



Central Division Paris Seat

Procedural Order
of the Court of First Instance of the Unified Patent Court
Central Division (Paris Seat)
delivered on 16/07/2025
No. App_25881/2025 UPC_CFI_484/2025

Claimant (Applicant):

KINEXON SPORTS & MEDIA GMBH

Schellingstraße 35, 80799 Munich, Germany

Represented by: Prof. Dr. Tilman Müller-Stoy, Prinzregentenplatz 7, 81675 Munich, Germany

Defendant:

BALLINNO B.V.

Registered at (1713 BA) Obdam, De IJvelandssloot 41

Represented by: R. Broekstra Msc LLM, M.G.R. van Gardingen, Georg Rauh, M.W.L.Groeneveld,
Grote Bickersstraat 74-78, 1013 KS Amsterdam, Netherlands

PANEL

Presiding judge

François Thomas

Legally qualified judge, judge rapporteur

Maximilian Haedicke

Technically qualified judge

Gérard Myon

DECIDING JUDGE:

This order has been issued by the legally qualified judge and judge rapporteur **Maximilian Haedicke**.

LANGUAGE OF PROCEEDINGS: English

PATENT AT ISSUE: EP 1 944 067 B1

SUBJECT OF THE PROCEEDINGS

Application for a cost decision (R. 151 RoP) - ACT_25841/2025

Application for protection of confidential information (R. 262A RoP) - App_no.: 25881/2025

SUMMARY OF FACTS AND REQUESTS

The Parties are in dispute about the confidential nature of details disclosed in an application for a cost decision and the measures warranted if a confidential nature would be accepted.

With submission of 30 May 2025, Claimant filed an Application for a cost decision No. ACT_25841/2025 regarding revocation action No. ACT_27358/2024 / UPC-CFI 230/2024.

In this Application for protection of confidential information (R. 262A RoP) of 30 May 2025, with regard to certain passages in the Application for a cost decision of 30 May 2025, Claimant requests:

1. The information shown in gray in the Application for a cost decision is Confidential Information according to R. 262A RoP, which must be treated as strictly confidential and may not be used or disclosed outside the present legal dispute, even after its conclusion.

2. Access to the unredacted version of Claimant's Application for a cost decision is restricted to the following persons on the Defendant's side:

a) the Defendant's UPC representatives and their internal assistants, insofar as their access to the Confidential Information is required for their work in these proceedings,

b) Petrus Mathias Borst.

3. The persons named under item 2 are obliged to treat the Confidential Information under item 1 as strictly confidential – even after these proceedings – and to use the Confidential Information exclusively for the purposes of these proceedings. The information must not be used or disclosed outside of these proceedings unless it has been disclosed to the receiving party outside of these proceedings. This exception, however, only applies if this information was obtained by the receiving party on a non-confidential basis from a source other than Claimant, provided that this source is not bound by a confidentiality agreement with Claimant or by any other duty of confidentiality.

Claimant argues:

- The information highlighted in gray constitutes business secrets of Claimant's UPC representative and of Claimant itself within the meaning of Art. 24 (1) lit. a) UPCA in conjunction with Art. 2 no. 1 of Directive (EU) 2016/943. Art. 2 No. 1 of Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure ("Trade Secrets Directive").
- This information, provided in the Application for a cost decision of 30 May 2025, is of economic value, as law firms that handle patent law mandates are in direct competition with each other in terms of their invoiced costs.
- It is also not publicly known what specific amount Claimant pays to its UPC representatives for their representation in the present proceedings and what other expenses were incurred. This information constitutes strategic financial information of economic value which is not accessible to Claimant's competitors; its disclosure would allow conclusions to be drawn about Claimant's internal resource allocation.
- It is not apparent that Defendant has an interest in unrestricted access to the information.

Defendant was invited to submit written comments. In its submission of 24 June 2025, Defendant requested that the R. 262A RoP application be dismissed in its entirety.

