

PROCEDURAL ORDER
of the Court of Appeal of the Unified Patent Court
issued on 6 June 2025
concerning an application for suspensive effect

HEADNOTES:

1. The provisions of Art. 67 UPCA mirror those of Article 8 on the right of information of the Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (hereafter the “Enforcement Directive”) which, among other measures, is designed to ensure a high level of protection in all the Member States of the European Union, and allows precise information to be obtained on the origin of the infringing goods or services, the distribution channels and the identity of any third parties involved in the infringement (Enforcement Directive, Preamble para. 21).
2. It follows that the communication of information belongs to measures that, when so ordered, are necessary to ensure a high level of protection. It is thus only under exceptional circumstances that the enforcement of such measures may be suspended under R. 223 RoP.
3. Even if disclosure of the information pending the appeal would to some extent undermine the purpose of the appeal against this part of the impugned decision, NUC has not shown that the appeal becomes devoid of purpose without suspensive effect and that its interests in maintaining the confidentiality of the information pending the appeal outweigh HUROM’s interests in immediately obtaining information on the origin and distribution of NUC’s products in order, inter alia, to prevent further infringements.

KEYWORDS:

Suspensive effect of the appeal, R. 223 RoP.

APPLICANT (APPELLANT AND DEFENDANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

NUC Electronics Co., Ltd, 280, Nowon-ro, Buk-gu, Daegu, 41548, Republic of Korea (hereinafter “**NUC**”)

represented by Martin Momtschilow, attorney-at-law, Dr. Christian Kau, attorney-at-law, Dr. Axel Oldekop, attorney-at-law, Preu Bohlig & Partner

RESPONDENT (CLAIMANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Hurom Co., Ltd., 80-60, Golden root-ro, Juchon-myeon, Gimhae-si, Gyeongsangnam-do, 62184, Republic of Korea (hereinafter “**HUROM**”)

represented by Klaus Haft, attorney-at-law, Sebastian Kratzer, attorney-at-law, Hoyng ROKH Monegier

PATENT AT ISSUE

EP 2 028 981

DECIDING PANEL

Panel 1a

Klaus Grabinski, President of the Court of Appeal

Peter Blok, Legally qualified judge

Emmanuel Gougé, Legally qualified judge and judge-rapporteur

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- Decision of the Court of First Instance of the Unified Patent Court, Mannheim Local Division, dated 11 March 2025

Numbers attributed by the Court of First Instance:

UPC_CFI_162/2024

ACT_17365/2024

ORD_68864/2024

FACTS AND REQUESTS OF THE PARTIES

4. HUROM has brought an action against NUC for infringement of its patent EP 2 028 981 before the Mannheim Local Division of the Unified Patent Court (hereafter respectively the “infringement action”, the “patent at issue” and the “Mannheim LD”).

Procedural background

5. On 11 March 2025 the Mannheim LD held that HUROM had demonstrated that NUC had infringed claim 1 of the patent at issue and, inter alia, ordered NUC to destroy and recall the products referred under Part A.II of the operative part of its decision, and ordered NUC, under Part B.II of said decision, to inform HUROM to the extent of which it had committed infringing acts referred to under said Part A.II, stating (i) the origin and distribution channels; (ii) the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained, in particular a number of specific information such as manufacturing quantities and times, individual deliveries, turnover, individual offers, advertising and identity of all third parties involved in the distribution (impugned decision, ORD_68864/2024).

Appeal and application for suspensive effect

6. On 9 May 2025, NUC brought an appeal against the impugned decision (APL_21565/2025 UPC_CoA_410/2025).

7. On 15 May 2025, NUC filed an application for suspensive effect of the appeal against the impugned decision under Art. 74 UPCA and R. 223 RoP (App_23407/2025 UPC_CoA_434/2025) to which HUROM responded.
8. NUC claims that the information it must provide pursuant to Part B.II of the impugned decision contains highly confidential business secrets, such as information regarding the identity of its customers, that its disclosure would cause irreparable damage in the event it is successful in the appeal and that, once disclosed, the information could no longer be made unavailable respectively unknown. It further claims that disclosure of the requested information would give HUROM – as direct competitor – access to highly sensitive economic information that HUROM could use strategically for its own market positioning, so that there is a clear risk of misuse of said information.
9. HUROM requests, in the absence of exceptional circumstances and of established confidential business secrets, the application for suspensive effect to be dismissed in its entirety and refers to its submissions in the R. 262A RoP proceedings with the Mannheim LD (see below).

