

EIP

C-KORE v Novawell: Paris local division grants evidence preservation order in subsea testing apparatus dispute

Order of 14 November 2023 (ORD_587064/2023)

This was another successful application for preserving evidence, following those in the *Oerlikon v Himson*, *Oerlikon v Bhagat Group*, *Jozef Frans Nelissen v OrthoApnea S.L.* and *Progress Maschinen & Automation v AWM and Schnell* cases.

C-KORE Systems Limited (“C-KORE”) is the proprietor of EP 2265793 (“EP 793”) relating to the testing of subsea apparatus. It leases its “Cable Monitor” product, a compact automated tool for testing subsea electrical assets, to contractors and companies worldwide. Novawell, a French company and former customer of C-KORE, developed an allegedly infringing competing product, called the “SICOM ROV Tool”, the subject of C-KORE’s application.

The three-judge panel of the Paris local division decided that C-KORE had met the required burden of proof under Article 60 of the UPC Agreement to present reasonably available evidence to support its infringement claim. C-KORE had sufficiently demonstrated that it was the current proprietor of EP 793, that the patent was in force in various European jurisdictions, including France, and that there was no opposition pending before the EPO. As to its infringement case on claim 1, C-KORE filed evidence explaining that EP 793 was embodied in its Cable Monitor product, which had been previously leased to Novawell after it had received training from C-KORE with the help of documents such as the user manual and drawings. C-KORE claimed that Novawell’s

“SICOM ROV tool” was “highly similar” to the patented apparatus, exhibiting pictures of the product from Novawell’s website and Novawell’s brochure that described the product. The purpose of the evidence preservation order was to secure evidence of infringement of the other claims of EP 793.

The Parisian court decided that it would make the order without hearing Novawell since there was a demonstrable risk, if advance notice were given, of evidence being destroyed or otherwise ceasing to be available. Its reasons were two-fold. First, the SICOM product was easily transportable and Novawell operated on different projects mainly in countries outside the UPC’s jurisdiction. Second, the digital data relating to Novawell’s product sought by C-KORE in its application could easily be concealed or erased.

The court also found that the period of under three months taken to file the application was a reasonable delay given that C-KORE had asked for the “standard procedure” and not the “urgent procedure”. As to balance of convenience, the court considered that the threat of definitive destruction of evidence outweighed Novawell’s exposure to the preservation measures.

The court ordered a named expert, accompanied by a competent bailiff and the applicant’s external lawyer, to carry out the order and submit a written report to the court within seven days of execution of the order.

The court ordered that access to the collected materials would be limited to the parties’ representatives and a confidentiality club would be settled to identify information relevant to the case as well as information considered to be a trade secret under EU Directive 943/2016 on the protection of trade secrets, so that access could be restricted to specific persons.

As a condition of the enforceability of the order, the court requested C-KORE to pay a security deposit of €20,000 for the legal costs and other expenses and compensation for any injury incurred or likely to be incurred by Novawell.

C-KORE filed an infringement action against Novawell in the Paris local division on 8 December 2023. This complies with the deadline to file an infringement action following an evidence preservation order, which is 31 calendar days or 20 working days from the date of the presentation of the written report by the expert to the court.