

UPC CFI, Local Division The Hague, 25 September 2024, Data Detection Technologies v Doytec

method and apparatus for dispensing items

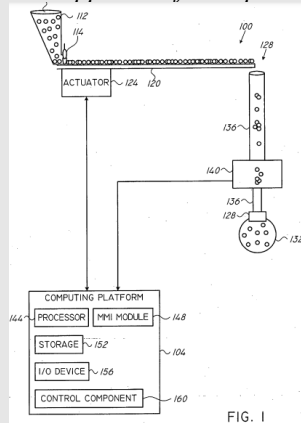


FIG. 1

PATENT LAW – PROCEDURAL LAW

Ex parte order to preserve evidence ([R. 197 RoP](#), [Article 60\(5\) UPCA](#))

- [Demonstrable risk of evidence being no more available once the SMT exhibition is over, for Doytec is based abroad and the technical and commercial documentation relating to C-1012 machine could easily be destroyed or otherwise ceasing to be available](#)

The appointed expert ([R. 196.5 RoP](#))

- [shall lodge a written report, together with a full copy of all the documents acquired as a result of the execution of the measures, immediately and no later than two days after the completion of execution of the measures](#)

The granting of an application for preservation of evidence or inspection of premises does not imply an unconditional order to disclose the evidence to the applicant ([Article 60\(1\) UPCA](#))

- [Pursuant to Article 60\(1\) UPCA the order must be subject to the protection of confidential information. Where the evidence may contain confidential information, this entails that the Court must hear the other party before deciding whether and to what extent to disclose the evidence to the applicant. In this context, the Court must give the other party access to the evidence and must provide that party with the opportunity to request the Court to keep certain information confidential and to provide reasons for such confidentiality.](#)

Source: Unified Patent Court

UPC Local Division in The Hague,
25 September 2024

(Perrotti)

UPC CFI NO. 554/2024

ORDER TO PRESERVE EVIDENCE

issued on 25 September 2024

APPLICANT

DATA DETECTION TECHNOLOGIES LTD. - Topaz street, Park Tzora Industrial Area, Kibbutz Tzora, 9980300, Israel

represented by Roeland Grijpink - Hoyng, Rokh, Monegier, Rembrandt Tower, Amstelplein 1, 1096 HA Amsterdam, The Netherlands

DEFENDANT

DOYTEC AUTOMATION LTD. - Shian Road, Foshan, Canton, 528329, Peoples Republic of China

PATENT AT ISSUE

[EP 2569713](#) (hereafter referred to as EP713), entitled *method and apparatus for dispensing items*

DIVISION

Local Division in The Hague

DECIDING JUDGES

This order has been issued by Pierluigi Perrotti, presiding judge at the Local Division in Milan, as standing judge in charge on 25.9.2024 for extremely urgent affairs coming from the Local Division in the Hague, pursuant to rules [1.2\(c\)](#), [194.4](#), [345.5](#) and [351.1\(a\) RoP](#).

LANGUAGE OF PROCEEDING

English

SUMMARY OF FACTS AND PROCEDURE

On the 25th of September 2024 Data Detection Technologies Ltd. (below DDT) has filed an application for preserving evidence against Doytec Automation Ltd. seeking an *ex-parte* order before the commencement of proceedings on the merits.

DDT is the proprietor of [EP713](#), that protects a method and apparatus for dispensing items.

According to DDT, there is a trade fair, called *Seeds meets Technology 2024* (SMT), that is taking place in Zwaagdijk-Oost, the Netherlands, on 24, 25 and 26 September. DDT and Doytec are both participating as exhibitors.

On 24.9.2024 DDT observed that Doytec has a seed counting machine on display at SMT to which it refers as its “3rd generation version C-1012”, which reproduced - with high probability - the teachings of claims 1 and 8 of [EP713](#).

The Applicant claims that the features of this counting machine, as also visible in the exhibited pictures, are assumed to replicate the claims’ teachings of its patent. DDT considers that the proof of the alleged infringement can be obtained only by means of an order for preserving evidence granted by the Court.

