

Procedural Order
of the Court of First Instance of the Unified Patent Court
issued on 02/06/2025
concerning EP 2 028 981
concerning App_23446/2025
(R. 262A RoP)

CLAIMANT

Hurom Co., Ltd.

- 80-60, Golden root-ro - 62184 - Juchon-myeon,
Gimhae-si, Gyeongsangnam-do - KR

Represented by Klaus Haft

DEFENDANTS/APPLICANTS

1) **NUC Electronics Europe GmbH**

- Schwalbacher Strasse 76 - 65760 - Eschborn -
DE

Represented by Christian
Kau

2) **WARMCOOK**

- 73 boulevard Gay Lussac - 13014 - Marseille -
FR

Represented by Christian
Kau

PATENT AT ISSUE:

European Patent No. EP 2 028 981

PANEL/DEVISION:

Panel of the Local Division in Mannheim

DECIDING JUDGES:

This order is issued by the legally qualified judge Böttcher acting as judge-rapporteur

LANGUAGE OF PROCEEDINGS: English

SUBJECT-MATTER OF THE PROCEEDINGS: Request pursuant R. 262A RoP regarding the provision of information

BRIEF SUMMARY OF THE FACTS UND REQUEST:

By decision of 11 March 2025, the Local Division Mannheim ordered Defendants to provide Claimant with information as set out under para. B. II. of the operative part of the decision.

Defendants submitted the information they wish to use to comply with the judgment via a R. 9 RoP application (App_23442/2025). By the request at hand, they submit a request pursuant to R. 262A RoP with regard to this information. They point out that, at the same time, they have lodged an appeal against the judgment and requested that the Court of Appeal orders that the appeal has suspensive effect.

Defendants argue that said information also relates to highly confidential business secrets. Taking into account the possibility, that the above-mentioned decision is be reverted, the highly confidential character of the information calls for issuing an order pursuant R. 262A RoP. In order to further protect the information contained in the redacted versions of the relevant exhibits, Defendants request that, pending the Court of Appeal's decision on the suspensive effect of the appeal, the access to the redacted and unredacted exhibits should not be granted to Claimant.

Claimant opposes the request.

Defendants request:

- 1) The information submitted with this request as Exhibit A 1a, Exhibit A 1b, Exhibit A 2a and Exhibit A 2b is classified as confidential and is not to be disclosed to the Respondent or its legal representatives (lawyers) until the Court of Appeal has ruled on the request of the Applicant pursuant to Art. 74 UPCA, R. 223 RoP (App_23408/2025; PR_APL_21563/2025).
- 2) Following the dismissal of the Applicants' request pursuant to Art. 74 UPCA, R. 223 RoP (App_23408/2025; PR_APL_21563/2025) by the Court of Appeal, only the information highlighted in grey in Exhibit A 1b and Exhibit A 2b is classified as confidential within the meaning of Art. 58 UPCA, R. 262A RoP.
- 3) The confidential content referred to under point 2) may only be disclosed to the legal representatives (lawyers) of the Respondent and to one person from the Respondent's company, who must be named by the Respondent.
- 4) The persons to whom the confidential content referred to under point 2) is disclosed are obliged to keep this information confidential, including from their own employees and the respondent and its employees.

If the duty of confidentiality is culpably breached, the court may impose an appropriate fine on the obligated party for each breach, the amount of which shall be determined by the court.

Claimant requests:

- I. to dismiss Defendants' confidentiality request of 15 May 2025 in case UPC_CFI_159/2024, ACT_17336/2024, App_23446/2025;
- II. *In the alternative to I.* – to grant access to the unredacted Exhibits 1b and 2b besides Claimant's UPC representatives and their assistants to the following employees of Claimant:
 - 1) [REDACTED] (Mr.) / Senior Manager of the IP Team
 - 2) [REDACTED] (Ms.) / Manager of the Overseas Sales Team 1
 - 3) [REDACTED] (Mr.) / Head of the IP Team
 - 4) [REDACTED] (Mr.) / Director of the Overseas Sales Division
 - 5) [REDACTED] (Ms.) / Senior Manager of the IP Team

