



ORD_575878/2023 UPC_CFI_9/2023
Procedural order of the Court of First Instance of
the Unified Patent Court
issued on: 03/10/2023

LEADERSHIPS :

- 1) Pursuant to Rule 4.2 VerfO, the parties are required to use official forms provided online. This also includes the various workflows. Within these workflows, no further applications are to be submitted that are assigned to other workflows and/or require different handling.
- 2) In the workflow pursuant to Rule 262.2 of the Rules of Procedure, a party may apply for protection against disclosure to third parties. Provisional protection is automatically provided upon receipt of the request. If a third party requests access, the request will be reviewed by a court. This also applies in the event that this information is contained in an order or decision of the court. The requesting party and the third party are parties to the proceedings. Other parties to the proceedings are not involved in the proceedings.
- 3) In the workflow pursuant to Rule 262A of the Rules of Procedure, a party may request protection for confidential information from another party to the proceedings. Before the order is issued, this other party to the proceedings must be heard (Rule 262A.4 of the Rules of Procedure).
- 4) The exclusion of the public from the interim hearing and the oral proceedings is governed by Rules 105.2 and 115 of the Rules of Procedure. Separate workflows are not available in this respect. Consequently, applications directed towards this are to be submitted in the workflow of the main proceedings (here: infringement proceedings).

KEYWORDS :

Official forms, workflows, confidential information, confidentiality request, exclusion of the public

Date of receipt of the application: 01/06/2023

Netgear Inc.

(Defendant) - 350 E Plumeria Dr - 95134 - San Jose - US

Statement of claim served on
28/08/2023

NETGEAR Germany GmbH

(Defendant) - Konrad-Zuse-Platz 1 - 81829 - Munich - DE

Statement of claim served on
14/08/2023

Netgear International Limited
(Defendant) - First Floor Building 3, University
Technology Centre, Curraheen Road - T12K516 - Cork
- IE

Statement of claim served on
14/08/2023

KLÄGER

1) **Huawei Technologies Co. Ltd** Represented by:
(Plaintiff) - Bantian Huawei Base Tobias J. Hessel
Longgang District Shenzhen - 518129 -
Shenzhen - CN

COMPLAINTS(R)

1) **Netgear Inc.** Represented by:
(Defendant) - 350 E Plumeria Dr - 95134 Stephan Dorn
- San Jose - US

2) **NETGEAR Germany GmbH** Represented by:
(Defendant) - Konrad-Zuse-Platz 1 - 81829 Stephan Dorn
- Munich - DE

3) **Netgear International Limited** Represented by:
(Defendant) - First Floor Building 3, Stephan Dorn
University Technology Centre,
Curraheen Road - T12K516 - Cork - IE

PATENT IN DISPUTE

Patent no.

Holder

EP3611989

Huawei Technologies Co. Ltd

PARTICIPATING JUDGES

This order was issued by the presiding judge and rapporteur Matthias Zigann.

LANGUAGE OF PROCEDURE: German

SUBJECT OF THE CASE:

Patent infringement:
here: Request for confidentiality

APPLICATIONS BY THE PLAINTIFF

I. For the protection of trade secrets, the information highlighted in grey in the complaint dated 1 June 2023 as well as the attachments, figures and overviews submitted for this purpose and marked "CONFIDENTIAL" or "confidential", which are summarised in tabular form as follows, are classified as confidential:

[Table according to the statement of claim of 1 June 2023 in ACT_459771/2023 UPC_CFI_9/2023; statement of 27 July 2023 in App_556724/2023 UPC_CFI_9/2023 and statement of 27 July 2023 in ORD_577400/2023 UPC_CFI_9/2023]

II. The above information shall be treated as strictly confidential by any person who becomes aware of it as a result of his or her participation in this proceeding and shall not be used or disclosed outside of this proceeding, except to the extent that it may be used or disclosed outside of this proceeding.
knowledge was obtained.

III. The obligation pursuant to Section II shall continue to apply after the conclusion of these proceedings, whereby this shall not apply if the court in the main proceedings has denied the existence of the trade secret in dispute in a final judgement or as soon as the information in dispute becomes known or readily accessible to persons in the circles that normally deal with such information.