ORDER SOUGHT BY THE APPLICANT

In summary, the Applicant seeks:

- to physically seize the C-1012 (as defined in this application), and all technical, promotional and commercial documentation in relation to the C-1012 by means of a bailiff during the SMT exhibition, which takes place from 24 until and including 26 September 2024 at Tolweg 13, (1681 ND) Zwaagdijk-Oost, The Netherlands, or to physically seize the C-1012 on any other location in the Netherlands;
- to make a detailed description of the C-1012, which will contain a detailed description of the features of the C-1012 and of the relevant technical, promotional and

commercial documentation about the C-1012 on any of the locations referred to under (i), and/or to take the C-1012 as a sample;

- appoint a custodian of the C-1012 to be seized or taken as a sample.

GROUND FOR THE ORDER

1. Jurisdiction and competence

The Unified Patent Court has jurisdiction with respect to the present request, under [artt. 32.1 \(c\)](#) and [60.1 UPCA](#). The patent at issue is a European Patent that was not opted-out. The patent is in force, *inter alia*, in The Netherlands, as evidenced by the register of the EPO (annex 1).

The Local Division in The Hague has competence pursuant to [artt. 32.1 \(c\)](#) and [33.1 \(a\) UPCA](#). As a matter of fact, Dutch territory is referred to as the place where the actual or threatened infringement has occurred.

Application has been filed before The Hague Local Division where DDT intends to start proceedings on the merits based on [art. 33.1 \(a\) UPCA](#), in conformity with [rule 192.1 RoP](#).

2. Fulfilment of the provisions of [rule 192.2 RoP](#)

2.1. Content of the application

The application for preserving evidence contains:

- (a) particulars in accordance with [rule 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 (SMT location);
- (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.

2.2. Concise description of the future proceeding in the merits

The Applicant will start proceedings on the merits with respect to the patent infringement against the Defendant for the patent infringement relying on the evidence obtained by the present proceedings if, as is to be expected, the suspicion of patent infringement is confirmed.

Consequently, conditions as provided by [rule 192.2 RoP](#) are fully met.

3. Burden of proof for the applicant under [art. 60 UPCA](#) - Reasonably available evidence given by the Applicant

3.1. Rights on a valid patent

The Applicant sufficiently proved that it is entitled as proprietor of the patent [EP713](#) (see annex 1).

Concerning the validity of the patent at issue, no opposition has been filed at the European Patent Office. DDT did not report the existence of any action for revocation brought before national Courts, as provided for in [rules 13.1\(h\)](#) and [192.2\(a\) RoP](#) nor of any other material act known to it relating to the validity of the patent at issue which might influence the Court in deciding whether or not to make an order without hearing the Defendant ([rule 192.2 RoP](#), second sentence).

Therefore, the Court has no reason to doubt the validity of the patent at issue - at this early stage.

3.2. Alleged infringement

[EP713](#) protects a method for dispensing discrete items into a multiplicity of containers (see claims 1 - 7) and an item dispenser (see claims 8 - 14).

Claim 1 is divided into features by the Applicant as follows:

