



The Hague - Local Division

UPC_CFI_16/2025
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 22/01/2025
regarding the preserving of evidence

APPLICANT

Mammoet Holding B.V.
(Applicant)
Karel Doormanweg 47 - 3115 JD - Schiedam
- NL

Represented by Ricardo
Dijkstra

DEFENDANT/S

P.T.S. Machinery B.V.
(Defendant)
Australiëweg 2 - 4561PD - Hulst - NL

PATENT AT ISSUE

Patent no.

Proprietor/s

EP4171996

Mammoet Holding B.V.

DECIDING JUDGE

COMPOSITION OF PANEL

Presiding judge	Edger Brinkman
Judge-rapporteur	Margot Kokke
Legally qualified judge	Not provided

The presiding judge designated the decision/order to the JR (R. 193.1, R.194.3 and R. 18 RoP), who is issuing this order as a single judge.

LANGUAGE OF PROCEEDINGS: English

I. Summary of facts and Procedure

1. The applicant (“Mammoet” or the “Applicant”) is a global leader in heavy lifting and transport solutions. It specializes in the engineering of heavy lifting and heavy transport equipment.
2. On 15 January 2025, Mammoet filed an application for preserving evidence against the defendant (“PTS” or the “Defendant”), before the commencement of proceedings on the merits pursuant to R.192 RoP (the “Application”).
3. Mammoet is the proprietor of European patent EP 4 171 996 B1 (“EP 996” or “the patent”), entitled “*Trailer System, Method for Transporting an Object by a Trailer System And Trailer Jack System*”. EP 996 was granted on 28 August 2024 in the English language. The European application for EP 996 was filed on 29 June 2021 as PCT application WO 2022/002936 (“WO 936”). EP 996 claims priority from Dutch application NL 2 025 942 (“NL 942”) which was filed on 29 June 2020 (the “Priority Date”).
4. The unitary effect of EP 996 was registered in the register for unitary patent protection on 8 October 2024. The unitary effect is effective in the (eighteen) Contracting Member States as from the date of publication of the mention of the grant of EP 996 in the European Patent Bulletin, i.e. from 28 August 2024 (pursuant to art. 4(1) Regulation (EU) 1257/2012).
5. The invention pertains to a modular trailer system for lifting and transporting large or heavy objects. EP 996 claims in independent claim 1:
 1. Trailer system, which comprises:
 - a first trailer module (10) which first trailer module comprises:
 - (...)
 - a loading bed (15),
 - a primary loading bed connector (17) (...)
 - a first jack system comprising a first jack cradle (21), which first jack cradle (21) comprises:

- a jack holder (22), and a jack (23) which is accommodated in the jack holder (22),
- a primary cradle connector (25), which is connected to the primary loading bed connector (17) of the first trailer module (10) and therewith connects the first jack cradle (21) to the first trailer module (10),

wherein the jack holder (22) of the first jack cradle (21) extends at least partly below the upper surface of the loading bed (16) of the of the first trailer module (10),

wherein the trailer system further comprises

- a second trailer module (110), which second trailer module (110) comprises: (
 - (...)
 - a loading bed (115),
 - a primary loading bed connector (117) (...)

