Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Local Division Munich

UPC_CFI_488/2023

ACT_47298/2024
App_63904/2024

Procedural Order

of the Court of First Instance of the Unified Patent Court

Local Division Munich

issued on 8 February 2025

APPLICANTS (DEFENDANTS)

1) Telefonaktiebolaget LM Ericsson, Torshamnsgatan 21, Kista - 16483 - Stockholm – SE

2) Ericsson GmbH, Prinzenallee 21 - 40549 - Düsseldorf - DE

represented by: Christof Augenstein

RESPONDENT (CLAIMANT)

Motorola Mobility LLC, 222 W. Merchandise Mart Plaza, Suite 1800 - Illiniois 60654 - Chicago - US

represented by: Klaus Haft

PATENT AT ISSUE

European patent n° 3 780 758

PANEL

Panel 1 of the Local Division Munich

DECIDING JUDGE

This order has been issued by the judge-rapporteur Tobias Pichlmaier

LANGUAGE OF THE PROCEEDINGSHE

English

FACTS AND REQUESTS

Defendants refer in their statement of defense and the respective exhibits to license negotiations between the group of the Claimant and the group of Defendant's. To protect this information, Defendants filed an application for confidentiality pursuant to R. 262A RoP.
Defendants assert that

- the information that is the subject of the application under point I.1 (see below) are highly confidential business secrets, which are not generally known and available to third parties;
- the parties (i.e. the Claimant's group and the Defendant's group) have assumed for these negotiations that this information is secret and should not be disclosed to third parties;

Defendants therefore **r e q u e s t**

I. according to R. 262A RoP

1. to classify the following information as confidential, so that the provisions of R. 262A RoP apply and, in particular, the information concerned is not published in the register or otherwise disclosed, namely

   Information on the license negotiations that preceded this legal dispute and are still ongoing, as well as internal considerations and calculations, namely

   − the statements highlighted in grey

   − the "Exhibits KAP FRAND" labelled as "strictly confidential";

   Such information according to section I.1. is contained in the submission referred to;

2. to order that

   the Claimant is only allowed to provide the information under I.1 to the authorised representatives and their staff (including experts and their team members) in this proceeding (ACT_47298/2024; UPC Number: UPC_CFI_488/2024) and may not disclose it to third parties

   unless the Claimant can prove that it has lawfully obtained knowledge of the information classified as confidential outside the present proceedings and that they are complying with any restrictions associated with this other acquisition of knowledge, in particular such restrictions arising from (pre)contractual nondisclosure agreements, concluded expressly or implied;

3. the Claimant has to pay a proportionate penalty payment in an amount to be determined by the court for each case of culpably non-compliance with this order;

4. to order the individuals listed under I.2

   a) to keep the confidential information according to section I.1 strictly confidential also beyond the proceedings and

   b) to use the confidential information exclusively for the purposes of these proceedings ACT_47298/2024; UPC Number: UPC_CFI_488/2024);

II. that in the event that the Court rejects the Defendants' applications for confidentiality wholly or partially, the information and/or documents submitted and subject to the above applications shall be deemed to have been submitted to the file and may be used in the proceedings by the other party and the Court only if and to the extent that the Defendants do not object within three days of receipt of the final and legally binding decision;

III. that the court orders that the decision is only enforceable after three (3) days beginning from the date it became final and legally binding.

Claimant opposes the Application and **r e q u e s t s**

to dismiss the application.

Claimant states that it has been practiced between the parties in the FRAND negotiations to see the claimant as part of the Lenovo group of companies. Most of the Information under the R. 262A RoP Application originates from Lenovo itself. There is no reason to exclude Lenovo or individuals at Lenovo from its own information. even to the extent the R. 262A Application relates to information of Ericsson, that information has already been distributed and used within Lenovo, the Lenovo group of companies and by their representatives, without any confidentiality obligations prior Ericsson's submission of such information in the present proceedings.

GROUNDS

In their statement of Defence Defendants declare:

> "The Claimant is a subsidiary of the Lenovo Group, Ltd., a Chinese multinational technology company which has its global headquarters in Beijing, China. During the license discussions contact essentially took place between the Defendant 1) and Lenovo US on behalf of the Lenovo Group including its subsidiary Motorola Mobility, LLC. Therefore, we collectively refer to "Lenovo" in the following including the Claimant if not stated otherwise.

Based on this statement, there is no reason to differentiate between Motorola and Lenovo in the context of this Application for confidentiality.

Restrictions based on R. 262A RoP serve to protect a party's confidential information (trade secrets, personal data or other confidential information) by imposing restrictions on the other party receiving the confidential information through their submission into the court proceedings. There is no justification for restricting a party's access to its *own* information.

Most of the Information under the Rule- 262A-Application originates from Lenovo (Motorola) itself. The Rule-262A-Application does not differentiate between Lenovo's and Ericsson's information. It is certainly not the task of the Court to examine all exhibits and writs to determine which party the information originates from in each case.

Furthermore, if the parties (i.e. the Claimant's group and the Defendant's group) – as stated in the Application – have already assumed for these negotiations that this information is secret and should not be disclosed to third parties, there is no apparent reason why the information in question additionally should be restricted with a Rule-262A-Order. On the other hand, if there were no confidentiality obligations for this information disclosed in the pre-trial negotiations prior Ericsson's submission of such information in the present proceedings – as stated in Respondent's comments to this Application –, there is also no apparent reason why the information in question should be restricted with a Rule-262A-Order.

Therefore, this Rule-262A-Application is unfounded as such. There is no reason to exclude Lenovo (Motorola) or individuals at Lenovo (Motorola) from Lenovo's (Motorola's) own information.

ORDER

The Application is rejected in its entirety.

INFORMATION ABOUT REVIEW BY PANEL

The Applicants may request that this Order be referred to the panel for a review pursuant to Rule 333 RoP. Pending review, the Order shall be effective (Rule 102.2 RoP).

Tobias Günther Pichlmaier

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