- 1.1 a method (204) for dispensing discrete items (116) into a multiplicity of containers (132) such that each of the multiplicity of containers contains a predetermined number of items, the method comprising:
 - 1.2 operating (232) a conveyor (120) such that items placed on the conveyor fall into a container at least partially in parallel,
 - 1.3 the conveyor activated for a period of time such that less than the predetermined number of items fall into the container;
 - 1.4 counting the falling items (236) using a counting mechanism (140) comprising at least three electromagnetic energy sources (316, 320, 324) and at least three receptors (336, 340, 344), wherein the counting mechanism is arranged such that:
 - 1.4.1 (a) each of the at least three electromagnetic energy sources emits energy in a different direction, and
 - 1.4.2 (b) no two of the at least three electromagnetic energy sources emit energy in perpendicular directions;
 - 1.5 determining a number of missing items in the container after items have fallen into the container during the operation and due to inertial forces after the operation; and
 - 1.6 operating the conveyor for a pulse duration (252).
- Claim 8 is divided into features by the Applicant as follows:
- 8.1 An item dispenser (100) comprising: a parallel transport conveyor (140);
 - 8.2 a counting mechanism comprising at least three electromagnetic energy sources (316, 320, 324) and at least three receptors (336, 340, 344), wherein the counting mechanism is arranged such that:
 - 8.2.1 (a) each of the at least three electromagnetic energy sources emits energy in a different direction, and
 - 8.2.2 (b) no two of the at least three electromagnetic energy sources emit energy in perpendicular directions,
 - 8.3 wherein said counting mechanism is positioned below an end of said conveyor, for counting items falling off said conveyor, wherein at least some of the items are at least partially horizontally parallel when falling through said counting mechanism; and
 - 8.4 a computing platform (104) connected to said conveyor and to said counting mechanism, and being configured to operate said conveyor in a continuous mode until a desired item count of a present batch is indicated by said counting mechanism as nearly being reached,
 - 8.5 and in a pulsed mode to complete at least an amount of items missing from the desired item count, wherein the pulsed mode comprises activation of said conveyor in at least one pulse having a length which was pre-

determined to cause a set number of items to fall off the conveyor as a direct result of the conveyor's operation as well as indirectly, due to inertial forces following the pulse.

The Applicant explains that the method and the apparatus make it possible to obtain accurate counting and division of individual items from bulk quantities into single packages.

DDT provides written testimony from two of its employees (see annex 7, 12).

The first one has personally seen on 24 September 2024, during the SMT exhibition, that Doytec was showing at booth no. 22 a seed counting machine, named *C-1012*, that looked very similar to the patented device. He also had a conversation with a representative of Doytec who described in detail the technology enclosed in *C-1012*, in terms that arise founded suspicion about the alleged infringement. On this same occasion, some photographs of the apparatus were taken and then attached to the written witness statement.

In very similar terms, the second employee reports that he had a conversation at the DDT stand with a representative of Doytec, who claimed to have shown the same machine at the SMT exhibition and described its features in terms which substantially coincided with the main features of DDT's invention.

The application also proposes a detailed comparison of the operating features of the *C-1012* as observed during the SMT exhibition.

Therefore, the suspicion of a patent infringement by Doytec seems plausible.

These are the reasons why the applicant needs an order for gathering more evidence to be able to prove the alleged infringement.

4. Requirements under [rule 194.2 RoP](#) and [rule 197 RoP](#)

According to [rules 194.2](#) and [197 RoP](#), the Court shall take into account the urgency of the action and the reasons to grant an order *ex parte* in exercising its discretion to decide the Application without hearing the Defendant ([rule 194.1\(d\) RoP](#)). In accordance with [rule 197 RoP](#) the Court may order measures to preserve evidence without the defendant being heard, in particular where there is a demonstrable risk of evidence being destroyed or otherwise ceasing to be available. Such is this case here.

4.1. Urgency

The requirement of extreme urgency is met as the exhibition where the alleged infringement takes place started on 24.9.2024 and will end tomorrow 26.9.2024 (see Annex 0).

4.2. Reasons to grant an order without hearing the defendant - risk of destruction of evidence

Consequently, taking into account all relevant factors, this order needs to be granted without the defendant having been heard, in particular since there is a demonstrable risk of evidence being no more available once the SMT exhibition is over, for Doytec is based abroad and the technical and commercial documentation relating to *C-1012* machine could easily be destroyed or otherwise ceasing to be available ([art. 60.5 UPCA](#)).

5. Payment of court fees

The Applicant declares that the "*the fixed fee of € 350 shall be paid on 25 September 2024*".

At this stage it is not possible to check the actual incoming of the sum in the dedicated bank account, as also confirmed by the Sub Registry in The Hague.

The stated reasons of exceptional urgency do not allow the decision to be postponed after positive check of the actual receipt of the fee due.

So far, the existence of this requirement can only be certified on the basis of the declaration made by the Applicant, under its direct liability.