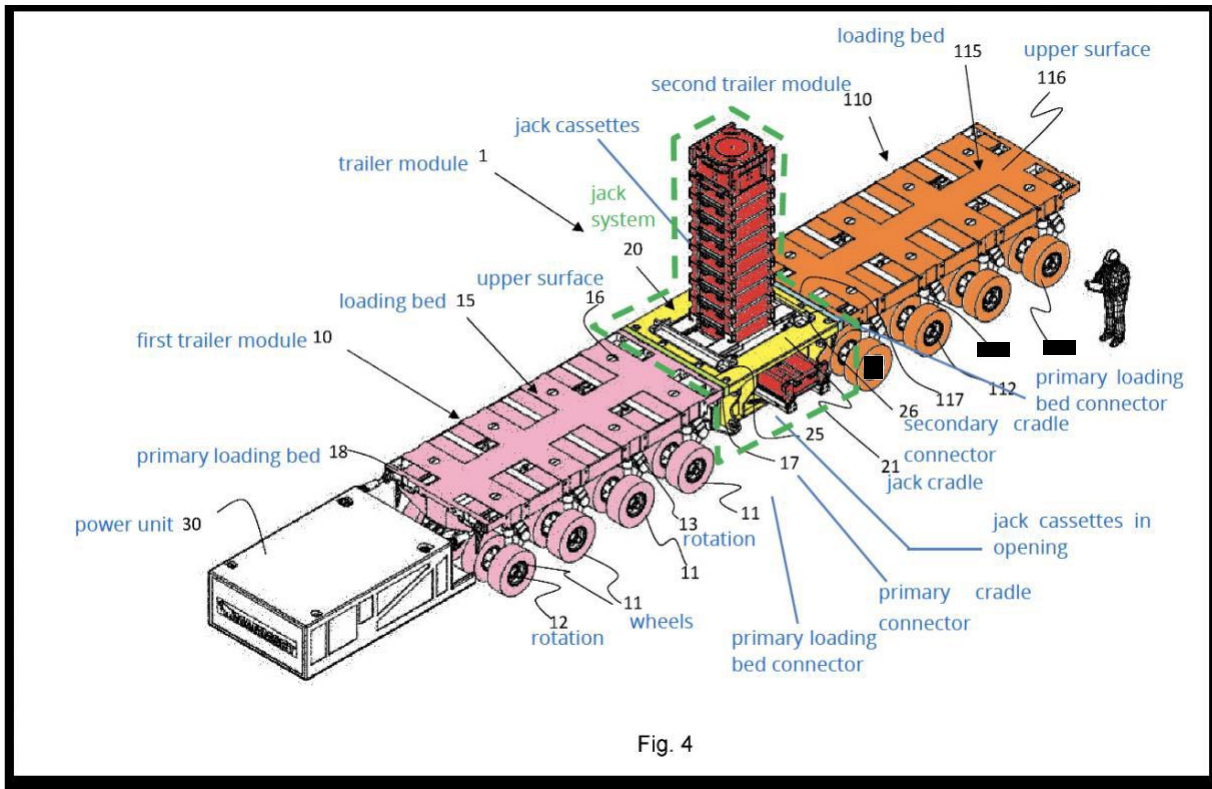
and wherein the first jack cradle (21) comprises a secondary cradle connector (26), which is connected to the primary loading bed connector (117) of the second trailer module (110) and therewith connects the first jack cradle (21) to the second trailer module (110),

and wherein the first jack cradle (21) is arranged between the first trailer module (10) and the second trailer module (110).

Thereon dependent claim 4 reads as follows:

4. Trailer system according to any of the preceding claims, wherein the jack system further comprises a jack cassette (28, 28a, 28b), and wherein the jack has an upper jack surface which is moveable between a retracted position and an extended position, and wherein the jack holder has an opening (29) which allows to insert the jack cassette on the upper jack surface when the upper jack surface is in its retracted position.

6. Figure 4 schematically shows an embodiment of a part of a trailer system (1) according to the invention, which comprises a first trailer module (10, pink), a first jack system (20, surrounded by green dotted line) and a second trailer system (110, orange). The first jack system (20) can lift the load. (colour and annotations added by Applicant's counsel):



7. According to the Application, Mammoet commissioned PTS, a company specialized in the production of heavy machinery, in November 2020, after the Dutch priority application was filed, to build six jack cradles based on confidential drawings provided by Mammoet. The jack cradle commissioned is asserted to be a cradle according to the invention of EP 996 which is, among other things, suitable to be connected with a first and a second trailer module. The jack cradle is argued to be an essential part of the invention.

