



Local Division Munich  
UPC\_CFI\_846/2024

**Order**  
**of the Court of First Instance of the Unified Patent Court**  
**issued on 10 March 2025**

APPLICANT (CLAIMANT IN THE MAIN PROCEEDINGS):

**Promosome LLC**, 48 Gurley Road, 06902 Stamford, Connecticut, US,

represented by: Georg A. Rauh of Vossius & Partner Patentanwälte Rechtsanwälte mbB,  
Siebertstr. 3, 81675 München, DE.

RESPONDENTS (DEFENDANTS IN THE MAIN PROCEEDINGS):

1. **BioNTech SE**, An der Goldgrube 12, 55131 Mainz, Germany,
2. **BioNTech Manufacturing GmbH**, An der Goldgrube 12, 55131 Mainz, Germany,
3. **BioNTech Manufacturing Marburg GmbH**, Emil-von-Bering-Straße 76, 35041 Marburg, Germany,
4. **BioNTech Innovative Manufacturing Services GmbH**, Vollmersbachstraße 66, 55743 Idar-Oberstein, Germany,
5. **BioNTech Europe GmbH**, An der Goldgrube 12, c/o BioNTech SE, 55131 Mainz, Germany,

represented by: Christine Kanz of HOYNG ROKH MONEGIER, Steinstrasse 20 - 40212 –  
Duesseldorf, DE. (for Defendants 1-5).

6. **Pfizer Manufacturing Belgium NV**, Rijksweg 12, 2870 Puurs-Sint-Amands, Belgium,
7. **Pfizer SAS**, 23-25 Avenue du Docteur Lannelongue, 75014 Paris, France,
8. **Pfizer AB**, Solnavägen 3h, 11363 Stockholm, Sweden,
9. **Pfizer, Inc.**, 66 Hudson Boulevard East, 10001-2192, New York, USA.

represented by: Tobias J. Hessel of Clifford Chance Partnerschaft mbB  
Königsallee 59 - 40215 – Düsseldorf, DE (for Defendants 6-9)

Defendants 1-9 are collectively referred to as “the Defendants”.

PATENT AT ISSUE:

European patent EP 2 401 365.

PANEL/DIVISION:

Panel 2 of the Local Division Munich.

DECIDING JUDGE:

This Order has been issued by András Kupecz as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS:

English.

SUBJECT OF THE PROCEEDINGS:

Patent infringement action – R. 262A RoP

SUMMARY OF FACTS

The Claimant lodged an infringement action against the Defendants with the Unified Patent Court (‘UPC’) by Statement of Claim dated 30 December 2024. In the Statement of Claim and by letter dated 2 January 2025, the Claimant (Applicant) made an application for the protection of confidential information pursuant to Rule 262A of the Rules of Procedure (‘RoP’). The confidential information was contained in the confidential version of Exhibits VB 4a and VB 4b.

The representatives for the Defendants were invited to comment on the request prior to making the present final order (Rule 262A.4 RoP). The Judge-rapporteur, by preliminary order dated 7 February 2025, ordered that access to the confidential version of Exhibits VB 4a and VB 4b was restricted to the Defendants’ authorised representatives personally until a final order was issued deciding on the confidentiality request. In the same order, Defendants were ordered to name the representatives and the employees or persons on its side who are to be granted access to the confidential information.

The Defendants provided comments and provided the names of persons who should be granted access to the confidential information.

The Claimant did not provide any further comments.

PARTIES’ SUBMISSIONS AND REQUEST

The Claimant argues that the underlying license agreement and amendment to the license agreement (Exhibits VB 4a and VB 4b) is subject to confidentiality insofar as neither party to this agreement and amendment can publish anything in relation to the license agreement, cf. Exhibit VB 4a, Sec. 8.3 and Exhibit VB 4b, Sec. 5. The information, i.e., the terms and conditions contained in this license agreement and amendment are internal to the parties involved, is not publicly accessible and is protected against unauthorised access by special precautions. Thus, the terms and conditions of the underlying license agreement and amendment are to be treated confidential by the Defendants.

