



Local Division Munich
UPC_CFI_846/2024

Order
of the Court of First Instance of the Unified Patent Court
issued on 15 July 2025

APPLICANTS (DEFENDANTS IN THE MAIN PROCEEDINGS, COUNTERCLAIMANTS):

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-Amunds, 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)

RESPONDENTS (CLAIMANT IN THE MAIN PROCEEDINGS, DEFENDANTS IN THE COUNTERCLAIM):

1. **Promosome LLC**, 48 Gurley Road, 06902 Stamford, Connecticut, USA,
2. **The Scripps Research Institute**, 10550 North Torrey Pines Road, La Jolla, CA 92037, USA,
represented by: Georg A. Rauh of Vossius & Partner Patentanwälte Rechtsanwälte mbB,
Siebertstr. 3, 81675 München, DE.

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 and counterclaim for revocation– R. 262A RoP

SUMMARY OF FACTS

The Applicants filed a request for protection of confidential information pursuant to Rule 262A and 262.2 of the Rules of Procedure by applications dated 18 June 2025. Defendants 1-5 did so in workflow App_29253/2025 UPC_CFI_846/2024 (generic), Defendants 6-9 in App_29243/2025 UPC_CFI_846/2024 (262A). It was agreed with the parties that the Court would – for CMS reasons – proceed only in the 262A workflow App_29243/2025, also for Defendants 1-5, who agree to any submissions made in that workflow by defendants 6) to 9). Identical applications have been made in the two counterclaims for revocation (CC_25855/2025 UPC_CFI_485/2025) and (CC_28514/2025 UPC_CFI_535/2025) involving the above parties and the same information. Hence, this order applies to those proceedings *mutatis mutandis*. Confirmatory orders will be issued in due course to complete the respective workflows.

The Respondents provided comments pursuant to Rule 262A.4 RoP after having been invited to comment by way of preliminary order dated 27 June 2025.

The Applicants did not provide any further comments.

REQUESTS

The Applicants request:

I. the information marked in grey in the Statement of Defence and Counterclaim for revocation dated 18 June 2025 and figures submitted along with it and marked as “CONFIDENTIAL”, which we have summarized in the following tables, are classified as confidential:

For Defendants 1-5:

No.	Confidential information	Brief	Paragraphs
1.	License agreement (Exhibit VB 4a)	Statement of Defence and Counterclaim for revocation dated 18 June 2025	380-391, 395, 398-399, Heading before 403, 403-405, 407, 409-410, 412, 414-417, 421
2.	License agreement (Exhibit VB 4b)	Statement of Defence and Counterclaim for revocation dated 18 June 2025	392-395, 398-399, Heading before 403, 403-405, 407, 409-410, 412, 421

For Defendants 6-9:

- I. the information marked in grey in the Statement of Defence and Counterclaim for revocation dated 18 June 2025 and figures submitted along with it and marked as “CONFIDENTIAL”, which we have summarized in the following table, are classified as confidential:

No.	Confidential information	Brief	Paragraphs
1.	License agreement (Exhibit VB 4a)	Statement of Defence and Counterclaim for revocation dated 18 June 2025	4, Heading before 378, 380-391, 395, 398-399, Heading before 403, 403-405, 407, 409-410, 412, 414-417, 421
2.	License agreement (Exhibit VB 4b)	Statement of Defence and Counterclaim for revocation dated 18 June 2025	4, Heading before 378, 392-395, 398-399, Heading before 403, 403-405, 407, 409-410, 412, 421

Hereafter collectively referred to “the CONFIDENTIAL INFORMATION”

II. and to order that they be treated as strictly confidential by anyone who becomes aware of them as a result of their involvement in the present proceedings and that they not be used or disclosed outside these court proceedings, except to the extent if and insofar as the obligor has demonstrably gained knowledge of the confidential information outside the present legal dispute (e.g., from parallel proceedings abroad) on a non-confidential basis, provided that such source is not bound by a confidentiality agreement with or other obligations of secrecy. Furthermore, confidentiality is generally no longer required if and as soon as a legally binding decision is made in the future that the information classified as confidential (see Sec. I.) is not confidential or if and as soon as the information classified as confidential becomes known in the relevant circles or is readily accessible to them. This also applies after the conclusion of these proceedings. 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.