8. In November 2024, Mammoet discovered a LinkedIn post of PTS' general director with the following content:



Director/Owner bij PTS Machinery
5 mnd

Base frame 100% Ste 690 material complete welded and machined total weight 8,5 tons



The depicted construction (which is positioned vertically in comparison with the picture shown above) is referred to as the “Mechanical Construction”.

9. The Mechanical Construction is, according to Mammoet, a jack cradle in conformity with claim 1 of EP 996, and specifically adapted for putting into effect the invention of EP 996. It argues that the Mechanical Construction is a jack cradle which is part of the trailer system of the invention and by producing and selling it for use in a trailer system of the invention, PTS indirectly infringes the EP 996. Furthermore, the customer that incorporates the jack cradle into a trailer system is alleged to infringe the patent directly.
10. Confronted with the post in a cease-and-desist letter, PTS admitted (by email of 9 December 2024) that it produced, offered for supply and supplied the Mechanical Construction to at least one party. The offer to supply and subsequent supply took place, according to PTS, in a Contracting Member State of the UPCA. PTS in its reply to the letter, asserts that this production and supply does not infringe EP 996 as the Mechanical Construction does not constitute the assembled claimed trailer system but is only possibly a part suitable to be used in such system. It also replied that it is not willing to give the name of the customer to whom the Mechanical Construction was supplied.
11. The Applicant is seeking an *ex parte* order granting measures to secure evidence of infringement by PTS and by third parties. It indicated that it intends to start proceedings on the merits (an infringement action) against PTS at the LD The Hague of the Court relying on further evidence of infringement obtained through the Application.

II. Order sought by the Applicant

12. In summary, Mammoet seeks:

- physical seizure of all technical promotional and commercial documentation, digital or hard copy, regarding the Mechanical Construction (depicted above) and the trailer systems in which the Mechanical Construction should be placed;
- a detailed description of the alleged infringing product (the Mechanical Construction) and trailer systems in which this should be placed;
- an order to allow the appointed persons access to PTS' premises;
- an order for PTS to assist the securing of evidence by providing passwords with penalty;
- appointment of a custodian;
- a written report, carried out by a bailiff assisted by an expert appointed by the Court, assisted by, if needed a computer specialist and law enforcement;
- access to the preserved evidence.

III. Grounds for the order

Jurisdiction

13. The Court has exclusive jurisdiction with respect to the Application as it concerns the preserving of evidence based on a European Patent with Unitary Effect which is in force in the Contracting Member States (Art. 32.1 (c) UPCA. The Local Division the Hague is competent because Mammoet indicated that it intends to start proceedings on the merits (an infringement action) against PTS at the LD The Hague of the court (R. 192.1 RoP), because the alleged infringer/defendant to be in the main action) is based in the Netherlands and because (at least part of) the alleged infringement (the production of the Mechanical Construction) is asserted to occur in the Netherlands (Art. 33.1 (a) and (b) UPCA).

Formal requirements

14. The requirements of R.192.2 are met. The Application contains:

- (a) particulars in accordance with R.13.1 (a) to (i) RoP;
- (b) a clear indication of the measures requested, including the exact location of the evidence to be preserved where it is known or suspected with good reason (domiciles of the Defendants);
- (c) the reasons why the proposed measures are needed to preserve relevant evidence;
- (d) the facts and evidence relied on in support of the application.

15. The Court fees have been properly paid, therefore conditions under R. 192.5 RoP are fulfilled. The check for the filing of a protective letter was negative.

