

**Order**  
**of the Court of First Instance of the Unified Patent Court**  
**issued on 17 July 2025**  
**concerning EP 3 511 174**  
**App\_28969/2025**

CLAIMANT:

**FUJIFILM Corporation**, 26-30, Nishiazabu 2-chome, Minato-ku, Tokyo 106-8620, Japan,

represented by: RA Christof Augenstein Kather Augenstein Rechtsanwälte  
PartGmbH, Bahnstraße 16 - 40212 - Düsseldorf - DE

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DEFENDANTS:

**1. Kodak GmbH**, Kesselstraße 19, 70327 Stuttgart,

represented by: Elena Hennecke, Freshfields Bruckhaus Deringer  
Rechtsanwälte Steuerberater PartG mbB, Feldmühleplatz 1,  
40545 Düsseldorf, Germany

electronic address for service: elena.hennecke@freshfields.com

**2. Kodak Graphic Communications GmbH**, Kesselstraße 19, 70327 Stuttgart,

represented by: Elena Hennecke, Freshfields Bruckhaus Deringer  
Rechtsanwälte Steuerberater PartG mbB, Maximiliansplatz  
13, 80333 Munich, Germany

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**3. Kodak Holding GmbH**, Kesselstraße 19, 70327 Stuttgart,

represented by: Elena Hennecke, Freshfields Bruckhaus Deringer  
Rechtsanwälte Steuerberater PartG mbB, Maximiliansplatz  
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PATENT AT ISSUE:

European patent EP3 511 174

PANEL/DIVISION:

Panel of the Local Division in Mannheim

DECIDING JUDGES:

This order was issued by Judge Tochtermann acting as presiding judge and judge-rapporteur, the legally qualified judge Böttcher, the legally qualified judge Agergaard and the technically qualified judge Wismeth.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT OF THE PROCEEDINGS: *R.262AROP IN ENFORCEMENT PROCEEDINGS ON RENDERING INFORMATION*

STATEMENT OF FACTS AND REQUESTS:

Defendants request in the course of enforcement proceedings which followed after the main decision of 2 April 2025 had been rendered:

1. to classify all information to be provided by Defendants pursuant to Section B.II. of the operative part of the decision of the Local Division Mannheim of 2 April 2025 (ORD\_598590/2023) and marked with the designation “*Information relating to Section B.II. of ORD\_598590/2023 - Strictly confidential*” as confidential (Rule 262A RoP UPC and Art. 58 UPCA);
2. to order that access to the information referred to in Item 1. shall be restricted exclusively to Claimant’s authorised outside representatives and their assistants and a maximum of three employees to be named by Claimant pursuant to Rule 262A RoP UPC, whereby the named employees shall not be involved in pricing, selling, marketing or any other competitive decision making;
3. to order that the information referred to in Item 1. shall be treated as confidential by the Claimant’s representatives, their assistants, and the employees referred to in Item 2., in a way that such information
  - a. shall not be used for other purposes than the calculation of potential damages in accordance with Section B.I. of the operative part of the decision of the Local Division Mannheim of 2 April 2025 (ORD\_598590/2023) and the identification of potential further infringing acts with regard to EP 3 511 174 in Germany;
  - b. shall only be disclosed in potential subsequent damage proceedings against Defendants (with access to the information on the Claimant’s side still limited in accordance with Item 1.) and/or potential subsequent infringement proceedings against third parties identified based on the information provided, including corresponding out-of-court correspondence, provided that (i) not more information than strictly needed for substantiation shall be disclosed, (ii) Claimant applies for reasonable confidentiality protection, and (iii) access to the information on the Claimant’s side remains limited in accordance with Item 1.