Defendant raises the following arguments:

- R. 262A RoP is not aimed at protecting the law firm that represents a party in the proceeding.
- Claimant failed to demonstrate that its (i.e. not those of Claimant's representatives) interests in keeping the information confidential and restricted, significantly outweigh those of Defendant.
- Claimant has not substantiated that an exception should be made to the general principle of the CD Milan (UPC CFI 477/2025, *Insulet Corporation/ EOFLOW Co. Ltd.*), according to which costs of proceedings are not covered by R. 262A RoP.
- It does not follow from the Application that the information in grey about the costs of the proceedings is indicative of Claimant's financial capacity, its commercial strategy, or the importance of the patent as a corporate asset.
- Claimant's request is not primarily aimed at protecting Claimant, but rather at protecting its representatives (and their law firm).
- The hourly rates charged by Claimant's representatives and the number of hours spent on a case are known to all of its current and former clients. It is highly unlikely that each of these clients is subject to confidentiality obligations regarding such information. This alone demonstrates that the greyed-out information neither qualifies as a business secret nor as a trade secret.
- Strict confidentiality obligations on a very small circle of individuals within both Respondent's and its representatives' organization are particularly burdensome.

GROUNDINGS FOR THE ORDER

Request under Rule 262A RoP denied

Claimant's request for protection of confidential information pursuant to R. 262A RoP is rejected.

R. 262A RoP states:

Protection of Confidential Information

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.

(...)

R. 262A RoP regulates the restriction of access to procedural information vis-à-vis parties to proceedings. Whether and to what extent a party's access to certain information contained in submitted pleadings or annexes is restricted must be determined by weighing the interests of the parties, taking into account the circumstances of the individual case (see R. 262A.5 RoP). On the part of the party affected by the access restriction, the right to be heard in order to exercise its rights in a fair procedure must be taken into account in particular, and on the part of the requesting party, its interest in protecting its confidential information.

As the UPC (LD Düsseldorf) clarified in its decision of 27 March 2024 – UPC CFI 355/2023, para. 19, a party seeking protection of confidential information must provide sufficiently substantiated reasons why it believes that the information in question is worthy of protection. It is not sufficient to rely on general circumstances, such as the existence of competition between the parties to the dispute. The court must be able to understand why the claimant believes that the specific information is in need of protection and confidential.

After evaluating the arguments brought forward by both parties, the Court comes to the result that Claimant's interests do not justify a confidentiality order under R. 262A RoP.

Claimant justifies its request in particular by arguing that the information concerning litigation costs has economic value and that its disclosure would allow conclusions to be drawn about Claimant's internal resource allocation. The Court considers this argument to be of a general nature: It invokes the competition between the Parties and the competition which its legal representatives are exposed to.

On the other hand, the particular importance of Defendant's right to access the information regarding the cost of proceedings and the associated right to a fair hearing has to be taken into account.

Moreover, the information regarding the litigation costs does not concern the main subject matter of the revocation proceedings and does not directly influence Claimant's business activities, as would be the case, for example, if technical information from research and development or concluded license agreements were the subject of the confidentiality application.

Further, the Court considers the limitation of the requested access to just one representative of Defendant to be unduly burdensome.

Considering all these factors, the Court comes to the conclusion that the application according to R. 262A RoP is to be rejected. Defendant's access to information regarding the litigation costs is not restricted.

Implied Application according to Rule 262.2 RoP granted

Claimant's implied request for protection of confidential information pursuant to R. 262.2 RoP is granted. R. 262.2 RoP states:

(2) A party may request that certain information of written pleadings or evidence be kept confidential and provide specific reasons for such confidentiality. To this end content of the register is made publicly available according to paragraph 1 (b) only 14 days after it has been available to all recipients.

(...)

Implied request according to R. 262.2 RoP

Claimant requests that the information regarding litigation costs may not be used or disclosed outside the present proceedings, even after they have ended. Hereby, Claimant requests that the general public may not have access to the information specified in the application for a cost decision.

This Court has already decided (ORD_39244/2024; ACT_580198/2023; UPC_CFI_367/2023, *CEAD/BEGO Medical GmbH*; concurring LD Munich (App_66581/2024 and APP_5747/2025 UPC_CFI_815/2024, *Edwards Lifesciences Corporation/Meril GmbH, Meril Life Sciences Pvt Ltd.*)) that the requests expressly made by the claimant for confidentiality of the information vis-à-vis the defendant pursuant to R. 262A RoP implicitly

contain a request for confidential treatment of the information vis-à-vis the public pursuant to R. 262.2 RoP. An order to keep certain information confidential in relation to the other party pursuant to R. 262A RoP also always excludes the accessibility of the information for the public in the register pursuant to R. 262 RoP (see also *Tillmann/Plassmann/v. Falck/Stoll*, RoP R. 262A para. 24). Otherwise, the party affected by the access restriction could obtain the confidential information by inspecting the register.