First instance application for protection of confidential information

10. Following its obligation to provide information as set out under Part B.II of the impugned decision, including information on its distribution channels, NUC submitted the information it wished to use to comply with the judgment via a R. 9 RoP application (R.9 RoP Application of 16 May 2024, App_23474/2025) and requested that such information be classified as confidential and access to such information be restricted to specific persons according to Art. 58 UPCA, R. 262A RoP (Application of 16 May 2025, App_23475/2025 UPC_CFI_162/2024), namely that:
 - (i) The information submitted with this request as Exhibit A 1a and Exhibit A 1b 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_23407/2025; PR_APL_21565/2025).
 - (ii) Following the dismissal of the Applicant's request pursuant to Art. 74 UPCA, R. 223 RoP (App_23407/2025; PR_APL_21565/2025) by the Court of Appeal, only the information highlighted in gray in Exhibit A 1b is classified as confidential within the meaning of Art. 58 UPCA, R. 262A RoP.
 - (iii) 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.
 - (iv) 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.
11. In a preliminary order of 20 May 2025, the Mannheim LD addressed the issue of confidentiality and ordered that the Exhibit A 1a and Exhibit A 1b, containing (allegedly) confidential information shall be restricted exclusively to HUROM's representatives pending a final decision upon the confidentiality request and that the information identified by NUC as confidential shall be treated as such by said representatives until further notice and shall not be used or disclosed outside of court proceedings (ORD_24143/2025 ACT_17365/2024 UPC_CFI_162/2024)
12. On 2 June 2025, the Mannheim LD dismissed NUC's request pursuant to R. 262A RoP of 15 May 2025 in its entirety (Order ORD_24143/2025, App_23475/2025 ACT_17365/2024 UPC_CFI_162/2024). It considered, inter alia, that if a defendant, after having been ordered 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.
13. It further decided that, in the absence of any indication for a specific risk of misuse which would justify the issuance of an order pursuant to R. 262A RoP, if the application pursuant to R. 262A RoP at hand were admissible, it would exercise its discretion not to grant protection pursuant to R. 262A RoP, as it already

stated in the impugned decision that the information to be provided by NUC to HUROM may only be used to identify third infringers, to determine and calculate damages and to verify information obtained from NUC in this regard (impugned decision para. 125). HUROM is not allowed to use the information for any other purposes, so that NUC information and commercial interests are sufficiently protected. It further reminded the parties that any unauthorized or improper use may in addition constitute a breach of business secrecy within the meaning of the “Trade Secrets” Directive (EU) 2016/943.

REASONS FOR THE ORDER

14. The requests shall be dismissed for the following reasons.
15. An appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties (Article 74.1 UPCA). According to R. 223.2 RoP, the application for suspensive effect shall set out (a) the reasons why the lodging of the appeal shall have suspensive effect and (b) the facts, evidence and arguments relied on.
16. The Court of Appeal can grant the application only if the circumstances of the case justify an exception to the principle that the appeal has no suspensive effect (UPC_CoA_388/2024, APL_39884/2024, 19 August 2024, Sibio v Abbott; UPC_CoA_12/2025 APL_366/2025 App_1182/2025, 16 January 2025, Bhagat v Oerlikon). Exceptional circumstances shall be assessed having regard to the relevant circumstances of the case. An exception to the principle that an appeal has no suspensive effect may apply, for instance, if the appealed order or decision is manifestly erroneous, or if the appeal becomes devoid of purpose in the absence of suspensive effect (Court of Appeal 19 June 2024, UPC_CoA_301/2024 APL_33746/2024 App_35055/2024 - ICPillar vs. ARM).
17. The requirement of exceptional circumstances has to be established by the applicant. In its application, NUC merely claims that suspensive effect is required because of the risk that a disclosure of the requested information would cause irreparable damage as, beyond providing HUROM with individual business contacts, it would as a whole form a precise picture of NUC's market strategy, internal distribution structure, and business positioning which, once disclosed, could no longer be made unavailable respectively unknown, and put forward the risk of misuse of said information without substantiating it further.
18. The power of the Court to order the communication of information on the origin and distribution channels, the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained, is enshrined in Art. 67 UPCA which provides that the Court may, in response to a justified and proportionate request of the applicant, order an infringer to inform the applicant of such information.
19. The provisions of Art. 67 UPCA mirror those of Article 8 on the right of information of the Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (hereafter the “Enforcement Directive”) which, among other measures, is designed to ensure a high level of protection in all the Member States of the European Union, and allows precise information to be obtained on the origin of the infringing goods or services, the distribution channels and the identity of any third parties involved in the infringement (Enforcement Directive, Preamble para. 21).
20. It follows that the communication of information belongs to measures that, when so ordered, are necessary to ensure a high level of protection. It is thus only under exceptional circumstances that the enforcement of such measures may be suspended under R. 223 RoP.
21. In the present case, referring in broad terms to a risk of irreparable harm without substantiating it, NUC has not demonstrated that the communication of information ordered under Part B.II of the impugned decision is a manifestly erroneous application of Art. 67 UPCA and has not brought forward any other exceptional circumstances which may justify that suspensive effect should be ordered. Even if disclosure of the information pending the appeal would to some extent undermine the purpose of the appeal against this part

of the impugned decision, NUC has not shown that the appeal becomes devoid of purpose without suspensive effect and that its interests in maintaining the confidentiality of the information pending the appeal outweigh HUROM's interests in immediately obtaining information on the origin and distribution of NUC's products in order, inter alia, to prevent further infringements.

22. The issue raised by NUC of confidentiality of the requested information and the associated risk of misuse of the same by HUROM does not change this assessment. It has been assessed by the Mannheim LD which considered that there is no risk of misuse which would justify the issuance of an order pursuant to R. 262A RoP (Mannheim LD, Order of 2 June 2025, ORD_24143/2025).
23. Concerning more specifically the risk of misuse of information, the Court of Appeal notes that, according to the impugned decision (para. 125), the information to be provided under Part B.II of its operative part must not be used for any other purpose than the purposes mentioned thereto, ie identify third infringers, to determine and calculate damages and to verify information obtained from the infringer.

ORDER

The application for suspensive effect is dismissed.

This order was issued on 6 June 2025.

Klaus Grabinski, President of the Court of Appeal

Peter Blok, Legally qualified judge

Emmanuel Gougé, Legally qualified judge and judge-rapporteur