This restriction shall not apply to the extent that this information has come to the knowledge of the receiving party outside of these proceedings and its underlying provision of information, provided that the receiving party has obtained it on a non-confidential basis from a source other than the Defendants or their affiliates, provided that such source is not bound by a confidentiality agreement or other obligation of secrecy with the Defendants or their affiliates;

4. to order that Claimant shall irrevocably delete all information referred to in Item 1. once the proceedings specified in Item 3.a and b have been terminated, or, if no such proceedings are being initiated, five years after receipt of the information;

5. to point out that

- a. the obligation under Item 3. shall also apply to Claimant;
- b. the persons named under Item 2. shall also be under an obligation to Claimant with personal liability for breach to maintain the confidentiality of the information referred to in Item 1. and not disclose it to any persons not named under Item 2.;
- c. the obligation to maintain secrecy pursuant to Item 1. shall continue to apply even if the purposes specified in Item 3. have been fulfilled, unless the disputed information becomes known or readily accessible to persons in the circles that usually have access to such information;
- d. in the case of a culpable breach, the court may impose a recurring penalty payment for each violation which will be determined having regard to the circumstances of the individual breach and enforce it immediately.

Defendants – after Claimant initiated enforcement proceedings against the defendants in various applications – argue that they were required to disclose confidential information according to the decision on the merits in these proceedings of 2 April 2025. Therefore their requests were justified referring to mn. 138 of the cited decision which reads as follows:

*“[...] In particular, the infringer’s commercial interests are sufficiently protected, because the information obtained must not be used for any other purpose than the purposes mentioned above. In case of an indication of a specific risk of misuse, the information can be further protected by protective orders pursuant to R. 262A RoP.”*

(Decision of the Local Division Mannheim of 2 April 2025, ORD\_598590/2023, mn. 138, emphasis added)

R.262A RoP in their eyes also applies – be it directly or by way of analogy – to information between the parties in the course of an enforcement proceeding. Claimant’s interest of effective enforcement would also not be impaired. Three persons were sufficient to deal with the information rendered as there were no time pressure which would call for a huge team being allowed to check the information rendered. Furthermore, the request would aim at preventing use of the information in a competition restricting manner. Finally, the limitations requested in Items 3 and 4 were justified to avoid that Claimant can make use of the information rendered for an indefinite time even after termination of the proceedings without their being a legitimate need.

The judge-rapporteur gave the defendants the possibility to comment, which requested to reject the request. In the alternative it submitted to only grant the request in a limited version as follows [personal names of the members of the confidentiality club redacted, reference is made to the unredacted version of the brief in the CMS]:

II. as an subsidiary request to I.

1. to classify all information to be provided by Defendants pursuant to Section B.II. of the operative part of the decision of the Local Division Mannheim of 2 April 2025 (ORD\_598590/2023) and marked with the designation "Information relating to Section B.II. of ORD\_598590/2023 – Strictly confidential" as confidential (Rule 262A RoP UPC and Art. 58 UPCA);
2. to order that access to the information referred to in Item 1. shall be restricted exclusively to Claimant's authorised outside representatives and their assistants, to Claimant's authorised private experts and to individuals who – on the Claimant's side – need access to this information to identify third infringers, to determine and calculate damages and to verify information obtained from the infringer ~~a maximum of three employees to be named by Claimant~~ pursuant to Rule 262A RoP UPC; ~~whereby the named employees shall not be involved in pricing, selling, marketing or any other competitive decision making;~~
3. to order that the information referred to in Item 1. shall be treated as confidential by the Claimant's representatives, private experts, their assistants, and the employees referred to in Item 2., in a way that such information
  - a) shall not be used for other purposes than the calculation of potential damages in accordance with ~~Section B.I. of the operative part of~~ the decision of the Local Division Mannheim of 2 April 2025 (ORD\_598590/2023) ~~and~~ the identification of potential further infringing acts ~~with regard to EP 3 511 174 in Germany and the~~ verification of information obtained;
  - b) shall only be disclosed in potential subsequent damage proceedings against Defendants (with access to the information on the Claimant's side still limited in accordance with Item ~~12.~~) in potential subsequent enforcement proceedings against the Defendants due to the provision of incorrect or incomplete information and/or potential subsequent infringement proceedings against third parties identified based on the information provided, including corresponding out-of-court correspondence, provided that (i) not more information than strictly needed for substantiation shall be disclosed, (ii) Claimant applies for reasonable confidentiality protection, and (iii) access to the information on the Claimant's side remains limited in accordance with Item ~~12.~~



