



UPC_CFI_477/2025
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 05/06/2025

Headnotes: In principle, the costs of the proceedings are not covered by confidentiality under Rule 262A RoP or by the attorney-client privilege unless they are specifically indicative of the company's financial capacity, its commercial strategy, or the importance of the patent as a corporate asset. Applying these principles, confidentiality as a general principle might also be granted to costs incurred by companies for legal services relating to litigation and patent protection, since this information might indicate the importance that companies attach to the patents they hold and the risk they are willing to take to protect them.

APPLICANT/S

Insulet Corporation
(Applicant) - 100 Nagog Park - MA 01720 -
Acton - US

Represented by Marc
Grunwald

RESPONDENT/S

EOFLOW Co., Ltd.
(Respondent) - 302Ho, HUMAX VILLAGE, 216 -
13595 - Hwangsaeul-ro, Bundang-gu,
Seongnam-si, Gyeonggi-do – KR

Represented by Mirko Weinert

PATENT AT ISSUE

Patent no.

Proprietor/s

EP4201327

Insulet Corporation

DECIDING JUDGE: judge rapporteur

LANGUAGE OF PROCEEDINGS: English

SUBJECT-MATTER OF THE PROCEEDINGS: application for confidentiality Rule 262A RoP

POINTS AT ISSUE

On May 28, 2025, INSULET co. Ltd filed a request with this court for the payment of costs incurred as a result of the proceedings relating to the application for a preliminary injunction against the Korean company EOFLOW (UPC_CFI 380/24 and the following proceedings before the Court of Appeal UPC_CoA 768/24).

INSULET also filed a request for confidentiality (262A) as to information regarding attorney’s fees and expenses incurred in connection with the application for PI.

The request was accompanied by the filing of Exhibits 2a, and 4a in two versions, one complete and one partially redacted, following the provisions of article 262(4).

Exhibit 3a appears to have been filed only in two versions too, the first one completely redacted (see below an example)

Insulet

Peterreins Schley Patent
Hermann-Sack-Str. 3
80331 MUNICH
GERMANY

Exhibit 3a
Insulet Corporation / J. EOFLOW Co., L
Unified Patent Court
Central Division Milan
Peterreins Schley
Application for Cost Decision

Payment advice notification	
Date	15.08.2024
Document/posting date	2000020174 / 15.08.2024
Our clerk	
Telephone	-
Fax	-
Your account with us	
Our account with you	

and a second one partially redacted (see below). This version was indicated by the Applicant as partially redacted.

Insulet

Peterreins Schley Patent
Hermann-Sack-Str. 3
80331 MUNICH
GERMANY

Insulet Corporation / J. EOFLOW Co., L
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INSULET's confidentiality request is based on: *"The information designated as confidential (marked in grey as well as Exhibits PS 2a, 3a and 4a) is protected under the 'attorney-client privilege' pursuant to R. 287 RoP and is therefore inherently privileged. It pertains to the specifics of legal fees and is of a highly sensitive nature, as it contains information involving the hourly rates and certain communication between Applicant and its legal representatives. This information is not publicly known and is not accessible to any third party. Applicant and Applicant's legal representatives have implemented appropriate measures to safeguard the confidentiality of this information. There exists a legitimate interest in maintaining its non-disclosure, and Applicant is entitled to a reasonable expectation of confidentiality in this regard".*

The Club of confidentiality should be restricted according to INSULET'S submission only to a few legal representatives of EOFLOW, and thus not to the company itself, *"Given the highly sensitive nature of the information at issue, the number of persons granted access must be strictly limited. For the purpose of these proceedings, there is no need to extend access to more than one individual on Respondent's side, in addition to its UPC representatives".*

EOFLOW submitted observations within the time limit indicated by the Court.

EOFLOW requested the application to be dismissed, maintaining:

- Information about the costs of litigation did not touch upon INSULET's business and did not constitute a trade secret of the company but rather of its legal representatives, whose position was not considered by Rule 262A,
- Some pieces of information were not even confidential, being related to translation costs, courier costs, and travel expenses,
- EOFLOW's interest in gaining access to the information was overriding INSULET's confidentiality interests.
- At least a natural person from each party must be involved in the club of confidentiality pursuant to the clear statement of Rule 262A so that any confidential information should not be restricted solely to legal representatives or to a designated employee of the counterparty.
- Subordinately EOFLOW asked that the designated employee would be its CEO Jesse Kim.

