure should encompass construction drawings relating to furnaces supplied to other sites and broadly defined categories of customer-related materials, without demonstrating the necessity of that extension. Even assuming that the Defendant's defence gave rise to a legitimate need for technical disclosure, this does not dispense with the requirement that such disclosure be limited to what is strictly necessary to address the disputed facts.

43. Secondly, the Claimant's reliance on the absence of evidence adduced by the Defendant cannot, in the circumstances of the present case, justify an extension of the disclosure beyond those limits. The burden of proving infringement remains with the Claimant. Art. 59 UPCA may assist a party in discharging that burden where specific evidence lies in the control of the opposing

party, but it cannot be used to justify an unduly broad or undifferentiated disclosure of technical documentation.

44. Thirdly, the Claimant's argument that confidentiality concerns were sufficiently addressed by the protective measures adopted does not cure the excessive breadth of the order in the respects identified above. The existence of confidentiality measures may reduce the risks associated with disclosure, but it does not replace the prior requirement that disclosure be limited to what is strictly necessary and proportionate in scope.

Evidentiary necessity for process features

45. By a second ground of appeal, the Appellant submits that the Court of First Instance erred in law in considering that the requested technical documentation, in particular construction drawings and operation and maintenance manuals, could be relevant for establishing the disputed features, insofar as those features relate to process parameters. In particular, the Appellant argues that feature F2.1.2 concerns a process parameter, namely the temperature in the drying stage, which cannot be established by reference to constructive documentation. According to the Appellant, the Court of First Instance failed to provide a fact-specific explanation as to how the requested documents would be capable of proving whether the Polyheld operates at a temperature of 400°C or above and thus misapplied the requirement of necessity under Article 59 UPCA.

46. This ground of appeal is not well-founded. It is true that feature F2.1.2 relates to a process parameter, namely the temperature at which the fuel is heated in the drying stage, and that such a parameter may not necessarily be directly derivable from construction drawings or similar design documentation taken in isolation. However, it does not follow from this that such documentation is irrelevant, or incapable, as a matter of principle, of contributing to the proof or rebuttal of that feature.

47. The purpose of an order under Art. 59 UPCA is not limited to obtaining evidence that conclusively establishes a disputed fact on its own. It is sufficient that the requested material is capable of contributing, directly or indirectly, to the assessment of that fact, in conjunction with other evidence. In the context of complex technical systems, such as an industrial biomass furnace, process characteristics and operating parameters are often closely linked to the underlying design, configuration and functional relationships between different components of the system.

48. In the present case, the disputed feature F2.1.2 is closely connected to the structural and functional characteristics of the Polyheld, including, in particular, the design of the upper region of the reactor, the arrangement of the fuel feed, the location of the combustion zone and the mechanisms of heat transfer within the system. Technical documentation relating to those aspects may therefore provide relevant information capable of supporting or challenging the parties' respective submissions, even if it does not, by itself, provide a direct measurement of operating temperatures.

49. This conclusion is reinforced by the fact that the Claimant, in its Reply, relied on technical reasoning intended to infer the presence of the required temperature conditions from the design and operation of the Polyheld, in particular by reference to the function of the upper compartment and the transfer of heat from the combustion stage to the fuel bed. The Defendant, for its part, disputed that reasoning by relying on its own account of the design and

operation of the system. In such a context, technical documentation describing the relevant aspects of the design may legitimately be regarded as evidentially relevant.

50. This is further supported by the fact that the Defendant itself bases its submissions regarding the absence of the claimed temperature conditions on the technical design and configuration of the Polyheld system, as evidenced by its reliance on construction drawings and descriptions of the internal arrangement of the furnace (see Statement of defence, p. 3). This confirms that such technical documentation may, at least in part, be capable of contributing to the assessment of the disputed process parameter.

51. The Court is not persuaded by the Appellant's submission, raised at the hearing, that the information sought would be inconclusive or superfluous because it is allegedly already known. The purpose of an order for the production of evidence under Art. 59 UPCA is not limited to obtaining decisive or self-standing proof but extends to material capable of contributing to the clarification of disputed facts, including by confirming, qualifying or contextualising the parties' respective submissions. The controlled production of relevant technical documentation may therefore serve to verify and substantiate assertions which would otherwise remain contested.

52. Moreover, the assessment whether a particular category of documents is capable of contributing to the clarification of a disputed technical issue falls, in principle, within the margin of discretion of the Court of First Instance. The Court of Appeal will intervene only where that assessment is vitiated by an error of law or is manifestly unreasonable. In the present case, the Court of First Instance cannot be said to have erred in considering, in principle, that construction drawings, technical documentation and operation manuals may contribute to the assessment of the disputed features, even though the scope of the disclosure ordered must, for the reasons set out above, be limited.