By order of 20 May 2025, the judge-rapporteur essentially dismissed request 1 and gave Claimant's representative the opportunity to comment, thereby ordering them to keep provisional confidentiality vis-à-vis the Claimant. The order states that the Claimant's representatives have to be heard immediately, because there is no basis and no justification for withholding such a submission until the Court of Appeal has ruled on an application for suspensive effect of an appeal against the underlying decision ordering the defendant to provide information. Rather, submissions must be served on the UPC representatives of the other party in the normal course of business. In addition, there is also no need to withhold such a submission which contains the information to be provided. The submitting party itself has the power to determine the time of such submission to the court. However, it must bear the consequences of any delay in providing information it is required to render. Since the timeliness of the provision depends in any case on the Claimant's receipt of the information, providing the information to the court is not sufficient to ensure timeliness anyway.

The order further states that, moreover, the submission at hand was served on Claimant's representative automatically by the CMS. For the reason set out above, Claimant's representative also have to get access to the unredacted versions of the submitted exhibits in order to comment on the confidentiality request. As usual, the Claimant's representatives must therefore be given the opportunity to comment on the request pursuant R. 262A RoP and must be required to maintain confidentiality, including vis-à-vis the Claimant, until a decision has been made on the request.

GROUNDS FOR THE ORDER:

The request is to be dismissed in its entirety.

1. If a defendant, after having been order to do so by a decision on the merits, provides information to the claimant, there is no possibility of applying separately to the court for protection of confidentiality for the provision of information.

R. 262A RoP applies only to information contained in the pleadings of the parties to the proceedings. This finding cannot be circumvented by submitting the information, which the defendant was ordered to disclose to the Claimant, to the court in an unsolicited written brief after

the decision on the merits has been delivered. This is all the more true since a defendant who has been ordered by a decision on the merits to provide information to the claimant must provide said information directly to the claimant and may not misuse the court as a letterbox or postman for the provision of information.

Furthermore, the proceedings before the court of first instance are concluded insofar as the court has decided on the merits. For this reason, it is no longer possible to submit any further submissions to the court of first instance in this regard.

2. Even if the application pursuant to R. 262A RoP at hand were admissible, the judge-rapporteur, after consultation with the presiding judge, exercises its discretion not to grant protection pursuant to R. 262A RoP.

The information, which Defendants have been ordered to provide, may only be used to identify third infringers, to determine and calculate damages and to verify information obtained from the Defendants in this regard (cf. decision on the merits, para. 121). In particular, Claimant is not allowed to use the information in order to gain a competitive advantage. The afore-mentioned restrictions on the use of the information are inherent to the order to provide information. They would remain in place even if the decision of 11 March 2025 were overturned on appeal and the infringement action were dismissed accordingly. Moreover, any unauthorised or improper use may in addition constitute a breach of business secrecy within the meaning of Directive (EU) 2016/943 ("Trade Secrets Directive"). Thus, Defendants' information and commercial interests are sufficiently protected because the information obtained by Claimant must not be used for any other purpose. In the case at hand, there is no indication for a specific risk of misuse, which would justify the issuance of an order pursuant to R. 262A RoP which would provide additional protection only. For this reason and the reasons outlined above, the interests of Claimant in an access which is not separately restricted by a court order pursuant to R. 262A RoP outweigh the interests of Defendants in obtaining additional protection by an order pursuant to R. 262A RoP.

3. There is no necessity and no justification to delay the decision on Defendants' request until the Court of Appeal has decided on the suspensive effect of Defendants' appeal against the decision on the merits.

Defendants themselves decided to submit the information to the files of the court. For the reasons outlined above, there is no justification for withholding the submission from Claimant and not deciding on the request pursuant to R. 262A RoP in the normal course of business.

ORDER:

- I. Defendants' request pursuant to R. 262A RoP of 15 May 2025 is dismissed in its entirety.
- II. For the period from its issuance, this order supersedes the preliminary order of 20 May 2025.

ORDER DETAILS

Order no. ORD_24141/2025 in ACTION NUMBER: ACT_17336/2024

UPC number: UPC_CFI_159/2024

Action type: Infringement Action

Related proceeding no. Application No.: 23446/2025

Application Type: APPLICATION_ROP262A

Issued in Mannheim on 2 June 2025

NAME AND SIGNATURE

Dirk
Andreas
Böttcher



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von Dirk Andreas
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Böttcher
Legally qualified judge