Material requirement; alleged Indirect infringement

16. The burden of presentation and proof for facts allegedly establishing the entitlement to the grant of the application, in particular regarding the infringement or imminent infringement of the patent, as well as for all other circumstances allegedly supporting the Applicant's request, lies with the Applicant.
17. Mammoet has shown that it is entitled to ask for the measures as it is the registered proprietor of the patent. It also submitted evidence of the Unitary effect of the patent which means that it is in force in all Contracting Member States. The patent has been granted, which is at this stage sufficient proof that the patent is valid. No reason to doubt the validity has come to the attention of the court. The opposition period is still pending.
18. Mammoet explains sufficiently convincingly that the Mechanical Construction is a first jack cradle of the invention as it contains first and second cradle connectors on opposite sides which make it suitable to be connected to the primary loading bed connectors of a first and a second trailer module and to be arranged between the trailer modules. It also explains that the jack cradle of the Mechanical Construction comprises a jack holder and that this holder extends partly below the upper surface of the first trailer module when connected, because the connection point is at the upper surface level (claim 1).
19. It also demonstrated that the jack holder shown in the Mechanical Construction has an opening which allows to insert jack cassettes as defined in claim 4.
20. Mammoet has furthermore provided evidence that the production and sale of the Mechanical Construction is likely to indirectly infringe the patent. Art. 26.1 UPCA provides that a patent shall confer on its proprietor the right to prevent any third party not having the proprietor's consent from supplying or offering to supply, within the territory of the Contracting Member States in which that patent has effect, any person other than a party entitled to exploit the patented invention, with means, relating to an essential element of that invention, for putting it into effect therein, when the third party knows, or should have known, that those means are suitable and intended for putting that invention into effect.
21. Mammoet stated that the jack cradle is an essential element of the invention and that it is produced by PTS in the Netherlands. Furthermore, PTS confirmed in its reply to the cease-and-desist letter that the Mechanical Construction was delivered to a customer in a Contracting Member State.
22. As Mammoet commissioned PTS to produce six jack cradles of the invention, which it did, it also had knowledge of (this part of) the invention. PTS was given access to the confidential drawing of the jack cradle and the knowledge to produce a jack cradle according to the invention. Applicant also pointed out that PTS knew the intended use of the jack cradles, because it asked for such clarification in order to be able to carry out the assignment. Mammoet thereupon provided it with a drawing of a trailer system of the invention with several modules, similar to figure 4 depicted above.

23. In view of the above, the Applicant has provided reasonably available evidence to support its claim that claims 1 and 4 of the patent have been and/or will be (indirectly) infringed (art. 60.1 UPCA) by PTS. It also indicated that it is seeking to secure (further) evidence of infringement, also to find out the identity of direct infringer(s), with the aim to start proceedings on the merits. Mammoet has therewith satisfied the Court to a sufficient degree of certainty of (imminent) (indirect) infringement of EP 996 by producing and supplying the Mechanical Construction within UPC territory. The Court notes that the degree of certainty required for the granting of an application for the preservation of evidence and description (R.190, 196 RoP) is lower than the threshold for the granting of an injunction as a provisional measure (R.211 RoP) as the former is also meant to collect evidence for further actions. The Court notes that the allegedly infringing acts might partly have taken place before the patent was granted (but after the application was published), however the LinkedIn post was still in place after the grant of the patent (constituting a continued threat of (indirect) infringement).

Further considerations: urgency and ex parte request

24. Mammoet requests to grant the application without hearing the defendant (*ex parte*). R.194.2 requires that the court assesses (a) the urgency of the action; (b) whether the reasons for not hearing the defendant (R.192.3 and R.197) appear well-founded; and (c) the probability that evidence may be destroyed or otherwise cease to be available (R.197).

25. Mammoet points out that the market for the equipment which is the subject of EP 996 is limited, with only a few tenders available, whereby the patent gives Mammoet an important competitive advantage (needed to cover the costs of development). The unpermitted use to the technology by competitors will cause irreparable harm.

26. Mammoet has reason to suspect that there is a risk of obfuscation of evidence based on PTS' unwillingness to cooperate and its unwillingness to acknowledge that the production and supply of the Mechanical Construction is an act of (indirect) infringement. As PTS probably no longer holds the displayed Mechanical Construction, evidence is likely to be restricted to emails, documents, purchase orders etc., which can easily be removed from PTS' servers.