Fishing expeditions and pre-emptive remedies

53. By another ground of appeal, the Appellant submits, in essence, that the Court of First Instance disregarded the limits imposed by Art. 59 UPCA and R. 190 RoP by authorising a measure that amounts to a fishing expedition and that functionally anticipates remedies which, under the structure of the UPCA, belong to the post-liability stage of the proceedings. The Appellant argues in particular that, by ordering the disclosure of construction drawings of all Polyheld furnaces supplied to other sites, the Court of First Instance effectively compelled advance disclosure of information relating to the scope of manufacture and supply, customer-specific configurations and de facto accounting-relevant material, thereby blurring the distinction between the proof of infringement and the subsequent remedies of information and rendering of accounts. The Appellant further relies on the confidentiality obligations owed vis-à-vis its customers and submits that the harm caused by such disclosure could not be undone if infringement were ultimately not established.

54. The Court accepts that Art. 59 UPCA and R. 190 RoP must not be used as instruments of general investigation, nor may they be employed to obtain, in advance of a finding of infringement, categories of information that are in substance directed to the quantification of liability or to remedial measures properly belonging to a later phase of the case. However, the Court does not consider that the contested order can be characterised as an impermissible fishing expedition or as an inadmissible anticipation of post-liability remedies. The Claimant had already advanced a specific theory of indirect infringement, supported by expert evidence, marketing material and technical argumentation directed to features F2.1.2, F7 and F7.1. The order for production was

not made in the abstract or in the absence of identified disputed facts. Nor was it directed, in form, to information such as turnover, sales volumes, identities of customers, distribution channels, prices or other classic accounting material.

Self-incrimination

55. The Appellant submits that the contested order is incompatible with the final sentence of Art. 59(1) UPCA, according to which an order to produce evidence shall not result in an obligation of self-incrimination. The Appellant accepts that, if its contention of non-infringement is correct, the documents sought would not in the specific case be self-incriminating. It nevertheless argues, in broader terms, that any document a Defendant is ordered to produce may potentially be self-incriminating and that, since the burden of proving infringement rests on the Claimant under Art. 54 UPCA, the requirements for an order under Art. 59 UPCA and R. 190 RoP were not met.

56. The Court of Appeal does not consider this ground of appeal to be well-founded. The prohibition contained in Art. 59(1) UPCA cannot be interpreted as meaning that a party may never be ordered to produce documents in its possession whenever such documents might, in some broad or abstract sense, be capable of supporting the opposing party's case. Such a reading would deprive Art. 59 UPCA and R. 190 RoP of much of their practical effect. The provision must instead be understood as excluding orders that would compel a party to furnish self-accusatory material in a manner incompatible with the procedural safeguards recognised by the UPCA, not as precluding any disclosure of documentary material merely because that material may be adverse to the interests of the producing party.

57. This conclusion is consistent with the case-law of CJUE concerning the privilege against self-incrimination. The Court has distinguished between proceedings that may lead to the imposition of penalties by a public authority and civil proceedings between private parties. In particular, it has held that the right not to provide answers that may involve an admission of an infringement cannot automatically be transposed to civil proceedings governing private-law disputes, which do not in themselves result in the imposition of public sanctions (see CJEU 10 November 1993, C-60/92, *Otto BV v Postbank NV*, paras. 15-17).

58. Furthermore, even in administrative investigations capable of leading to sanctions, the Court has recognised that undertakings may be required to produce pre-existing documents and factual information, while retaining protection against being compelled to admit an infringement (see CJEU 18 October 1989, C-374/87, *Orkem v Commission*, paras. 33-39). Although that case-law arose in a different context, it confirms that Art. 59(1) UPCA cannot be interpreted as excluding, in general, orders requiring a party to produce pre-existing technical or commercial documents relevant to the resolution of a dispute.

59. In the present case, the Appellant does not identify any specific category of documents that would engage the prohibition in a concrete and legally relevant sense. On the contrary, the Appellant expressly submits that, on its own case, the Polyheld does not infringe and that the requested documents would therefore not be self-incriminating in the specific circumstances of the present dispute. The Respondent's argument thus remains at a level of abstraction that is insufficient to establish an infringement of Art. 59(1) UPCA.

Excessive burden and excess of discretion

60. The Appellant further contends that the Court of First Instance erred in carrying out the proportionality assessment and exceeded the margin of its discretion.

61. The Court finds that there is no need to examine these grounds of appeal, as they are rendered moot by the Court's conclusions on the first ground of appeal.

Insufficient measures to protect confidential information

62. Lastly, the appellant submits that the Court of First Instance erred in law in holding that the measures ordered were sufficient to protect the Defendant's confidential information. In essence, the appellant contends that the Court failed to establish an adequate confidentiality regime, in particular by not restricting access to sensitive technical materials to a limited group of persons and by relying excessively on the professional obligations of confidentiality incumbent upon the opposing counsel.

