



Procedural order
of the Court of First Instance of the Unified Patent Court Local Division
Düsseldorf
issued on 11 March 2024
concerning EP 2 697 391 B1

LEADERSHIPS:

1. Pursuant to R. 262A.6 CR, the number of persons granted access to confidential information may not be greater than necessary to ensure compliance with the right of the parties to an effective remedy and a fair trial, and the number of persons authorised to have access must include at least one natural person from each party and the respective lawyers or representatives.
2. In principle, it is the responsibility of the respective party to name the persons for whom it seeks access. If it does so, the exclusion of a person cannot be justified solely on the grounds that the designated person is active in the technical field related to the patent in question. This is precisely why the person in question is often only in a position to provide their company and its representatives with the information required for effective legal prosecution. The information classified as confidential is not unprotected despite such access. Even if the persons concerned have access to the information in question, they must comply with the confidentiality obligations imposed on them, which can be enforced if necessary by imposing fines or enforced in accordance with national law.
4. since the group of persons to whom access to the (allegedly) confidential information is granted must not exceed the scope necessary for compliance with the right of the parties to an effective legal remedy and a fair procedure, the group of persons entitled to access must always be subject to a case-by-case examination and, if necessary and appropriate, adapted to the requirements of the respective procedure.

KEYWORDS:

Protection of secrets; application for protection of secrets; trade secrets; 262A application; secrecy protection order; summary proceedings

APPLICANT:

10x Genomics, Inc, 6230 Stoneridge Mall Road, 94588-3260 Pleasanton, CA, USA, legally represented by the Board of Directors, which is represented by the CEO ..., *ibid*,

represented by: Lawyer Prof. Dr. Tilman Müller-Stoy, Attorney at Law

Dr Martin Drews, Patent Attorney Dr Axel Berger, Prinzregentenplatz 7, 81675 Munich,

Electronic address for service: ...

RESPONDENT:

Curio Bioscience Inc, 4030 Fabian Way, Palo Alto, CA 94303, USA, represented by its CEO ..., *ibid*,

represented by: Attorney at Law Agathe Michel-de Cazotte, European Patent Attorney Cameron Marschall, 1 Southampton Row WC1B 5HA London, United Kingdom,

Electronic delivery address: ...

PATENT OF DISPOSITION:

EUROPEAN PATENT NO. EP 2 697 391 B1

DECISION-MAKING BODY/CHAMBER:

Judges of the Düsseldorf Local Court Co-Judges:

This order was issued by the presiding judge Thomas as rapporteur.

LANGUAGE OF PROCEDURE: German

SUBJECT: R. 262A VerfO - Protection of confidential information

BRIEF DESCRIPTION OF THE FACTS:

The parties are currently involved in proceedings for interim measures. By written submission dated 15 February 2024, the defendant filed an application for the protection of confidential information contained in the notice of opposition and annexes.

In the opinion of the defendant, access to the information classified by it as confidential should be restricted. This information is of a purely commercial and non-technical nature, so that patent attorneys do not need access to this information. The scope of the information classified as confidential by the defendant is small. This information is also limited, specific, highly commercially sensitive and of such a nature that employees of the applicant do not need access. If an employee of the applicant is granted access, this employee must belong to the legal department and must not be involved in commercial decisions. In addition, the applicant would have to convince the court that she

The defendant had procedures in place to ensure that access to the information classified as confidential by the defendant was limited to the named persons. In order to ensure that the information in question is not used outside the present proceedings, the other legal representatives who are given access to the information in question in addition to the legal representatives named in the proceedings to date should not be involved in pending UPC proceedings conducted by the applicant in the same field.

In a procedural order dated 16 February 2024, the Local Chamber of Düsseldorf initially granted access to the unredacted version of the submitted documents to the authorised representatives previously named in the proceedings and obliged them to maintain confidentiality - also vis-à-vis the applicant - under threat of a penalty payment. At the same time, the local division gave the parties the opportunity to make additional submissions on the group of persons to be granted access until the final decision on the application for confidentiality. By order dated 23 February 2024, after hearing the parties, the Local Chamber Düsseldorf extended the group of persons entitled to access to a total of four legal representatives, two legal assistants and one employee of the applicant and at the same time gave the applicant the opportunity to comment on the defendant's application for confidentiality.

MOTIONS BY THE PARTIES:

The defendant applies,

1. order that access to the text in red in the confidential notice of opposition to the application for interim measures and in the confidential affidavit of Mr ... (see confidential annex CR- 3) be restricted to a total of no more than four named legal representatives of 10x in person who undertake not to participate in any licensing negotiations in the field of spatial transcriptomics for 5 years; or
2. in the alternative, order that access to the text in red in the confidential notice of opposition to the application for interim measures and in the confidential affidavit of Mr ... (see confidential Annex CR-3) be restricted to:
 - i. a maximum total of four named legal representatives of 10x in person; and
 - ii. a named employee of 10x from the legal department who is also not involved in any business decisions; and
 - iii. in both of the above cases to persons who undertake not to take part in any licence agreement negotiations in the spatial transcriptomics sector for 5 years.

The applicant requests,

Access to the information designated as confidential by the defendant, at least for the group of persons in accordance with the order under no. 1 of the procedural order

from 23 February 2024.

In addition, the applicant leaves it to the discretion of the court to include the following persons in the group of persons already entitled to access in accordance with the procedural order of 23 February 2024:

Attorney and representative before the UPC Dr ...,

PA, European Patent Attorney and representative before the UPC Dr ...,

European Patent Attorney Dr ...,

and two other reliable persons at the applicant, namely Mr ..., Chief Legal

Officer of the applicant,

..., Senior Director Intellectual Property of the applicant.