27. The Court finds that the application is urgent, and that the Applicant filed the application without delay after becoming aware of the alleged indirect infringement in November 2024. It addressed PTS immediately with a cease-and-desist letter, to which PTS reacted as set out above.

28. Moreover, the Court will grant the order without hearing the Defendant, as the capture of data is one of the Applicant's targets and it is generally accepted that digital data can be easily hidden or erased if previous notice is given of this kind of application, as is also mentioned above. Mammoet's fear that evidence can easily be removed if the Defendant is informed or heard before the measure, is thus considered justified.

29. Consequently, this order shall be granted without the Defendant having been heard since

there is a demonstrable risk of evidence being destroyed or otherwise ceasing to be available (Art.60.5 UPCA).

Balance of interests

30. The weighing up of the interests of all parties implies granting the measure, considering the potential risk of harm for each of the parties, in the case of granting - for the Defendant - or denial of the measure - borne by the Applicant. From the information given at this stage of the proceedings, the Court notes that the Defendant is a (former) supplier of jack cradles to the Applicant and is as such aware of the relevant part of the invention at issue here. In addition, it is aware of the intended use of the jack cradle. Defendant's business is not likely to be affected substantially by the measures (copies/description) and confidentiality of its trade secrets shall be addressed by restricting access to the information. Taking into consideration the principle of proportionality, the threat of definitive destruction of the evidence borne by the Applicant prevails over the Defendant's exposure to the enforcement of the required measures.
31. The application seeking an *ex parte* order for preserving evidence is granted partially with the limitations set out below in the operational part of this order.

modalities of execution, experts, custodian

32. Pursuant to R. 196.4 RoP, the authorized measures shall be carried out in accordance with the national law of the place where the measures are to be executed, i.e. Dutch law. Accordingly, the order shall be carried out by a bailiff as is required under national law. The bailiff proposed by the Applicant [REDACTED] of *Equilibristen Gerechtsdeurwaarders*) is known to the court, is competent in the territory of The Netherlands and can be engaged by the Applicant to carry out the order. Appointment is not required under Dutch law and if this is required for carrying out orders of the UPC, this order can be considered as such.
33. The bailiff shall be accompanied/assisted by a technical expert, appointed by the Court in a separate workflow. The expert proposed by the Applicant, [REDACTED] (of De Vries & Metman patent attorneys), is an independent representative at the UPC and a Dutch and European patent attorney. The Court trusts that expertise, independence and impartiality, as required by R. 196.5 RoP will thus be guaranteed.
34. As the seizure will require searching PTS's servers and/or computers, the bailiff at his discretion, is given the right to appoint an independent and impartial computer expert to assist with (this part of) the seizure.
35. For the (digital) search the keywords provided by the Applicant (as Exhibit CE16) can be used in a first step of digital selection.

36. As requested, the bailiff shall also serve as the custodian to safeguard the evidence collected, with the right to engage additional personnel at his discretion, provided they are equally bound by confidentiality.
37. No employee or representative of the Applicant is allowed to be present during the execution of these measures. This was also not requested.
38. The appointed expert shall lodge a report in writing (the "Written Report") concerning (i) the description of possibly infringing objects (ii) documentation relating to the delivery or offer for sale of the Mechanical Structure (including number of such structures manufactured, to whom, when etc), together with a full copy of the relevant documents and data acquired (including photograph/video material) as a result of the execution of the measures, within ten business days after the execution of the measures, with the bailiff's report ("proces-verbaal") as an appendix.
39. Defendant shall be ordered to enable the bailiff and the expert to carry out the order, including the access to digital information. In case the Defendant does not follow this order, the bailiff shall/appointed person shall be authorized to enforce the provisions of this order, if needed with the help of law enforcement authorities or seizure of the relevant objects. In case access is not possible without the help of the Defendant (e.g. in the case of a password for information in the cloud), and the order is not complied with in this respect, the Defendant shall pay a penalties (pursuant to R.196.1(d) and R.354.3 RoP) in the way and up to the amount specified in the operational part of the order.

