



UPC_CFI_397/2023
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 26/03/2024

APPLICANT:

C-KORE SYSTEMS LIMITED
3 Bramley's Barn The Menagerie,
Skipwith Road - YO19 6ET - Escrick - GB

Represented by
Denis Schertenleib

RESPONDENT:

NOVAWELL
22 Allée des Caravelles
34280 - Carnon-Plage - FR

Represented by
Jérôme Ferrando

LANGUAGE OF PROCEEDINGS: English

PATENT AT ISSUE

Patent no.

Proprietor

EP2265793

C-KORE SYSTEMS LIMITED

DECIDING JUDGE

Judge-rapporteur

Camille Lignières

LANGUAGE OF PROCEEDINGS: English

Legal grounds for an application under R.262A RoP

EU Directive 2016/943 on Trade secret provides in its Article 9.3: "When deciding on the measures referred to in paragraph 2 and assessing their proportionality, the competent judicial authorities

shall take into account the need to ensure the right to an effective remedy and to a fair trial, the legitimate interests of the parties and, where appropriate, of third parties, and any potential harm for either of the parties, and, where appropriate, for third parties, resulting from the granting or rejection of such measures.”

Article 58 UPCA foresees that: “To protect the trade secrets, personal data or other confidential information of a party to the proceedings or of a third party, or to prevent an abuse of evidence, the Court may order that the collection and use of evidence in proceedings before it be restricted or prohibited or that access to such evidence be restricted to specific persons.”

Rule 262A.6 RoP on Protection of Confidential Information states that: “The number of persons referred to in paragraph 1 shall be no greater than necessary in order to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and the respective lawyers or other representatives of those parties to the legal proceedings.”

Grounds in the present case

A Saisie Order was issued on 14 November 2023 at the request of C-Kore.

By order of 12 December 2024, a confidentiality club was organised pursuant to Article 58 UPCA to examine all the information gathered in the Saisie written Report.

The Court notes from the expert's report dated of 5 February 2024 that the parties agreed on the list of seized documents to be kept confidential under the protection of trade secrets.

On 20 February 2024 (due to a technical problem with the CMS), C-Kore submitted a request by e-mail to set up a confidentiality club.

The Court invited Novawell and C-Kore to submit by 18 March 2024:

-a list of persons for the composition of the confidentiality club according to Rule 262A.6 RoP, on the protection of confidential information: “at least one natural person from each party, and the respective lawyers or other representatives of those parties to the legal proceeding.

On 7 March 2024, Novawell responded proposing the following list of persons:

- Sophie DELAVEAU (UPC rep.)
- Sebastien FACHE (UPC rep.)
- Jerome FERRANDO (UPC rep.)

On 18 March 2024, C-Kore responded proposing the following list of persons:

- Rachel Fetches from HGF Limited;
- Christie Batty from HGF Limited;
- Scott Fletcher from HGF Limited;
- Richard Jenkins from HGF Limited;
- Denis Schertenleib from Schertenleib Avocats;

- Marc Lauzeral from Schertenleib Avocats; and
- Stella Signoroni from Schertenleib Avocats.

Following an email from the Judge-Rapporteur of 19 March 2024 to the representatives of the parties in the present case, the latter confirmed their agreement with the respective proposals, and in particular with the fact that the confidentiality club does not include "one natural person from each party".

In view of all these facts, the Court notes that there is an agreement between the parties on the composition of the confidentiality club and that this proposal by the parties is in accordance with the principle of a fair trial. Even though Rule 262A RoP provides that the confidentiality club shall include at least one natural person from each party, the Court considers that it is possible for the parties to exclude access by a natural person by mutual agreement, provided that the principle of a fair trial is not affected. (UPC-CFI-239/2023, The Hague LD, Order of 4 March 2024 on confidentiality)

Therefore, the confidential information as defined in the expert's report of 5 February 2024 will be accessible to a limited number of persons according to the list of persons as proposed by the parties.

The confidential information shall appear in a redacted document for parties other than the members of the confidentiality club. Only the panel of the Court and the members of the confidentiality club will have access to the unredacted version of the documents containing the said confidential information. In particular, the members of the confidentiality club will have access to the Saisie written Report presented to the Court on 11 December 2023.

ORDER

The confidential information as mentioned in the expert report dated of 5 February 2024 will be accessible only to the persons as follows:

From Novawell's side:

- Sophie DELAVEAU (UPC rep.)
- Sebastien FACHE (UPC rep.)
- Jérôme FERRANDO (UPC rep.);

From C-Kore's side:

- Rachel Fetches (HGF Limited)
- Christie Batty (HGF Limited)
- Scott Fletcher (HGF Limited)
- Richard Jenkins (HGF Limited)
- Denis Schertenleib (Schertenleib Avocats)
- Marc Lauzeral (Schertenleib Avocats)
- Stella Signoroni (Schertenleib Avocats).

The present order may be reviewed in accordance with R.333 RoP.

Delivered in Paris, on 26 March 2024.

C. LIGNIERES, Judge-rapporteur.

ORDER DETAILS

Order no. ORD_12088/2024

UPC number: UPC_CFI_397/2023

Action type: Infringement action

Related proceeding to main Applications No.: 583867/2023 and 592899/2023

Application Type: Application under R.262A RoP