REASONS FOR THE ORDER:

The application for the protection of trade secrets and other confidential information is admissible and is successful to the extent tenorised.

I.

There are no objections to the admissibility of the application.

1.

Article 9(1) and (2)(a) of Directive (EU) 2016/943 provides that, in judicial proceedings, access to documents containing trade secrets or alleged trade secrets submitted by the parties or third parties may, on request, be restricted in whole or in part to a limited number of persons. The protection of confidential information is provided for in Article 58 of the UPCA and implemented in Rule 262A of the Rules of Procedure of the Unified Patent Court (see UPC_CFI_54/2023 (LK Hamburg), order of 3 November 2023).

2.

The formal requirements standardised by R. 262A.2 and .3 VerfO have been complied with. The applicant's representatives were also heard before the protective order was issued, as required by R. 262A.4 of the Code of Procedure. They made use of the opportunity granted to them to comment.

II.

The applicant has not denied in detail that the information classified by the defendant as confidential is business secrets or at least other confidential information. It can therefore be assumed that the information in question requires protection. Access to the information in question was therefore to be restricted to certain persons in accordance with R. 262A.6 VerfO.

1.

In principle, it is the responsibility of the respective party to name the persons whose access they wish to have. In order to take into account the special features of summary proceedings, a limitation to four legal representatives (two partners and two associates to represent them) is generally required.

support), two patent attorney representatives and three representatives of the client (UPC_CFI_463/2023 (LK Düsseldorf), procedural order of 14 February 2024), whereby this group of persons can be extended by two paralegals if necessary (UPC_CFI_463/2024 (LK Düsseldorf), procedural order of 23 February 2024).

2.

If a party has exercised its right of nomination, the exclusion of a person cannot be justified solely on the grounds that this person is active in the technical field related to the patent in question. It is precisely because of this proximity to the subject matter that the person in question is often only in a position to provide their company and its representatives with the information required for effective legal prosecution. This does not mean that the information classified as confidential is unprotected. Even if the person concerned has access to the information in question, they must comply with the confidentiality obligations imposed on them, which can be enforced if necessary by imposing fines or enforced under national law (UPC_CFI_355/2023 (LK Düsseldorf), procedural order of 26 February 2024; see also Tilmann/Plassmann/v. Falck/Stoll, UPC-VerfO R. 262A, para. 19 f.).

3.

Since the group of persons who are granted access to the (allegedly) confidential information must not exceed the scope necessary for compliance with the right of the parties to an effective legal remedy and a fair trial in accordance with R. 262.6 sentence 1 of the Code of Procedure, the group of persons entitled to access must nevertheless always be subject to a case-by-case examination and, if necessary and appropriate, adapted to the requirements of the respective proceedings (UPC_CFI_463/2023 (LK Düsseldorf), order of 23 February 2024).

a)

In the present case, this means that patent attorneys do not need access to the unredacted version of the notice of opposition and its annexes. All of the information categorised by the opponent as confidential is of a commercial and non-technical nature. In addition, taking into account the further submissions of both parties, it appears appropriate and necessary to continue to limit the number of employees authorised to access to the minimum number provided for both in Directive (EU) 2016/943 and in R. 262A.6 CR and thus to one natural person.

b)

Insofar as the applicant has suggested extending access to two further employees of the applicant, she has not addressed the concerns expressed by the respondent with regard to these employees. Nor did she provide any details as to why these employees should be granted access despite these concerns. Against this background, there is no reason to expand the group of authorised users.

ARRANGEMENT:

1. Access to the unredacted version of the statement of opposition dated 15 February 2024 and to the unredacted version of Annex CR-3 is restricted to the following persons on the applicant's side:

Lawyer and representative before the UPC Prof. Dr

...; lawyer and representative before the UPC Dr ...;

Lawyer and representative before the UPC Dr ...; lawyer and
representative before the UPC ... LL.M.; paralegal ...;
paralegal ...;

Mr ..., Vice President Intellectual Property of the applicant.

The above-mentioned persons are also obliged to maintain the confidentiality of the information contained in the unredacted versions of the above-mentioned documents vis-à-vis the applicant.

2. The information designated as confidential by the defendant must be treated as confidential by the persons named in section 1. It may not be used or disclosed outside these court proceedings unless it has come to the knowledge of the receiving party outside these proceedings. However, this exception only applies if this information was obtained by the receiving party on a non-confidential basis from a source other than the defendant or its affiliated companies, provided that this source is not bound by a confidentiality agreement with the defendant or its affiliated companies or by any other confidentiality obligation towards them.
3. The applicant is ordered to take appropriate measures to ensure that the information obtained from Mr ... which is subject to this confidentiality order remains confidential and is not used outside these proceedings. In particular, the applicant must ensure that the information subject to the confidentiality obligation is contained at the applicant exclusively in secure electronic files to which only Mr ... has access. Insofar as the information subject to the confidentiality obligation is printed by Mr ... on the business premises of the respondent, suitable measures must be taken to ensure that only Mr ... has access to these printouts.
4. In the event of culpable infringement of this order, the court may impose a penalty payment for each case of infringement, to be assessed according to the circumstances of the individual case.
5. In all other respects, the defendant's application of 15 February 2024 for the protection of confidential information is rejected.

DETAILS OF THE ARRANGEMENT:

App_8500/2024 for main file reference ACT_590953/2023

UPC number: UPC_CFI_463/2023

Type of proceedings: Application for interim measures

Issued in Düsseldorf on 11 March 2024 NAMES

AND SIGNATURES

Presiding Judge Thomas