Second, in light of Claimants' submissions in response before the President of the Paris Commercial Court, it is also clear that Claimants' intention in initiating this arbitration was to create confusion in the mind of the President of the Paris Commercial Court as to whether he has jurisdiction to hear MBDA's application. In particular, Claimants went so far as to argue in pure bad faith before the President of the Paris Commercial Court that the initiation of these Summary Arbitral Proceedings constitutes the beginning of an arbitration on the merits, thereby putting an end to his jurisdiction to order provisional measures. Such contention is obviously absurd from an arbitration law perspective given the provisional character of Summary Arbitral Proceedings.

Second, MBDA is well-aware of its obligations under English law with respect to the preservation of evidence in contemplation for discovery during arbitration proceedings under Article 35.5(B) of the SHA. Nothing in Claimants' Request suggests that MBDA would not comply with these obligations or has done so in the past. That Claimants took additional measures to preserve evidence by putting in place a formalistic and burdensome "litigation hold" does not make the same mandatory under English law. Indeed, the only authority cited by Claimants to justify their approach to preservation of evidence is a book published by the American Bar Association, which clearly pertains to discoveries in civil litigation under the laws of the United States, not England. In fact, English courts have historically viewed the obligations in terms of preservation of documents as only commencing after litigation has commenced. As noted by the HHJ Simon Brown QC, even the term "litigation hold" used by Claimants comes from the US Federal Rules of Civil Procedure and is alien to the practice before English courts. It is not until recently that English law has set out directions to legal representatives to ensure that their clients preserve disclosable documents. However, no formalistic preservation method of the kind suggested by Claimants is mandatory, or even suggested, under English Civil Procedure Rules.