



UPC_CFI_54/2023
Final procedural order
of the Court of First Instance of the Unified Patent Court issued on
02 April 2024

HEADNOTES

Final order of confidentiality and access restriction under Rule 262A. Determination and substantiation of business and trade secrets.

Reliable people. KEYNOTES

Rule 262A.Art. 58 UPCA. Art. 9 Directive (EU) 2016/943. trade secrets. Final order.

DISPUTE PARTIES

- 1) **Avago Technologies International Sales Pte. Limited** Represented by Florian Schmidt-Bogatzky
(applicant) - 1 Yishun Avenue 7 - 768923 - Singapore - SG
- 2) **Tesla Germany GmbH** Represented by Dr Marcus Grosch
(defendant) - Ludwig-Prandtl-Straße 27-29 - 12526 Berlin - DE
- 3) **Tesla Manufacturing Brandenburg SE** Represented by Dr Marcus Grosch
(defendant) - Tesla Str. 1 - 15537 Grünheide (Mark) - DE

STREITPATENT

Patent number	Owner
EP1612910	Avago Technologies International Sales Pte. Limited

APPLICANTS

- 1) **Tesla Manufacturing Brandenburg SE** Represented by Dr Marcus
Tesla Str. 1 - 15537 Grünheide (Mark) Grosch
- EN

2) **Tesla Germany GmbH** Represented by Dr Marcus
Ludwig-Prandtl-Straße 27-29 - 12526 Grosch
Berlin - DE

ORDERING JUDGE:

Judge-rapporteur STATE OF THE PROCEEDINGS:

Patent infringement action

APPLICATIONS OF THE PARTIES:

In a document dated 8 March 2024, the defendants request that the information deposited in grey in the duplicate of 8 March 2024 in the main proceedings 463258/2023, which is related to the defendants' sales results to be forecast (all deposited in grey, in particular sub E.), be declared confidential information. They request that access to this information be restricted to certain persons in accordance with R. 262A.1 EPG-VerfO and that any further access be declared inadmissible. You have also submitted redacted versions of these documents.

They argue that the information based on the defendant's business forecasts for the potential enforcement period of twelve months in the future from a possible injunction is necessarily the core of the information that must be kept secret in the company. In addition, reference is made to the judge-rapporteur's provisional order of 11 March 2024 for the defendant's reasons.

The defendants 1) and 2) apply:

1. It is ordered that the information contained in the duplicate relating to the defendant's sales results to be forecast (all highlighted in grey, in particular sub E.) is confidential information that must be treated as strictly confidential and may not be used or disclosed outside the present legal dispute, even after its conclusion. The plaintiff may only make the specified information accessible to such representatives and internally only to such employees who have a legitimate interest in it. Internal access is to be limited to a maximum of three reliable persons who are to be named to the court and the defendants.
2. In the event that the plaintiff violates an order to this effect, the local division may, at the defendant's application, impose a recurring penalty payment of up to

up to EUR 250,000.00 for each individual case of infringement and enforce it immediately.

The applicant claims that the Court should,

the provisional procedural order of 11 March 2024 with the access restrictions be lifted promptly.

The plaintiff claims that the defendants only wanted to delay the proceedings with this new application for secrecy protection.

BRIEF DESCRIPTION OF THE PROCESS

By provisional order of the judge-rapporteur dated 11 March 2024, access to the confidential version of the duplicate of 8 March 2024 in the main proceedings 463258/2023 was restricted to the plaintiff's representative personally until a final confidentiality order was issued and the plaintiff's representative was obliged to maintain confidentiality.

Since the case management system only served the redacted versions of the documents, as only became apparent through the plaintiff's notification in its statement of 18 March 2024, the unredacted documents were sent to the plaintiff by the defendants themselves on 18 March 2024 through the mediation of the law firm. At the same time, in its statement of 18 March 2024, the plaintiff named three persons who were involved in the ... Inc. and who, in addition to the plaintiff's representative, should be allowed to inspect the full versions of the documents.

REASONS FOR THE ORDER:

The admissible application is well-

founded. 1.

The order is based on R. 262A of the CPC in conjunction with Art. 9 (1) and (2) (a) of Directive (EU) 2016/943. These provisions stipulate that in judicial proceedings, access to documents submitted by the parties or third parties containing business secrets or alleged business secrets may be restricted in whole or in part to a limited number of persons upon application. R. 262A of the UPC's Rules of Procedure implements the protection of confidential information.

a) In the present case, the existence of business or trade secrets is to be assumed with the certainty required for an order pursuant to R. 262A VerFO with regard to the predicted sales results. According to R. 262A.5 VerFO, this is the case 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 (with regard to the further requirements, see the local division's order of 3 November 2023 - ORD_577763/2023 - in these proceedings). The plaintiff has also rightly not denied that the information on the forecast sales result is a business or trade secret of the defendant. They are based on the defendants' own forecast estimates, which go beyond the calculation based on the official registration figures, the average price of the Tesla

Model Y and the published return on sales.

b) In this respect, access to the information or evidence concerned was to be restricted to certain persons, R. 262A.1 of the Code of Procedure. According to R. 262A.6 of the Rules of Procedure, the number of persons referred to may not be greater than necessary to ensure compliance with the right of the parties to the proceedings to an effective remedy and a fair trial and must include at least one natural person from each party and the respective lawyers or representatives of these parties to the proceedings.

aa) In accordance with the requirements, the plaintiff has named three persons who are employed by Broadcom Inc. and who, in addition to the plaintiff's representative, are authorised to inspect the full versions of the documents. These are the same persons who were previously named in case 577763/2023. The defendants have not put forward any personal grounds for obstruction.

bb) The fact that these persons are not employed by the applicant itself is irrelevant. In this respect, reference should be made to the statements of the local division in the order of 3 November 2023 (ORD_577763/2023).

2.

The order is not appealable per se in accordance with R. 220.1 VerfO. An appeal is therefore only possible together with an appeal against the final decision. No party has yet applied for authorisation to appeal in accordance with R. 220.3 VerfO. It does not appear necessary to authorise the appeal ex officio.

FINAL ORDER:

1. It is ordered that the information contained in the duplicate of 8 March 2024 in the main proceedings 463258/2023, which is related to the defendant's sales result to be forecast (all highlighted in grey, in particular sub E.), is confidential information that must be treated as strictly confidential and may not be used or disclosed outside the present legal dispute, even after its conclusion.
2. The plaintiff may only make the designated information available to those representatives and internally only to those employees who have a legitimate interest in it. Access is limited to the authorised representatives of the plaintiff and to the following persons:
 - a. ... ; Director and Managing IP Counsel, ... Inc.
 - b. ... , Master Engineer, ... Inc.
 - c. ... , Senior IP Counsel, ... Inc.

Any further access to the designated information is not permitted.

3. This final order replaces the provisional order dated 11 March 2024 for the future.

DETAILS OF THE ORDER:

Order no. 12880/2024in proceedings
ACT_463258/2023 UPC number: UPC_CFI_54/2023
Nature of the action: Action for infringement
No. of the related procedure: 12793/2023
Type of application: APPLICATION_ROP262A

Issued in Hamburg on 02 April 2024

Digital

Stefan

signed by Stefan
Schilling

Shilling

Date: 2024.04.02

Legally qualified Person ID: 5Schilling

-judge-rapporteur -