6. Balance of interests and modalities of execution

6.1. Balance of interests

The weighting up of the interest 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.

Taking into consideration the principle of proportionality, the threat of definitive loss of the evidence borne by the Applicant is deemed to be prevalent over the Defendant's exposure to the enforcement of the required measures.

In this case, applications seeking an *ex-parte* order for preserving evidence shall be considered as reasoned request and shall be granted as requested by the Applicant.

6.2. Modalities of execution

Pursuant to [rule 196.4 RoP](#), the authorised measures will be carried out in accordance with the national law of the place where the measures are executed - i.e. Dutch law - by one expert, appointed by the Court and namely mentioned in the operative part.

This expert is a long-term experienced patent attorney, who currently is the managing partner of a firm established in The Netherlands. The Applicant declares that this expert does not have any relationship with DDT or Defendant.

The choice appears to guarantee expertise, independence and impartiality, as required by [rule 196.5 RoP](#).

In view of the extreme urgency, in the event that the appointed expert is not available to carry out the measure, he is hereby authorised to designate, as of now, a replacement within his professional firm with the same qualification and similar experience.

The expert is subject to the professional obligations of confidentiality with regard to all information to which he may have access in the course of his duties.

The appointed expert will proceed assisted by the competent bailiff.

The Applicant requested that DDT and/or its representatives will in any case not be allowed to be present during the enforcement of the order to be rendered in this matter and that the bailiff will not be entitled to make an exception to this pursuant to the applicable national law.

The appointed expert shall lodge a written report, together with a full copy of all the documents acquired as a result of the execution of the measures, immediately

and no later than two days after the completion of execution of the measures.

6.3. Confidentiality

DDT requests the Court to determine that the persons involved in the carrying out of the measures for the preservation of evidence pursuant to the order to be rendered in this matter, like the bailiff, the expert and the custodian, shall not be allowed to provide information to DDT or third parties concerning these measures (including in the detailed report to be drafted by the bailiff in relation to these measures and by the expert in relation to the detailed description), and shall not provide opportunity to provide insight to the C-1012 or to the respective detailed reports or to examine these, except if the defendant consents or on the basis of a further order of the UPC.

In its [decision of 23.7.2024](#), the Court of Appeal provided a systematic interpretation of the provisions relating to the application for the preservation of evidence or the inspection of premises, establishing some relevant legal principles, which are set out below (Apl. no. 20002/2024 - UPC CoA no. 177/2024).

An application for the preservation of evidence or inspection of premises within the meaning of [Article 60 UPCA](#) and [rules 192](#) et seq. RoP implies a request to disclose to the applicant the outcome of the measures, including the report written by the person who carried out the measures. This follows from the fact that the legitimate purpose of the measures is the use of the evidence in proceedings on the merits of the case ([rules 196.2](#) and [199.2 RoP](#)), which includes the use of the evidence to decide whether to initiate proceedings on the merits and to determine whether and to what extent the evidence will be submitted in these proceedings.

Disclosure of the evidence to the applicant or to certain persons acting on behalf of the applicant is indispensable for that purpose. Moreover, [rules 196.1](#) and [199.1 RoP](#) provide that the Court may decide in its order that the evidence shall be disclosed to certain named persons and shall be subject to appropriate terms of non-disclosure. This confirms that the procedure initiated by an application under [Article 60 UPCA](#) aims at not merely the preservation of evidence and the inspection of premises as such, but also at the disclosure of the evidence to the applicant.

However, the granting of an application for preservation of evidence or inspection of premises does not imply an unconditional order to disclose the evidence to the applicant. Pursuant to [Article 60\(1\) UPCA](#) the order must be subject to the protection of confidential information (see also [Article 7\(1\) of Directive 2004/48/EC](#) of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights). Where the evidence may contain confidential information, this entails that the Court must hear the other party before deciding whether and to what extent to disclose the evidence to the applicant. In this context, the Court must give the other party access to the evidence and must provide that party with the opportunity to request the Court to keep certain information confidential and to provide reasons for such

confidentiality. If the other party makes such a confidentiality request, the Court must provide the applicant with the opportunity to respond in a manner that respects the potential confidentiality interests of the other party. The Court may do this, for example, by granting access only to the representatives of the applicant whom the Court, pursuant to [rule 196.3\(a\) RoP](#), has authorised to be present during the execution of the measures and subject to appropriate terms of non-disclosure.