IV. Third parties may only have access to the file contents of these proceedings in such a way that the statements containing business secrets referred to in Section I are rendered unrecognisable.

V. Section D. and in particular the sections of the complaint dated 1 June 2023 highlighted in grey as well as the annexes, figures or overviews marked "confidential" or "CONFIDENTIAL" are to be excluded from publication in the register and from any inspection of the files by third parties.

VI. In the event that this submission is discussed at the interim hearing and/or at the oral hearing, it is ordered that

1. to exclude the public for this part of the interim hearing and/or the oral hearing due to jeopardising interests of the parties worthy of protection;
2. to oblige the persons present at the interim hearing and/or oral proceedings, including the party representatives, the authorised representatives and the patent attorneys appointed to participate in the legal dispute, to disclose facts which concern the statements highlighted in grey or the attachments marked "confidential" or "CON- FIDENTIAL" and which come to their knowledge for the first time through the pleadings exchanged in the proceedings or the statements in the oral proceedings, to keep them secret from third parties and to use them only for the purpose of conducting the proceedings in the present case

BRIEF PRESENTATION OF THE FACTS

The plaintiff filed an infringement action (ACT_459771/2023 UPC_CFI_9/2023) on 1 June 2023. In the statement of claim, it submitted the above-mentioned confidentiality requests. In a written submission dated 27 July 2023, it made the same requests as part of a workflow concerning an application pursuant to Rule 262.2 of the Implementing Regulation (App_556724/2023 UPC_CFI_9/2023).

By order of 28 September 2023 (ORD_577400/2023 UPC_CFI_9/2023), the applicant was requested to re-upload the pleading of 27 July 2023 because, in addition to motions under Rule 262.2 of the Rules of Procedure, it also contains motions under Rule 262A of the Rules of Procedure, and for the latter a prior hearing of the opposing party must be held. This hearing is not possible in the workflow relating to a request under Rule 262.2 because this workflow is conducted unilaterally until a request is submitted by a third party. The other parties to the proceedings are not involved in this.

The plaintiff complied with the order on 29/09/2023.

Despite the opportunity to comment, the defendant did not respond.

Protective measures can only be reliably provided within the CMS if the respective workflows are opened by the applicant in accordance with Rule 262 or 262A.

This is not guaranteed within general applications or orders.

JUSTIFICATION OF THE ORDER

1.

Firstly, it should be noted that the procedure chosen by the plaintiff is not fully compatible with Rule 4.2 of the Rules of Procedure. According to this rule, the parties are required to use official forms provided online. This also includes the various workflows. Within these workflows, no further applications are to be submitted that are assigned to other workflows and/or require different handling. Furthermore, it should be noted that the application is based on the national German practice of secrecy protection without dealing with the deviating legal bases of the Rules of Procedure of the Unified Patent Court.

In the workflow pursuant to Rule 262.2 of the Rules of Procedure, a party may apply for protection against disclosure to third parties. Provisional protection is automatically provided upon receipt of the request. If a third party requests access, the application will be reviewed by a court. This also applies to

in the event that this information is contained in an order or decision of the court. The applicant and the third party are parties to the proceedings. Other parties to the proceedings are not involved in the proceedings.

In the workflow pursuant to Rule 262A of the Rules of Procedure, a party may request protection for confidential information from another party to the proceedings. Before the order is issued, this other party to the proceedings must be heard (Rule 262A.4 of the Rules of Procedure).

The exclusion of the public from the interim hearing and the oral proceedings is governed by Rules 105.2 and 115 of the Rules of Procedure. Separate workflows are not available in this respect. Consequently, applications relating to this must be submitted in the workflow of the main proceedings (here: infringement proceedings).

2.

Insofar as the applicant's request is for protection pursuant to Rule 262.2 of the Rules of Procedure, no further action is required at present. Protection is granted automatically as soon as the request is received. As soon as a third party requests access to the information covered by the application, a decision will have to be made on the opposing applications.

3.

Insofar as the plaintiff seeks protection against the defendant pursuant to Rule 262A of the Rules of Procedure, the application can be granted as soon as a workflow has been opened by the plaintiff pursuant to Rule 262A of the Rules of Procedure.