Based on these reasons, the Claimant **requests:**

- I. the following information be classified as confidential in accordance with Rule 262A RoP:
  - Exhibits VB 4a and VB 4b labelled „confidential“ and
  - any information relating to the content of Exhibits VB 4a and VB 4b;
- II. access to the information referred to in item I. be restricted to the following persons:
  - the Defendants' authorised legal representatives, their assistants and team members and
  - the employees of the parties who have a legitimate interest in access to the documents and information;
- III. the persons listed in item II. be obliged to treat the information referred to in item I. as confidential and to use the information referred to in item I. exclusively for the purpose of the proceedings and to otherwise maintain its confidentiality vis-a-vis third parties;
- IV. the persons listed in item II. be obliged to return or destroy any information referred to in item I. received from Claimant or another party after the final termination of the proceedings;
- V. the aforementioned persons listed in item II. shall not use or disclose the information referred to in item I. outside these proceedings unless it has come to the knowledge of the persons listed in item II. outside these proceedings, provided that this exception shall only apply if such information has been obtained by the persons listed in item II. on a non-confidential basis from a source other than the Claimant or its affiliates, provided that such source is not itself bound by a confidentiality agreement or other duty of confidentiality vis-à-vis the Claimant or its affiliates;
- VI. no copy of a judgment or other decision shall be served in these proceedings in which the confidential information has not been redacted to any person other than those listed in item II;
- VII. the order be made subject to a proportionate penalty payment in an amount to be determined by the court for each case of non-compliance.

Defendants 1) to 5) have no objections concerning Claimant's request on the content and scope of the protection of confidential information.

The employees or persons who are to be granted access to the confidential version of Exhibits VB 4a and VB 4b on behalf of the Defendants 1) to 5) are named as follows (all being [REDACTED]):

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]

In addition, according to Defendants 1-5, the permanent order shall cover

- all UPC representatives listed in the CMS as legal team members;
- all other UPC representatives within HOYNG ROKH MONEGIER and Zwicker Schnappauf & Partner;
- in addition [REDACTED] and [REDACTED] of Powell Gilbert UK;
- all assistants of HOYNG ROKH MONEGIER, Powell Gilbert (Europe) LLP/UK and Zwicker Schnappauf & Partner.

Defendants 6-9 also have no objections concerning Claimant's request on the content and scope of the protection of confidential information.

The employees or persons who are to be granted access to the confidential version of Exhibits VB 4a and VB 4b on behalf of the Defendants 6) to 9) are named as follows (all being [REDACTED]):

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

In relation to the representatives, Defendants 6-9 submit that the permanent order shall cover all representatives as stated in R.262A.6 RoP, which explicitly refers not only to the authorised representative, but to respective lawyers and other representatives of the parties. Further, according to Defendants, assistants shall have access to the confidential information.

#### GROUND FOR THE ORDER

The Claimant's application for the protection of confidential information, the admissibility of which is not in doubt, must be granted subject to the following.

To protect trade secrets, personal data or other confidential information, the Court may order that access to such information be restricted to specific persons (Art. 58 of the Agreement on a Unified Patent Court ('UPCA') and Rule 262A RoP). The Court may allow an application for such an order considering in particular whether the grounds relied upon by the applicant significantly outweigh the interest of the other party to have full access to the information (Rule 262A.5 RoP).

The Defendants do not dispute that the grounds put forward by Claimant in its application justify an order restricting access to the confidential information to specific persons. Absent any indications to the contrary, the Court thus deems Exhibits VB 4a and VB 4b labelled "confidential" and any information relating to the content of Exhibits VB 4a and VB 4b, as indicated by the Claimant, as confidential within the meaning of Art. 58 UPCA, Rule 262.2 and Rule 262A RoP (the "**Confidential Information**").

Pursuant to Rule 262A.6 RoP the number of persons to whom access to the Confidential Information is restricted shall be no greater than necessary in order to ensure compliance with the rights 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.

Absent any objections from the Claimant, also with a view to the number of defendants and the relevant circumstances of the case, the Court does not have any concerns with the persons identified by the Defendants who are to be granted access to the Confidential Information. This includes [REDACTED], [REDACTED], and [REDACTED], [REDACTED] of Powell Gilbert UK. Rule 262A.6 RoP does not require that the person to whom access is given be an employee of a party or a representative within the meaning of Art. 48 UPCA. Furthermore, as a general principle, a party is free to decide which attorneys it wishes to engage to assist it in the proceedings (UPC Court of Appeal 12 February 2025, UPC\_CoA\_621/2024, *Daedalus/Xiaomi*).

In relation to Defendants' UPC representatives, it follows from Rule 262A.6 RoP, as has been confirmed in the standing case law of the UPC, that access to confidential information shall not be

restricted to only the authorised representatives named and identified in the CMS, but extends to other members of their team actively involved in the present proceedings, including other UPC representatives, patent attorneys and support staff (see e.g. recently Local Division Munich 14 January 2025, UPC\_CFI\_145/2024, UPC\_CFI\_146/2024, UPC\_CFI\_147/2024, UPC\_CFI\_148/2024 *Sanofi v Accord*). There is, however, no reason to widen this group to persons who are not actively involved in these proceedings. To the extent that Defendants are seeking access to the Confidential Information for any person who is not actively involved in these proceedings, this is denied. Furthermore, it should be noted that the authorised (named) UPC representatives identified above are personally responsible for ensuring that their team members maintain the confidentiality of the information (also see Local Division Munich 2 December 2024, application 56128/2024 in ACT\_584119/2023, unpublished).