Confidentiality

40. The bailiff, the appointed expert and any other persons engaged by the bailiff, as well as the representatives of the parties, are subject to the professional obligations of confidentiality with regard to all information to which they may have access in the course of their duties.
41. The expert shall upload the Written Report in the separate workflow concerning his appointment. This allows confidentiality of the report to be uploaded as access to this workflow is restricted. In accordance with Art. 58 UPCA and R. 196.1 RoP, the Court orders that the access to the Written Report is, as requested by Applicant, initially limited to the representatives of the Defendant only. Thus the expert shall, simultaneously with uploading, communicate the Written report to the representatives of the Defendant only. The representatives of the Applicant shall be given access to the unredacted Written Report on the fifth working day after its uploading, unless Defendant makes use of the opportunity to file a request for confidentiality before that date, in which case the Court shall decide by specific order on access and on the terms of a "confidentiality club".
42. After submission and review of the Written Report, a (wider) confidentiality club can or is to be established, at the request of the parties, in order to determine which information is relevant for the case and to identify whether and to what extent such information is considered to be a

“trade secret” (as defined by EU Directive n. 943/2016 on the protection of trade secrets) or otherwise needs to be kept confidential, whereby access will be restricted to specific persons.

43. Pursuant to Art. 60.8 UPCA and R. 198 RoP, the measures to preserve evidence shall be revoked or otherwise cease to have effect, at the Defendant’s request, if the Applicant does not bring an action leading to a decision on the merits of the case before the Court within a time period not exceeding 31 calendar days or 20 working days, whichever is the longer, from the date of the presentation of the Written Report by the expert to the Court.
44. The Written Report and any other outcome of the measures to preserve evidence may only be used in the proceedings on the merits of the case, in accordance with R. 196.2 RoP.

Service

45. Taking into account the need to ensure the surprise effect, service of the Application, together with this order, shall be carried out by the Applicant at the premises of the Defendant, immediately at the time of the execution of this order, in accordance with R. 197.2 RoP.

Security.

46. Pursuant to R. 196.3 and 196.6 RoP, the Court orders Mammoet to provide adequate security – also as a condition for the enforceability of this order - for the legal costs and other expenses and compensation for any injury incurred or likely to be incurred by the Defendant, by deposit of the amount of EUR 20.000 in the dedicated UPC bank account (available on the UPC website).
47. This order shall become effective only after security by deposit has been provided by the Applicant.

Review and Appeal.

48. The Defendant may request for the review of this order according to Art. 60.6 UPCA and R. 197.3RoP.
49. An appeal may be lodged by the parties within fifteen days of the notification of this order in accordance with Art. 73.2 (a) UPCA and R. 220.1 RoP.

IV ORDER

For these reasons, the Court, Local Division The Hague, orders that

I. The Applicant is allowed to preserve evidence at PTS’ premises at **Australiëweg 2, 4561 PD Hulst**, The Netherlands, by obtaining:

- (a) a detailed description of the Mechanical Construction depicted above at 9 and/or of a trailer system suitable for incorporating such device which allegedly infringe EP 4 171 996 B1, accompanied by photographs and videos;
- (b) the physical seizure of photocopies of technical and promotional documentation and materials, relating to the production and/or distribution of the Mechanical Construction

depicted above at 9 and/or of a trailer system suitable for incorporating such device, which allegedly infringe EP 2 265 793; in case copying on site is not possible the bailiff can physically seize the documentation, copy at his premises and return the documents within two working days;

(c) the preservation in print or copy of digital media and data relating to the Mechanical Construction depicted above at 9 and/or of a trailer system suitable for incorporating such device which allegedly infringe EP 4 171 996 B1

and to present a Written Report to the court on the measures to preserve evidence with regard to the infringement of claims 1 and 4 of EP 4 171 996 B1;