The opportunity for the other party to make a confidentiality request must be distinguished from the remedies available against the order for the preservation of evidence or the inspection of premises, such as the review of an order for preservation of evidence without hearing the defendant pursuant to [rule 197.3 RoP](#). Therefore, the Court must hear the other party on the request for disclosure even if this party has decided not to file a remedy against the order to preserve evidence or inspect premises. For the same reasons, the failure to apply for a review of an order for the preservation of evidence or for the inspection of premises, cannot not be considered as a tacit approval of the disclosure of evidence. 4. Pursuant to [Article 60\(8\) UPCA](#) the Court shall ensure that measures to preserve evidence or to inspect premises are revoked or otherwise cease to have effect, at the defendant's request, if the applicant does not bring, within a period not exceeding 31 calendar days or 20 working days, whichever is longer, action leading to a decision on the merits of the case before the Court (see also [Article 7\(3\) of Directive 2004/48/EC](#) and [Article 50\(6\) of the Agreement on Trade-Related Aspects of Intellectual Property Rights](#)). [Rules 198.1](#) and [199.2 RoP](#) specify that the time period runs from the date specified in the Court's order, taking into account the date when the report referred to in [rule 196.4 RoP](#) is to be presented. These rules must be interpreted in the light of the purpose of the measures for the preservation of evidence or inspection of premises, which is to use the outcome of these measures in the proceedings on the merits of the case ([rules 196.2](#) and [199.2 RoP](#)). In view of this, the Court must, as a general principle, specify in its order a time period that starts to run from the date of disclosure of the evidence to the applicant or from the date on which the Court has made a final decision not to grant the applicant access to the evidence.

These principles are fully acknowledged here.

The Court considers that the standard of caution suggested by the Applicant for the protection of confidentiality is reasonable.

Considering that the application under [Article 60 UPCA](#) and [rules 192](#) et seq. RoP implies a request to disclose to the applicant the outcome of the measures, the Applicant is not required to lodge further requests. The report and its annexes will be filed by the expert at the Sub-Registry and the Applicant will have full access to them from 30.10.2024 on, unless the Defendants make use of their opportunity to request confidentiality, irrespective of whether other remedies - such as review or appeal - are proposed.

Applicant's access shall be by way of pickup of a copy (previously made available by the expert, as already provided in this order) at the premises of the Sub-Registry, under the supervision of the presiding judge / judge-rapporteur and with the assistance of a clerk. The activities will be reported in order to be uploaded on the CMS.

If a request for confidentiality is actually made by Defendant within 30.10.2024, the Court will determine by specific order, after having consulted the parties, whether, to whom and to what information access will be granted.

Request for review and appeal may be filed independently (see following paragraphs 6.7 and 6.8) and the outcome of these remedies shall be respected.

Pursuant to [art. 60.8 UPCA](#) and [rule 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 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, that will start to run from the date of disclosure of the evidence to the Applicant or from the date on which the Court has made a final decision not to grant the Applicant access to the evidence.

6.4. Restrictions on the use of the written report

The written report and any other outcome of the measure to preserve evidence may only be used in the proceedings on the merits of the case, in accordance with [rules 196.2](#) and [199 RoP](#).

6.5. Service

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, with the bailiff's occurring support, at the premises where the SMT exhibition is taking place, immediately at the time of the execution of this order, in accordance with [rule 197.2 RoP](#),

6.6. Security

Pursuant to [rule 196.6 RoP](#), the Court considers that there are special circumstances for not making the enforceability of the measure conditional on the lodging of a security by the Applicant.

In fact, the time limit for the fair is only one day from the adoption of the present order, with an objective irreparable compromise of the possibility of its execution if it is subject to the payment of a security or to the reservation of an equivalent guarantee.