Preconditions of R. 262.2 RoP fulfilled

While the fundamental right to be heard and their right to a fair trial are particularly at issue for the parties to the proceedings who would be affected by a possible confidentiality order under R. 262A RoP, only the general public's interest in information must be taken into account when deciding on the application under R. 262.2 RoP. The requirements for granting a restriction on publication are therefore lowered, as decided by LD Munich (UPC CFI 815/2024, *Edwards Lifesciences Corporation/Meril GmbH, Meril Life Sciences Pvt Ltd.*). This Court intends to follow this reasoning and considers the preconditions to be fulfilled.

Claimant has convincingly submitted that the information concerning litigation costs is not publicly available information both for the legal representative and for Claimant. As Claimant has stated, the information is strategic financial information that is not accessible to Claimant's competitors; and its disclosure would allow conclusions to be drawn about Claimant's internal resource allocation. The information, provided in the Application for a cost decision of 30 May 2025, is of economic value also for the representative, as law firms that handle patent law mandates are in direct competition with each other in terms of their invoiced costs.

The Court sees no reason to exclude information regarding litigation costs from the scope of application of R. 262.2 RoP.

First, while it is true that the legal representative of Claimant is not a "party" to the proceedings, the representative submitted its request on behalf of Claimant as a party to the proceedings. Therefore, at least in a formal sense, a party to the proceedings has requested the information to be considered confidential.

Secondly, R. 262.2 RoP does not expressively require that the information to be kept confidential must necessarily be information belonging to the party; it can also be information belonging to a third party. This view is supported by the wording of Art. 58 UPCA.

Article 58 UPCA states:

Protection of confidential information

To protect the trade secrets, personal data or other confidential information of a party to the proceedings or of a third party, or to prevent an abuse of evidence, the Court may order that the collection and use of evidence in proceedings before it be restricted or prohibited or that access to such evidence be restricted to specific persons.

The legal representative is not a "party to the proceedings" in the sense of Art. 58 UPCA, and may arguably not be considered as a "third party" in the sense of this provision. However, the extension of protection of confidential information to third parties allows the conclusion *a fortiori* that the legal representative is protected under this provision. If the secrets of a person who is alien the proceedings may be protected, the secrets of a person who is not a party to the proceedings but is nevertheless involved therein must also be protected.

Third, as previously explained, information concerning the litigation costs is confidential information not only for the representative but also for Claimant. As Claimant has stated, the information is strategic

financial information of economic value that is also not accessible to Claimant's competitors; and its disclosure would allow conclusions to be drawn about Claimant's internal resource allocation.

Public Interest

The public holds a legitimate interest in the identity of the party bearing the costs of court proceedings. This interest arises in particular from the fact that third parties, as part of the public, can assess whether they wish to take the litigation and cost risk for future proceedings of their own if they are aware of the cost decisions.

However, the interest of the public to learn about the exact legal costs, which has to be weighted against Claimant's interests, is limited. The Court's decision regarding the allocation of costs is sufficient to duly inform the public.

Furthermore, as lawyers' fees in patent disputes are generally subject to individual agreements, no well-founded conclusions can be drawn about potential costs in other court proceedings based on the legal expenses incurred by other parties.

Nothing else follows from the public's oversight function either, which is sufficiently ensured through access to the Court's decision regarding which party is to bear the costs and in what amount.

ORDER

1. Claimant's application pursuant to R. 262A RoP is denied.
2. Claimant's implied request for protection of confidential information pursuant to R. 262.2 RoP is granted. Defendant and its UPC representatives are prevented from bringing the subject matter of the application for a cost decision to attention of third parties.

Issued at 16 July 2025.

Legally Qualified Judge Maximillian Haedicke

Order details

Order no. ORD_27316/2025 in ACTION NUMBER: ACT_27358/2024
UPC number: UPC_CFI_484/2025
Action type: Revocation Action
Related proceeding no. Application No.: 25881/2025
Application Type: APPLICATION_ROP262A

INFORMATION ABOUT REVIEW BY PANEL

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).