II. To carry out the order to preserve evidence, the Applicant shall engage and instruct bailiff [REDACTED] who shall be accompanied/assisted by the technical expert appointed by the court, and other assistance deemed necessary by the bailiff to carry out the order (as mentioned above at 32-34), including law enforcement, in accordance with the provisions of Dutch law on the execution of judicial measures;

III. Said bailiff is also appointed as custodian of any documents or other material seized and preserved, if needed;

IV. The court appoints [REDACTED] (of De Vries & Metman) as technical expert to assist/accompany the bailiff to carry out this order;

V. No employee or representative of the Applicant is allowed to be present during the execution of these measures;

VI. The technical expert is ordered to present his Written Report on the measures to preserve evidence regarding the alleged infringement of the patent, enclosing all relevant documents collected as exhibits, to the sub-registry of the Local Division The Hague once the required activities have been completed and in any case **no later than ten business days** from the date of execution of the present order, by uploading the Written Report and annexes in the workflow dedicated thereto;

VII. The Written Report,

- (a) may only be used in proceedings on the merits to be initiated in relation thereto;
- (b) shall only be accessible to the representatives (first of the Defendants only, from the fifth working day after its uploading also to the representatives of the Applicant until established/requested otherwise as set out above in 41-42;

VIII. the appointed persons are subject to the professional obligations of confidentiality with regard to all information to which they may have access in the course of their duties;

IX. The Defendant is ordered to allow the persons mentioned at II. to carry out this order, including granting access to the premises and digital environments and disclosing all physical or digital information regarding the alleged infringement;

X. In case the Defendant does not allow the person appointed to carry out this order, the bailiff is authorized to engage the help of others such as a computer specialist and/or the law enforcement authority. If and to the extent that carrying out the order is only possible with the help of PTS, e.g. by providing passwords and/or access codes to servers off site and/or cloud storage accounts, a penalty payment, payable directly to the court is ordered, of EUR 5,000 per hour during which such access is not granted, upto a maximum of EUR 100.000;

XI. The measures to preserve evidence shall be revoked or otherwise cease to have effect, at the Defendant's request, if the Applicant does not bring action leading to a decision on the merits of the case before the court within a period not exceeding 31 calendar days or 20 working days, whichever is the longer, from the date of the presentation of the Written report by the expert to the Court;

XII. This order, together with a copy of the application and its exhibits as well as the instructions for access to the proceedings for the Defendant via the CMS, shall be served by the bailiff on the Defendant at the premises of the Defendant immediately at the time of the execution of this order, in compliance with the Dutch legal provisions for the service of judicial documents;

XIII. This order is enforceable under condition of recorded payment by the Applicant of a security by deposit of 20.000 Euro on the dedicated UPC account;

XIV. The decision on costs is referred to the proceedings on the merits;

XV. The Defendant may request a review of this order within thirty days after the execution of the measures, pursuant to R. 197.3 RoP;

XVI. An appeal may be lodged by the parties within fifteen days of the notification of this order in accordance with Art. 73.2 (a) UPCA and R. 220.1 (c), 224.2 (b) RoP.

The Hague, 22 January 2025,

Margot
Elsa KOKKE



Digitally signed by
Margot Elsa KOKKE
Date: 2025.01.22
21:22:19 +01'00'

instructions to the registry

A workflow to appoint an expert must be opened and access codes must be generated for both the expert and the Defendant.

information about appeal

See orders IV.XV and IV.XVI above.

information about security payments and periodic penalty payments (in case of non-compliance)

See orders IV.X and IV.XIII above

order details

Order no. ORD_3693/2025

UPC number: UPC_CFI_16/2025

Application No.: 1474/2025

Application Type: Application for preserving evidence pursuant to RoP192