The applicant presents itself as a big industrial company which should therefore be able to compensate the defendant for any damage caused by the enforcement of the measure.

The measure is therefore immediately enforceable pursuant to [rule 196.3 RoP](#).

6.7. Review

Defendant may request for the review of this order according to [art. 60.6 UPCA](#) and [rule 197.3 RoP](#).

6.8. Appeal

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 [rule 220.1 RoP](#).

FOR ALL THESE REASONS

the Court orders that the Applicant is allowed to:

- (i) obtain, gather and preserve all the technical, promotional and commercial documentation regarding the machinery identified with the commercial name *C-1012* available during the *Seeds meets Technology 2024* exhibition, that takes place until 26 September 2024 at Tolweg 13, (1681 ND) Zwaagdijk-Oost, The Netherlands;
 - (ii) preserve evidence at the same above mentioned location by detailed description of the machinery identified with the commercial name *C-1012* present on site, accompanied by photos and videos of these machine and / or components, also in order to establish whether the machinery is implementing the teachings as claimed in [EP2569713](#);
 - (iii) take one machinery identified with the commercial name *C-1012* as a sample, with a custodian to be appointed according with the provisions of Dutch law on the execution of judicial measures;
- Doytec Automation ltd. is ordered to allow the persons appointed to carry out this order (i) to enter its spaces at the *Seeds meets Technology 2024* exhibition and to preserve evidence; (ii) to take photographs or films for documentary purposes relevant to the ordered preservation of evidence; (iii) to have full access to all the documents regarding the machinery identified with the commercial name *C-1012*;
 - in case the Defendant does not comply spontaneously with these instructions, the persons appointed to carry out the order are authorised - in accordance with the provisions of Dutch law on the execution of judicial measures - to request the assistance of law enforcement if deemed necessary;
 - this order shall be carried out, with the bailiff territorial competent, by Mr. ir. Bas W.H. Langenhuisen, Julianaplein 4 (5211 BC) Den Bosch, info@patentwerk.nl, +31(0)736911350, with the authorisation to appoint a substitute if he is not available, according to the conditions set out in the grounds of this order;
 - the expert is subject to the professional obligations of confidentiality with regard to all information to which he may have access in the course of his duties;
 - no representatives of the Applicant are allowed to be present during the execution of this order, according to the express request of the Applicant itself;
 - it is ordered to the appointed expert to present to the Sub-Registry of the Local Division in The Hague of the Unified Patent Court a written Report on the findings of the measures to preserve evidence with regard to the suspected infringement of [EP2569713](#), enclosing all the collected documents, once the required activities will have been completed and, in any case, no later than two days after all operations will have been finalised; three copies of the aforementioned Report and documents should be made

- available, one for the Court and one for each of the parties;
- 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;
 - the measure 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, that will start to run from the date of disclosure of the evidence to the Applicant or from the date on which the Court has made a final decision not to grant the Applicant access to the evidence;
 - the access to the written expert's report and its attachments will be available for the Applicant from 30.10.2024 on, at the premises of the Sub-Registry of The Hague Local Division, under the supervision of the presiding judge / judge-rapporteur, with the assistance of a clerk, unless the Defendant makes use of the opportunity to file a request for confidentiality within 30.10.2024; in case this request for confidentiality is actually filed the Court is to decide if and which persons will have access and to what information;
 - this order, together with a copy of the application and its exhibits as well as the letter of service and the instructions for access to the proceedings by the CMS, shall be served by the Applicant, with the support of the bailiff, at the premises of the Defendants immediately at the time of the execution of this order, complying with the Dutch law in regard to service of judicial documents;
 - this order is immediately enforceable;
 - the decision on costs is referred to the subsequent proceedings on the merits;
 - the Defendant may request a review of this order within thirty days after the execution of the measures, pursuant to [rule 197.3 RoP](#);
 - 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 [rule 220.1 \(c\), 224.2 \(b\) RoP](#).

Milan, 25 September 2024.

Pierluigi Perrotti, standing judge

Silke Fest, *clerk*