63. The Court accepts that, in proceedings involving technical products and process-related information, the disclosure of detailed documentation may entail a risk for the party holding such information, in particular where the opposing party operates in the same market.

64. However, it does not follow that access to such information must be excluded altogether or systematically limited in the manner proposed by the appellant. The system established by R. 262A RoP does not impose a single model of protection but rather entrusts the Court with the task of designing measures that are appropriate, proportionate and tailored to the specific circumstances of the case.

65. In the present case, the Court of Appeal finds that the measures adopted by the Court of First Instance satisfy the requirements of adequacy and proportionality under Art. 58 UPCA and R. 262A RoP. In particular, the fact that access to the confidential material is granted to the legal representatives of the opposing party cannot, as such, be regarded as incompatible with the protection of confidential information. On the contrary, R. 262A RoP proceeds on the basis that the right of the parties to effective representation and defence must be preserved and that legal representatives will normally be included among the persons authorised to access confidential information, subject to appropriate safeguards.

66. The case-law of the Court of Appeal likewise confirms that access by counsel to confidential information is not, in itself, objectionable and may be necessary to ensure the effective exercise of the rights of defence, provided that adequate safeguards are adopted (see, inter alia, CoA 26 January 2026, UPC_CoA_755/2025, *Sun Patent v Vivo*; CoA 26 January 2026, UPC_CoA_631/2025, *Ericsson v Asustek*; CoA 12 February 2025, UPC_CoA_621/2024, *Daedalus v Xiaomi*).

67. Such representatives are subject to professional duties of confidentiality and act under the supervision of the Court within a controlled procedural framework. It cannot therefore be presumed, as a matter of principle, that access by legal representatives would lead to misuse of the information or would be insufficient to ensure an adequate level of protection.

68. Furthermore, the Court of Appeal considers that the Appellant's proposal to exclude entire categories of persons – including external counsel or patent attorneys – from access to the file would, in the circumstances of the present case, go beyond what is necessary to safeguard confidentiality. Such a restriction would significantly impair the opposing party's ability to exercise its rights of defence and to effectively participate in the proceedings.

69. In particular, the exclusion of legal representatives involved in parallel or related patent proceedings would risk depriving the party of the benefit of its chosen counsel and would unduly restrict the preparation of its case. As follows from the case-law of the Court of Justice, the protection of confidential information must be balanced against the requirements of effective judicial protection and the rights of the defence (see CJEU 14 February 2008, C-450/06, *Varec*).

70. Finally, the Court considers that the measures adopted by the Court of First Instance strike a fair balance between the competing interests at stake. They ensure that the requesting party is able to access the evidence necessary to substantiate its claims, while at the same time providing a level of protection against misuse of confidential information which is both realistic and compatible with the conduct of adversarial proceedings.

Conclusions

71. For all those reasons, it must be stated that the Court of First Instance did not err in principle in ordering the production of technical documentation under Art. 59 UPCA and R. 190 RoP. However, it exceeded the limits of its discretion in so far as the scope of the order was not confined to what was strictly necessary and proportionate for the assessment of the contested features F2.1.2, F7 and F7.1. The order must therefore be set aside in part and replaced by a more limited measure.

72. In the circumstances of the present case, a properly calibrated order should be confined to the drawings relating to the Polyeld furnace installed at the Oberpullendorf site, and to operation and maintenance manuals in so far as they are relevant to the disputed features. No sufficient basis has been shown for extending the order to construction drawings relating to furnaces supplied to other sites or to broadly defined categories of “other materials”. Such a measure is sufficient to meet the legitimate evidentiary interests of the claimant while avoiding the disclosure of unrelated technical or commercial information.

73. It follows that the impugned order must be set aside in part and replaced by an order reflecting those limitations.

ORDER

1) Paragraph 1 of the operative part of the order of the Court of First Instance dated 10 April 2026 is set aside and in place thereof, the Defendant is ordered, within two weeks, to produce:

    a) Complete construction drawings of the furnace at the Oberpullendorf site (see Exhibit Geistwerk ./3, page 4);

    b) Operation and Maintenance (O&M) manuals provided by the Defendant to its customers relating to the Polyheld furnace at the Oberpullendorf site.

2) The order is otherwise upheld

3) All other requests by both parties are dismissed.

This order was issued on 29 June 2026.

KLAUS STEFAN MARTIN Grabinski Digitally signed by KLAUS STEFAN MARTIN Grabinski Date: 2026.06.29 14:50:55 +02'00'

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

Paolo Catallozzi Firmato digitalmente da Paolo Catallozzi Data: 2026.06.29 17:37:18 +02'00'

Paolo Catallozzi, legally qualified judge and judge-rapporteur

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Emmanuel Gougé, legally qualified judge

Mariana Ghibirsina Digitally signed by Mariana Ghibirsina Date: 2026.06.29 15:57:49 +02'00'

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