The application is admissible

The Application contains the grounds upon which the applicant believes the information or evidence in question should be restricted in accordance with Article 58 of the Agreement.

A redacted and an unredacted copy of the Exhibits were lodged with the application.

The application is partially well-founded

Rule 262A – Protection of Confidential Information - states: *'1. Without prejudice to Article 60(1) of the Agreement and Rules 190.1, 194.5, 196.1, 197.4, 199.1, 207.7, 209.4, 315.2 and 365.2 a party may make an Application to the Court for an order that certain information contained in its pleadings or the collection and use of evidence in proceedings may be restricted or prohibited or that access to such information or evidence be restricted to specific persons'.*

Article 262 a RoP aims to preventing the disclosure of information of technical and commercial interest outside the perimeter of the necessary defence right, which is why, on the one hand, the disclosure of the documents in their full version outside the proceedings is prevented, and, on the other hand, access to the documents is always guaranteed to at least one person expressing the counterparty as well as to the defence team.

Article 262A RoP also responds to reasons of efficiency, consistency, and procedural celerity because it allows the parties a more articulate defence by exposing confidential and privileged information while at the same time preventing the risk of its disclosure to the public.

Reference is made to UPCA Rule 58, Rule No. 262A, Directive (EU) 2016/943 on the protection of know-how and undisclosed business information ('trade secrets') and the solutions adopted by interpretation by the UPC in relation to the protection of confidential information.

Indeed, the general rule outlined in Rule No. 262A, paragraph No. 6 of R.o.P.2 reproduces the wording used in the last paragraph of Article 9 (2) of Directive (EU) 2016/943 on the protection of know-how and undisclosed business information ('trade secrets').

Before going into the merits of the claims made by INSULET, it should be recalled that the first legal mention of know-how or of "undisclosed information" is to be found in the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as TRIPS), which is Annex 1C to the Marrakesh Agreement signed on 15 April 1994 and which established the World Trade Organisation (WTO).

Article 39(2) of TRIPS states that: '*Natural and legal persons shall have the opportunity to prevent information lawfully under their control from being disclosed, acquired or used by others without their consent in a manner contrary to honest business practices, provided that such information*':

- *are secret in the sense that the body of the information is not, as a body or in the precise configuration and assembly of its components, generally known or readily accessible to persons within the circles that normally deal with this type of information*
- *have a commercial value because they are secret;*
- *Have been subject to steps that were reasonable under the circumstances by the person lawfully in control of the information to keep it secret.*

These characteristics are then reproduced almost identically in Article 2 of Directive n° 943/2016. Thus, the main characteristics of protectable trade secrets are, according to this legal framework, secrecy, commercial value, and demonstrable investment to keep the information secret.

It should be noted, however, that the concept of 'trade secret' in the context of the above-mentioned Directive is significantly broader than that of know-how, as it also includes commercial, accounting, and market information that cannot be translated into production processes.

It must, therefore, be a piece of information which, individually or in combination, is such that it cannot be acquired by competitors within a reasonable time and at a reasonable cost, and whose knowledge by the competitor is either not possible, because it would require overcoming the company's defensive precautions, or is obtainable through effort or investment; secondly, the information must have an economic value, not in the sense that it has a market value, but in the sense that its use entails a competitive advantage on the part of the person implementing it, which makes it possible to maintain or increase market share; thirdly, the information must be subject, on the part of the persons to whose legitimate control it is subject, to specific measures that are reasonably adequate to maintain it secret.

Applying these principles, confidentiality as a general principle might also be granted to costs incurred by companies for legal services relating to litigation and patent protection.

This information might indicate the importance that companies attach to the patents they hold and the risk they are willing to take to protect them.

This court, therefore, considers, on the other hand, that, in principle, the costs of the proceedings are not covered by confidentiality unless they are specifically indicative of the company's financial capacity, its commercial strategy, or the importance of the patent as a corporate asset.

And thus, as correctly stated by the defendant's defense, protection cannot be recognized from the point of view of protecting the law firm about the disclosure of the costs it applies to patent litigation, but only from the point of view of the company, which is the sole beneficiary of the protection governed by Rule 262A RoP but not under the principle of attorney-client privilege.