In this respect, the request of the plaintiff "are to be treated as strictly confidential by everyone, ..., and may not be used or disclosed outside of these proceedings" is to be understood as meaning that this is to be ordered - precisely also - vis-à-vis the defendant.

Rule 262A.1 provides that ... a party may apply to the court for an order restricting access to certain information contained in its pleadings or restricting the collection and use of evidence in the proceedings

or to declare it inadmissible. In contrast, the above-mentioned request of the plaintiff represents a minus insofar as access by the defendant should be physically possible without further ado, provided that this access takes place while maintaining confidentiality and the use remains limited to the proceedings here.

The court may grant the application pursuant to Rule 262A.5 of the Rules of Procedure in particular if the reasons given by the applicant for the order significantly outweigh the other party's interest in unrestricted access to the information or evidence in question. Since the defendant has not raised any objections and the plaintiff has justified the application by stating that the information in question is information that is already the subject of out-of-court confidentiality agreements with the defendant or third parties, the application will have to be granted as soon as it has been filed in the correct workflow.

Only if the application is submitted in the correct workflow can it be ensured that the necessary protective measures are taken within the CMS.

4. Insofar as the party to the action requests the exclusion of the public from the interim hearing and the

The decision on the application for an oral hearing will be made by the ruling body acting at that time.

5. If the applications are directed at information contained in a judgement that requires confidentiality, it is first necessary to wait for the judgement to be issued. Then - within a waiting period of 14 days - a (further) application pursuant to Rule 262.2 VerfO must be submitted, enclosing a redacted version of the judgement.

6. Insofar as the application is aimed at imposing confidentiality obligations on other persons in addition to the persons attributable to the defendant, it must be rejected. There is no legal basis for this.

ARRANGEMENT

1. Once the litigant files the motion in the workflow for 262A, it will be ordered that the information greyed out in the June 1, 2023 complaint, as well as the submitted attachments, figures and overviews marked "CONFIDENTIAL" or "confidential", which are summarised in total in tabular form as follows,

[Table as per statement of claim dated 1 June 2023 in ACT_459771/2023 UPC_CFI_9/2023; as per pleading dated 27 July 2023 in App_556724/2023 UPC_CFI_9/2023 and as per pleading dated 27 July 2023 in ORD_577400/2023 UPC_CFI_9/2023]

are to be treated as strictly confidential by the defendant and may not be used or disclosed by it outside of these proceedings, unless this information was obtained outside of these proceedings.

2. The obligation under Section 1 shall continue to apply after the conclusion of these proceedings, whereby this shall not apply if the court has denied the need for confidentiality of this information by a legally binding decision or order or as soon as the information in dispute becomes known or readily accessible to persons in the circles that normally deal with such information.
3. In all other respects, the applications are rejected. The right is reserved to refer the matter again at a later date.
4. The appeal is authorised.

INSTRUCTIONS TO THE PARTIES AND THE LAW FIRM

- 1- The claimant is required to file his application for protection under Rule 262A in the workflow provided for this purpose.
- 2- The plaintiff is also required to resubmit the currently premature applications in the further course of the proceedings.
- 3- The law firm must ensure that third parties are only granted access to the information that is the subject of the application within the framework of a court order pursuant to Rule 262.6 VerfO.

INFORMATION ABOUT THE APPOINTMENT

An appeal against this order may be lodged either - by any party who has been unsuccessful in whole or in part in its applications, together with the appeal against the final decision of the Court of First Instance on the merits, or - after the appeal has been admitted by the Court of First Instance, within 15 days of service of the relevant decision, by any party who has been unsuccessful in whole or in part in its applications (Art. 73(2)(b) UPCA, Rules 220.2, 224.1(b) RP).

ARRANGEMENT DETAILS


Order no. ORD_575878/2023 in PROCEDURE NUMBER: ACT_459771/2023

UPC number: UPC_CFI_9/2023

Type of case: Infringement action

Dr Zigann
Presiding judge and rapporteur

**Matthias
ZIGANN**

 Digitally signed by
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Date: 2023.10.03
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