III. The sections with confidential content referred to under Sec. I. may only be disclosed to the persons as defined in the confidentiality order of the Division dated 10 March 2025 (ORD_6596/2025).

IV. In the event that this submission of facts is discussed in the oral hearing to order that only the persons as defined in the confidentiality order of the Division dated 10 March 2025 (ORD_6596/2025) are permitted to attend the oral hearings taking place in the present proceedings at which confidential information may be disclosed. Only these persons may be provided with the recordings and minutes of the aforementioned hearings insofar as information to be classified as confidential under Sec. I. is concerned.

GROUND FOR THE ORDER

The (admissible) application is, to a large extent, unfounded.

The CONFIDENTIAL INFORMATION is already covered by the confidentiality order dated 10 March 2025 (Order no. ORD_6596/2025 in ACTION NUMBER: ACT_68533/2024. "Confidentiality Order"). This issue was addressed by the judge-rapporteur in the preliminary order dated 27 June 2025 and has been confirmed by the Respondents and this was not contested by the Applicants. The Confidentiality Order classifies Exhibits VB 4a and VB 4b and any information relating to the content of Exhibits VB 4a and VB 4b (see Confidentiality Order, under 1, in connection with the definition of "Confidential Information" in the Confidentiality Order) as confidential within the meaning of Art. 58 UPCA, Rule 262.2 and 262A RoP. There is no need for a new order pursuant to Rule 262A RoP if the information or evidence concerned is already protected by a Rule 262A RoP order but is only contained in another statement or document lodged in the proceedings (cf. UPC Court of Appeal 20 June 2024, UPC_CoA_234/2024, *Curio/10x Genomics*). The restrictions and protections granted by points 2 – 6 of the Confidentiality Order therefore already apply to the CONFIDENTIAL INFORMATION. In view of this, a new order is neither necessary nor appropriate.

In addition, the CONFIDENTIAL INFORMATION relates to information in agreements between the Claimant and the patent proprietor, both being Defendants in the counterclaim (i.e. the license agreements VB 4a and VB 4b). The CONFIDENTIAL INFORMATION is thus already known to both of these parties. This is uncontested by the Applicants. For this reason, also, there is no need to restrict access to the CONFIDENTIAL INFORMATION for the Claimant and the patent proprietor.

In relation to the request under IV to hold the oral hearing (in relation to the CONFIDENTIAL INFORMATION) behind closed doors, there is no need for an order at this stage beyond the classification of the information as confidential within the meaning of Article 58 UPCA, Rule 262A RoP and Rule 262.2 RoP as already provided for in the Confidentiality Order. The decision to make (part of) the hearing confidential (also see Article 45 UCPA) will be a matter for the Court in the context of the oral hearing and should be postponed until that point in time.

In view of the above, the application is, to a large extent, unfounded and is to be rejected for requests I-III. A decision on request IV is deferred to the oral hearing.

ORDER

- Applicants' requests I-III are rejected.
- A decision on Applicants' request IV is deferred to the oral hearing.

15 July 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 the Respondents' representatives access in the CMS to the unredacted versions of the Statements of Defence and Counterclaims for revocation in cases ACT_68533/2024, CC_25855/2025 and CC_28514/2025.

DETAILS OF THE ORDER

Order no. ORD_32550/2025 in ACTION NUMBER: ACT_68533/2024

UPC number: UPC_CFI_846/2024

Action type: Infringement Action

Related proceeding no. Application No.: 29243/2025

Application Type: APPLICATION_ROP262A