This restriction shall not apply to the extent that this information has come to the knowledge of the receiving party outside of these proceedings and its underlying provision of information, provided that the receiving party has obtained it on a non-confidential basis from a source other than the Defendants ~~or their affiliates~~, provided that such source is not bound by a confidentiality agreement or other obligation of secrecy with the Defendants ~~or their affiliates~~;

~~4. to order that Claimant shall irrevocably delete all information referred to in Item 1. once the proceedings specified in Item 3.a and b have been terminated, or, if no such proceedings are being initiated, five years after receipt of the information;~~

5. to point out that

a) the obligation under Item 3. shall also apply to Claimant;

~~b) the persons named under Item 2. shall also be under an obligation to Claimant with personal liability for breach to maintain the confidentiality of the information referred to in Item 1. and not disclose it to any persons not named under Item 2.;~~

c) the obligation to maintain secrecy pursuant to Item 1. shall continue to apply even if the purposes specified in Item 3. have been fulfilled, unless the disputed information becomes known or readily accessible to persons in the circles that usually have access to such information;

d) in the case of a culpable breach, the court may impose a ~~recurring~~ penalty payment for each violation which will be determined having regard to the circumstances of the individual breach ~~and enforce it immediately~~.

III. as an subsidiary request to II.

1. to classify all information to be provided by Defendants pursuant to Section B.II. of the operative part of the decision of the Local Division Mannheim of 2 April 2025 (ORD\_598590/2023) and marked with the designation "Information relating to Section B.II. of ORD\_598590/2023 – Strictly confidential" as confidential (Rule 262A RoP UPC and Art. 58 UPCA);

2. to order that access to the information referred to in Item 1. shall be restricted exclusively to Claimant's authorised outside representatives and their assistants, to Claimant's authorised private experts and to the following individuals who – on the Claimant's side – need access to this information to identify third infringers, to determine and calculate damages and to verify information obtained from the infringer ~~a maximum of three employees to be named by Claimant pursuant to Rule 262A RoP UPC, whereby the named employees shall not be involved in pricing, selling, marketing or any other competitive decision making;~~

3. to order that the information referred to in Item 1. shall be treated as confidential by the Claimant's representatives, private experts, their assistants, and the employees referred to in Item 2., in a way that such information

a) shall not be used for other purposes than the calculation of potential damages in accordance with ~~Section B.I. of the operative part of~~ the decision of the Local Division Mannheim of 2 April 2025 (ORD\_598590/2023) ~~and~~, the identification of potential further infringing acts ~~with regard to EP 3 511 174 in Germany and the verification of information obtained;~~

b) shall only be disclosed in potential subsequent damage proceedings against Defendants (with access to the information on the Claimant's side still limited in accordance with Item ~~4~~2.), in potential subsequent enforcement proceedings against the Defendants due to the provision of incorrect or incomplete information and/or potential subsequent infringement proceedings against third parties identified based on the information provided, including corresponding out-of-court correspondence, provided that (i) not more information than strictly needed for substantiation shall be disclosed, (ii) Claimant applies for reasonable confidentiality protection, and (iii) access to the information on the Claimant's side remains limited in accordance with Item ~~4~~2.