In fact, rule 262A refers to information '*contained in its pleadings*' and evidence thereof and, therefore, to information identifiable as company secrets in the sense previously referred to.

Art. 58 UPCA refers to ‘confidential information of a party to the proceedings or of a third party’ and thus to companies, and the third party mentioned is undoubtedly not the legal team involved in the proceedings.

In light of these considerations, the invoices issued by Law Firm Peterreins Schley and listed in Exhibit 2 can be protected by confidentiality because they show the patent owner's interest in defending it.

However, this does not apply to the breakdown of costs within the law firm and between individual employees, with an indication of the billable hours referred to in Exhibit 4.

With regard to Exhibit 3, a document has been submitted that appears to contain some of the invoices already filed as Exhibit no. 2, but which, however, shows an ‘invoice amount paid’ higher than the ‘original invoice amount’ for almost all invoices.

It is not easy to understand the reason for filing this document, as it already contains data included in Exhibit 2.

INSULET may clarify the relevance of this document during the phase relating to the determination of the costs of the proceedings; with regard to the confidentiality of this information, protection can be granted for the same reasons given for Exhibit No. 2.

As to the concrete modalities and the identification of the ‘club’ of confidentiality, the general rule is the mandatory inclusion in the club of a natural person and the legal defence team.

And this is pursuant to the letter of Rule No. 262A, paragraph No. 6 of the R.o.P. and Article 9 (2), last paragraph, of Directive (EU) 2016/943, cited above.

The importance of this discipline has already been observed in application by other Local Courts of the UPC (i.e. the decision of the Local Court of Dusseldorf of 27 March 2024¹ UPC_CFI_355/2023) where the necessary examination of confidential information by a legal representative of defendant in order to ensure the fullness of the direct defence and cross-examination was emphasised.

These specific rules specify that the number of persons referred to in the confidentiality club must not exceed the number necessary to ensure respect for the right of the parties to the judicial proceedings to an effective remedy and to a fair trial and must include at least one natural person for each party and the respective lawyers or other representatives of those parties to the proceedings.

As regards the prohibition of access to individual natural persons, the Court observes, excluding the defendant or the natural person representing the company is only possible:

- I. on mutual agreement
- II. in case of waiver by the party concerned of the right of access by a natural person
- III. in antitrust behaviours

In the present case, there is no agreement of the parties; the respondent has not waived the request for access by a natural person of its own and there is no interference with antitrust law.

Therefore, INSULET’s request to limit confidentiality to law firms’ representatives is dismissed.

The natural person representing EOFLOW can be identified as Jesse KIM, CEO of EOFLOW.

The importance of the correct interpretation of the system of Section 262. (a) of the RoP in the light of the underlying rationale of the institute, highlighted above, suggests that the appeal should be admitted, also in the light of the need for a consistent interpretation, within the system, as expressly indicated by Preamble No. 8 of the RoP.

¹ The court has to strike a balance between the adequate level of protection of said confidential information and the right of the claimant to have sufficient access to the information in order to exercise its right to be heard. In this context, R. 262A.6 RoP establishes with all desirable clarity as a ground rule of paramount importance that at least one natural person from each party and the respective lawyers or other representatives are to be granted access in order to ensure a fair trial. When deciding upon the level of restriction, again the circumstances of the case are to be taken into consideration. Whereas in some cases a restriction may be more important to safeguard the confidential information concerned, in other cases the right to full access to the files of a party trumps the interest of protection.

The appeal against this order is therefore admitted.
The court issues the following

ORDER

Exhibits 2 and 3 lodged in No. ACT_25378/2025 in the unredacted version will be accessible only to the legal representatives of EOFLOW Ltd. including employees of the law firm who need access for case management purposes, and to Mr. JESSE KIM.

The Registrar shall, as soon as practicable, take all necessary steps to give effect to this Order.

Milan, 5 June 2025

judge rapporteur
Andrea Postiglione

INFORMATION ABOUT APPEAL

Leave to appeal is granted.

ORDER DETAILS

Order no. ORD_25720/2025 in ACTION NUMBER: ACT_39640/2024
UPC number: UPC_CFI_477/2025
Action type: Application for provisional measures (RoP206)
Related proceeding no. Application No.: 25415/2025
Application Type: APPLICATION_ROP262A