In the event of a culpable breach of this Order, the Court may impose a recurring penalty payment for each violation which will be determined having regard to the circumstances of the individual breach.

The Court does not see a legal basis for nor, given the circumstances of this case, a separate legal interest in an order to return or destroy the Confidential Information beyond the general duty of confidentiality provided for in Art. 58 UPCA and Rule 262A RoP as this duty already extends beyond the termination of these proceedings. To the extent part IV of the request is so intended, it is therefore rejected.

With regard to request VI, to the extent that this request is to be understood as addressed to the staff of the Court, it lacks a legal basis. Rule 262A RoP does not apply to Court staff (UPC Court of Appeal 20 January 2025, UPC\_CoA\_835/2024, APL\_67638/2024, App\_68645/2024 *Amazon/Nokia*). In so far as the request relates to the parties, it is moot as the Court does not see what it adds over the requests that are granted in this Order. However, besides the power to restrict access to evidence under Art. 58 UPCA, pursuant to Art. 45 UPCA, the Court may decide to make the proceedings confidential, to the extent necessary, in the interest of one of the parties. Similarly, under Art. 10 UPCA, the register shall be kept public subject to the conditions set out in the UPCA and RoP. As follows from the above, the Claimant has an interest in keeping the Confidential Information out of the public domain (also see below on Rule 262.2 RoP). Any further decision to keep (parts of) the proceedings confidential, including any judgement/decision that is to be served, will be made at the appropriate point in time.

For the sake of completeness, the Court notes that the Claimant has also made an application under Rule 262.2 RoP to keep the Confidential Information in the Court register confidential from the public on the basis of the same reasoning as for the present request (App\_22/2025 UPC). This request shall be granted in due course in the respective workflow with the above grounds applying *mutatis mutandis*.

#### ORDER

For these reasons, having heard the parties, the Court orders as follows:

1. The **Confidential Information** is classified as confidential within the meaning of Art. 58 UPCA, Rule 262.2 and 262A RoP.
2. Access to the Confidential Information shall be limited, on the part of **Defendants 1-5**, to the following representatives:

**Christine Kanz** (authorised UPC representative)

and other members of her **team** actively involved in the present proceedings, including other lawyers, patent attorneys and support staff

and to the following natural **persons**:

[REDACTED] and [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

3. Access to the Confidential Information shall be limited, on the part of **Defendants 6-9**, to the following representatives:

**Tobias J. Hessel** (authorised UPC representative)

and other members of his **team** actively involved in the present proceedings, including other lawyers, patent attorneys and support staff

and to the following natural **persons**:

[REDACTED]

4. The Confidential Information shall be treated as such by the Defendants, the Defendants' authorised representatives, their team members and the other natural persons as mentioned under 2 and 3 above and shall not be used or disclosed outside of these court proceedings, except to the extent, that it has come to the knowledge of the receiving party outside of these proceedings, provided that it has been obtained by the receiving party on a non-confidential basis from a source other than Claimant, provided that such source is not bound by a confidentiality agreement with or other obligation of secrecy with Claimant. This obligation of confidentiality shall continue to apply until further notice, even after the conclusion of the court proceedings, unless this information becomes otherwise known or readily accessible to persons who typically have access to such information.
5. If the Defendants' representatives named above make use of the possibility to grant access to confidential information to other members of their team, they are personally responsible for ensuring that their team maintains the confidentiality of the information.
6. In the event of a culpable breach of this Order, the Court may impose a recurring penalty payment for each violation which will be determined having regard to the circumstances of the individual breach.
7. The provisional protection granted by the Preliminary Order dated 7 February 2025 is hereby lifted in so far as it goes beyond this Order.
8. Any further request is rejected.

András  
Ferenc  
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10 March 2025  
KUPECZ  
Judge-rapporteur

#### INFORMATION ABOUT PANEL REVIEW

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

#### INSTRUCTIONS TO THE REGISTRY

In giving effect to this order, the (sub-)registry shall take all necessary steps to grant access to the confidential version of Exhibits VB 4a and VB 4b subject to the above restrictions and conditions.

#### DETAILS OF THE ORDER

Order no. ORD\_6596/2025 in ACTION NUMBER: ACT\_68533/2024

UPC number: UPC\_CFI\_846/2024

Action type: Infringement Action

Related proceeding no. Application No.: 15/2025

Application Type: APPLICATION\_ROP262A