This restriction shall not apply to the extent that this information has come to the knowledge of the receiving party outside of these proceedings and its underlying provision of information, provided that the receiving party has obtained it on a non-confidential basis from a source other than the Defendants ~~or their affiliates~~, provided that such source is not bound by a confidentiality agreement or other obligation of secrecy with the Defendants ~~or their affiliates~~;

~~4. to order that Claimant shall irrevocably delete all information referred to in Item 1. once the proceedings specified in Item 3.a and b have been terminated, or, if no such proceedings are being initiated, five years after receipt of the information;~~

5. to point out that

a) the obligation under Item 3. shall also apply to Claimant;

~~b) the persons named under Item 2. shall also be under an obligation to Claimant with personal liability for breach to maintain the confidentiality of the information referred to in Item 1. and not disclose it to any persons not named under Item 2.;~~

c) the obligation to maintain secrecy pursuant to Item 1. shall continue to apply even if the purposes specified in Item 3. have been fulfilled, unless the disputed

information becomes known or readily accessible to persons in the circles that usually have access to such information;

d) in the case of a culpable breach, the court may impose a ~~recurring~~ penalty payment for each violation which will be determined having regard to the circumstances of the individual breach ~~and enforce it immediately~~.

Claimant argues the application were inadmissible as defendants did not submit the allegedly confidential information. Furthermore, R. 262A RoP were not applicable at all since it only applied to pleadings of the parties in the proceedings and not to pleadings exchanged outside court proceedings.

The confidentiality should have been addressed in the proceedings on the merits. Filing the request only by now happened for tactical reasons alone.

Moreover, the defendants did not substantiate that the information to be rendered were of confidential character.

The application also were too broad and had to be at least limited in accordance with the subsidiary requests of Claimant.

For further details reference is made to the briefs and exhibits exchanged between the parties.

#### GROUND FOR THE ORDER:

As the parties to the proceedings submit multiple and even duplicated applications in the enforcement proceedings and finally had the judge-rapporteur's decision reviewed by the panel, this order is referred to and decided by the whole panel in order not to prolong these enforcement proceedings any further.

The request of Defendants for confidentiality in the enforcement proceedings is to be rejected for the following reasons:

First, it would have been for the defendants to already submit in the main proceedings that any information they would have to render in case of the court finding for infringement should be subject to special confidentiality provisions to be included in the main decision. No such application had been submitted even though the defendants were well aware of the confidentiality issue in the proceedings and submitted multiple 262A-requests in the course of the main proceedings.

Second, the court already clarified in its main decision as cited *supra* that the information to be rendered "must not be used for any other purpose than the purposes mentioned above" (cf. decision of 2 April 2025, mn. 138). This was to emphasize that it is an imminent characteristic of the information rendered in the course of enforcement proceedings, which are based on the enforceable operative part of a court decision, that the information may only be used in that context and e.g. not to engage in behaviour which were counter to antitrust law. Therefore alone, no further clarifications as applied for by Defendants are necessary.

Third, in the decision as cited before, it is stated that a further protection may be possible under special circumstances "in case of an indication of a specific risk of misuse". Defendants failed to submit any such facts.

The application finally gives reason to remark further that defendants err, that the information being rendered in the course of enforcement proceedings may only be used until the termination of proceedings or until five years after receipt of such information pointing to Art. 72 UPCA. The decision is enforceable in various jurisdictions for a much longer time than five years. It suffices to mention that in Germany, where the focus of these proceedings lies, a final court decision may be enforced for thirty years (cf. § 197 Abs. 1 Ziffer 3 German BGB). Furthermore, even if the five years period of Art. 72 UPCA has lapsed – be it applicable to the question at hand or not – there may be reasons, why the claimant still may want to verify points by referring to the rendered information,



e.g. in case products emerge on the market anew and there is reason to believe that a defendant engaged in fraudulent activities where no limitation period might apply at all under the applicable law. Claimant would then be forced to get hold of the information already rendered before anew, if one were inclined to follow defendants' argument, which therefore appears to be not convincing.

ORDER:

1. The request for protection of confidential information of 18 June 2025 (UPC\_CFI\_365/2023, Apl\_28969/2025) is rejected.
2. The defendants have to bear the costs of the proceedings.

Issued in Mannheim on 17 July 2025

NAMES AND SIGNATURES

Presiding judge Tochtermann	
Legally qualified judge Agergaard	
Legally qualified judge Böttcher	
Technically qualified judge Wismeth	