



## Hamburg - local division

### **UPC\_CFI\_54/2023** **Preliminary procedural order** **of the Court of First Instance of the Unified Patent Court issued** **on 04 October 2023**

#### HEADNOTES

Hearing on application for confidentiality and restriction of access under Rule 262A. Order temporarily restricting access to the party representative pending final disposition of the application.

#### KEYNOTES

Rule 262A. Trade Secrets. Interim Order. Restriction of access. DISPUTES

- 1) **Avago Technologies International Sales Pte. Limited**  
(Party to the main proceedings - Claimant) - 1  
Yishun Avenue 7 - 768923 - Singapore - SG  
Represented by Florian Schmidt-Bogatzky
  
- 2) **Tesla Germany GmbH**  
(defendant) - Ludwig-Prandtl-Straße 27-29 - 12526  
Berlin - DE  
Represented by Dr Marcus Grosch

- 3) **Tesla Manufacturing Brandenburg SE** Represented by Dr Marcus Grosch  
(defendant) - Tesla Str. 1 - 15537 Grünheide (Mark)  
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PATENT AT ISSUE

Patent number	Owner
<b>EP1612910</b>	Avago Technologies International Sales Pte. Limited

APPLICANTS

- 1) **Tesla Manufacturing Brandenburg SE** Represented by Dr Marcus Grosch  
Tesla Str. 1 - 15537 Grünheide (Mark) - DE
- 2) **Tesla Germany GmbH** Represented by Dr Marcus Grosch  
Ludwig-Prandtl-Straße 27-29 - 12526 Berlin - DE

ORDERING JUDGE:

Judge-rapporteur

LANGUAGE OF THE PROCEEDINGS:

German

SUBJECT OF THE PROCEEDINGS:

Patent infringement suit

#### APPLICATIONS BY THE PARTIES:

In a document dated 2 October 2023, the defendants requested that access to the passages highlighted in grey in the statement of defence and to Annexes B 2 and B 4 attached to the statement of defence be restricted to certain persons in accordance with R. 262A.1 UPC Agreement and that any further access be declared inadmissible. You have also submitted redacted versions of these documents.

They argue that the technical and business information listed in the application constitutes trade and business secrets of the defendant within the meaning of Art. 24 (1) (a) UPCA in conjunction with Art. 2 (1) Directive (EU) 2016/943. Thus, the exact, product-specific design of the attacked embodiment (Plaintiff's response under C. IV. 3 c] and Annex B 2) is neither generally known or accessible in its entirety nor in the exact order and composition of its components to persons in the circles that normally deal with this type of information and is also the subject of secrecy measures within the Tesla Group.

The information in the statement of defence under sub D. I. 2. c) and in Annex B 4 was already known to the Claimant, as the letter according to Annex B 4 had already been served on it out of court. Nevertheless, it is information that is not known or readily available on the market and from which conclusions can be drawn about the nature and scope of the defendant's business relationships with its suppliers.

With regard to the information reproduced in the statement of defence under D. I. 2. a) (4) and highlighted in grey with regard to the purchase prices of individual chips and the information reproduced under sub E. II. and sub D. I.

2. a) (5) on the sales result to be forecast are also business and trade secrets.

#### REASONS FOR THE ORDER:

Article 9(1) and (2)(a) of Directive (EU) 2016/943 provides that, in judicial proceedings, access to documents submitted by the parties or third parties containing trade secrets or alleged trade secrets may be restricted, in whole or in part, to a limited number of persons on application. This is implemented in the RoP of the UPC Agreement in R. 262A.

According to R. 262A.4 RoP, the representative of the other parties must be invited to submit a written statement before an Order is issued. However, in the interests of effective protection of secrecy, the requirement to be heard *before an order is issued* only applies to the final order of secrecy and access restriction. In the interest of effective protection of secrecy in accordance with Directive (EU) 2016/943, however, access can be further restricted until a final order is issued, namely to the person representing the plaintiff. Discussion of the confidentiality application with the party is possible with the redacted versions of the documents concerned.

The provisional Order must also be issued in order to enable the appointment of any reliable persons on the plaintiff's side who may also inspect the confidential information. For this reason, the UPC Agreement's case management system is programmed in such a way that a provisional Order is issued first, which provides for a statement by the Claimant and the naming of specific persons in the Claimant's organisation *and* sets a deadline for the Defendant to respond. The latter can be used to give the defendant the opportunity to submit any comments on the persons named by the plaintiff.

to be able to raise objections.

In substance, the information on the product-specific design of the challenged embodiment, the purchase prices of individual chips and the information on the sales result to be forecast are likely to be business or trade secrets. With regard to the information in Annex B 4, it is likely to depend on the details of the disclosure to the Claimant.

The competence of the judge-rapporteur for the present Order in the written procedure follows from R. 331.1 in conjunction with 334 and 335 RoP.

ORDER:

1. Access to the confidential version of the statement of defence dated 2 October 2023 and the confidential versions of Annexes B 2 and B 4 is to the plaintiff's representative personally until a final confidentiality order is issued. Until this time, the plaintiff's representative will also be bound to secrecy vis-à-vis the plaintiff with regard to the information contained only in the confidential versions of the aforementioned documents.
2. The Claimant is given the opportunity to comment on the Defendant's confidentiality request of 2 October 2023 within two weeks.
3. The Claimant is ordered to designate within this period up to three employees who are to be granted access to the confidential versions of the aforementioned documents.
4. The defendants are then given the opportunity to respond to the Claimant's statement within 10 days.

DETAILS:

Order No. 577763 in proceedings ACT\_463258/2023 UPC  
number: UPC\_CFI\_54/2023

Nature of the action: Action for infringement

No. of the related procedure: 577703/2023

Type of application: APPLICATION\_ROP262A

Issued in Hamburg on 04 October 2023

Legally qualified judge Dr Schilling  
- judge-rapporteur -