

ORDER

of the Court of Appeal of the Unified Patent Court
issued on 20 June 2024
concerning an application pursuant to R.262A RoP

HEADNOTE:

A non-appealed order by the Court of First Instance pursuant to R.262A RoP that restricts access to certain information or evidence to specific persons, unless otherwise stated in the order, continues to apply after the proceedings, and therefore applies also to the appeal proceedings. There is no need for a new order pursuant to R.262A RoP if the same information or evidence that is already protected by a R.262A RoP order is contained in another statement or document lodged in the appeal proceedings.

KEYWORDS:

R. 262A RoP – protection of confidential information

APPLICANT AND RESPONDENT (AND DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE CFI):

Curio Bioscience Inc.

hereinafter also referred to as: 'Curio',
represented by European patent attorney Cameron Marshall and
attorney-at-law Agathe Michel-de Cazotte (Carpmaels & Ransford)

APPELLANT AND RESPONDENT (AND CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE CFI):

10x Genomics, Inc.

hereinafter also referred to as: '10x',
represented by attorney-at-law Prof. Dr. Tilman Müller-Stoy (Bardehle Pagenberg)

PATENT AT ISSUE

EP 2 697 391

PANEL AND DECIDING JUDGES:

This order was issued by the second panel of the Court of Appeal consisting of:
Rian Kalden, Presiding judge and judge-rapporteur
Ingeborg Simonsson, legally qualified judge
Patricia Rombach, legally qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- ORD_23580/2024
- Case number of the Court of First Instance: UPC_CFI_463/2023; ACT_590953/2024 (application for preliminary measures)

PROCEDURAL HISTORY AND INDICATION OF THE REQUEST

1. The parties were involved in proceedings before the Court of First Instance, Düsseldorf Local Division ('CFI'), where 10x filed an application for provisional measures against Curio. 10x's requests were partly dismissed and 10x appealed from the order (hereinafter: the PI-appeal).
2. During the proceedings before the CFI, as a result of an application by Curio, the CFI took measures to protect information pursuant to R.262A.4 RoP, and adopted a preliminary order on 23 February and a final order on 11 March 2024 (App_8500/2024, UPC_CFI_463/2023). The final order, similar to the preliminary order, establishes that access to the unredacted version of a document named CR-3 be restricted to certain persons on 10x side. The persons were also obliged to maintain the confidentiality of the information contained in the unredacted versions of the above-mentioned documents vis-à-vis 10x. The final order has not been appealed.
3. Again during the proceedings before the CFI, a change of language of proceedings request was made by Curio. This was denied by the CFI and appealed from by Curio. During these procedural appeal proceedings, Curio submitted a redacted version of CR-3, called CR-1, to the Court of Appeal and requested that access to certain information be restricted to the persons named in paragraph 1 of the order of the Düsseldorf Local Division.
4. The Court of Appeal was of the opinion that if the information was already protected by the order of 11 March 2024 of the CFI, there was no need for an additional order in the procedural appeal proceedings. It held:

(...) the confidentiality obligation ordered by the Court of First Instance, Düsseldorf Local Division, already applies to the information subject to the R.262A RoP request. The information is therefore already protected and Curio Bioscience's request is superfluous and therefore there is no need for legal protection. Documents and evidence submitted in the First Instance that require confidentiality should therefore not be submitted again in the appeal proceedings. In this respect, it is sufficient to refer to these documents and evidence.
5. In the PI-appeal, Curio again filed an application pursuant to R.262A RoP. In its request it stated that the information subject to the request contained in its Statement of response concerns the same information that was the subject of the order of the CFI dated 11 March 2024.

GROUND FOR THE ORDER

6. The Court of Appeal refers to its order of 28 March 2024 between the parties in UPC_CoA_101/2024 in App_12137/2024. In view thereof and on the basis of the principles set out therein, the Court of Appeal is of the opinion that there is no need for a new order pursuant to R.262A RoP if the information or

evidence concerned is already protected by a R.262A RoP order but is only contained in another statement or document lodged in the appeal proceedings.

7. Curio's application for confidentiality must therefore be rejected, without there being a need to be tried in substance. In view thereof, there is also no need to hear 10x on the application.

ORDER

1. Curio's application is rejected. In substance the information that is subject of its application remains protected by the order of the CFI dated 11 March 2024.
2. The Registry of the Court of Appeal is instructed to grant access to the unredacted version of the Statement of response in the PI appeal only to the persons named in the CFI order of 11 March 2024, who are subject to the duty of confidentiality.

Issued on 20 June 2024

Judges

Rian Kalden, Presiding judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

Patricia Rombach, legally qualified judge