



Local Division Munich

UPC_CFI_771/2025

UPC_CFI_802/2025

Order

of the Court of First Instance of the Unified Patent Court

Local Division Munich

issued on 11 November 2025

Headnotes:

1. One of the circumstances relevant to admission to a confidentiality club is whether the individual is an employee of the party, an employee of the party's economic unit or an employee of a third party.
2. If it is possible for a person who is not an employee of the party to join a confidentiality club, it is – depending on the relevant circumstances of the case – in any case justified for employees of the party or its economic unit to be admitted to a confidentiality club.

Claimant:

Solvay Specialty Polymers Italy S.p.A., 20 Viale Lombardia, 20021, Bollate, Milano, Italy

represented by: Ulrich Worm

Defendants:

1. **Zhejiang Fluorine Chemical New Material Co., Ltd.**, No. 5, Weiyi Road, Shangyu Hangzhou Economic and Technological Development Zone, 312369, Shaoxing, Zhejiang Province, China
2. **Hubei Fluorine New Materials Co., Ltd.**, No. 6, Jin'ao Avenue, Zekou Sub-district Office, 433100, Qianjiang, Hubei Province, China

represented by: Matthias Meyer

Language of the proceedings:

English

Patents at issue:

EP 2 147 029

Panel:

Panel 1 of the Local Division Munich

Deciding Judge:

This order has been issued by Dr. Matthias Zigann (Presiding judge), Tobias Pichlmaier (judge-rapporteur) and Margot Kokke (Legally qualified judge)

Points at issue:

Review of a confidentiality order (R. 333 RoP)

Summary of facts

By order of 25 September 2025 a confidentiality order (R. 262A RoP) was rendered in response to defendants' confidentiality request dated 2 September 2025 and claimants submission dated 24 September 2025.

With his submission claimant stated that both parties tried to mutually agree to create a confidentiality club, but unfortunately could not reach such an agreement.

With his submission dated 24 September 2025, claimant requested the Court to establish a confidentiality club comprising

- [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
- [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
- Professor Dennis W. Smith, expert of Claimant

In this context, claimant stated that defendants rejected claimant's suggestion arguing that [REDACTED] [REDACTED] and [REDACTED] [REDACTED] are not employed by claimant. [REDACTED] [REDACTED] is employed by Syensqo USA LLC. [REDACTED] [REDACTED] is employed by Syensqo SA/NV. Syensqo SA/NV is the holding company of the Syensqo group. Syensqo SA/NV holds all shares of claimant (Exhibit MB INFR 13). Syensqo USA, LLC is a 100% consolidated company of the Syensqo group. Furthermore, [REDACTED] [REDACTED] is Board Secretary at Synorb Battery Material, LLC, which is 51% owned by Syensqo SA/NV.

The claimant also stated that the name of their firm had recently been changed from *Solvay Specialty Polymers Italy S.p.A.* to *Syensqo Specialty Polymers Italy S.p.A.* (Exhibit MB INFR 13).

Claimant argued that it is not possible to prepare comprehensive responses to the Statement of Defence and the Counterclaim for Revocation as long as the individuals named have no access to the unredacted briefs and exhibits.

With Procedural Order issued on 25 September 2025, the judge-rapporteur established a confidentiality club as requested by claimant. On 6 October 2025,

defendants applied for a review of this order by the panel and requested to exclude [REDACTED] [REDACTED] and [REDACTED] [REDACTED] from the confidentiality club.

The defendants argue that they were not given the opportunity to comment on claimants' submission dated 24 September 2025, which constitutes a violation of their right to be heard. As neither [REDACTED] [REDACTED] nor [REDACTED] [REDACTED] are employees of the claimant, but rather of third parties, and there are no other reasons for granting them access to confidential information, they must be excluded from the 'confidentiality club'.

Defendants **r e q u e s t**

1. to review the procedural order of the Court of September 25, 2025;
2. to exclude [REDACTED] [REDACTED] and [REDACTED] [REDACTED] from the confidentiality club;
3. to impose on the Claimant, that they must make Mr. [REDACTED] [REDACTED] and Ms. [REDACTED] [REDACTED] aware of the confidentiality order of 25 September 2025 and that they have to treat the confidential information highlighted in grey and the grey-framed images/figures in Defendant's Statement of Defence and Counterclaim for Revocation as well as Exhibits B&B 6, B&B 7, B&B 8 and B&B 9 in strict confidence and may not use or disclose the confidential information outside these proceedings, unless it has been acquired by them outside these proceedings pursuant to R. 262A RoP;
4. the obligation under item 3. shall continue to apply even after the conclusion of these proceedings; this shall not apply if the court has denied the existence of the disputed trade secret by a final judgment or as soon as the disputed information becomes known or readily accessible to persons in the circles that usually deal with such information;
5. to invite Claimant to name two new persons who should be granted access to the confidential information;
6. to set Defendants a deadline to comment on the persons newly named by the Claimant;

7. alternatively, to grant Defendants leave to appeal according to R. 220.2 RoP against the Court's order of 25 September 2025.

Claimant **r e q u e s t s**

to dismiss Defendants' application dated 6 October 2025 in its entirety.

Reasons

After reviewing the contested order, the panel finds that the judge-rapporteur correctly decided to admit [REDACTED] and [REDACTED] to the confidentiality club.

1. Legal standard for establishing a confidentiality club

Rule 262A.6 RoP provides that the number of persons to whom access to confidential information is granted is restricted and shall be no greater than necessary in order to ensure compliance with the rights of the parties to the legal proceedings to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and the respective lawyers or other representatives of those parties to the legal proceedings. According to the jurisdiction of the Court of Appeal ("CoA", order of 12 February 2025, UPC_CoA_621/2024), whether a particular person may be granted full access under this provision must be determined on the basis of the relevant circumstances of the case, including the role of that person in the proceedings before this Court, the relevance of the confidential information to the performance of that role and the trustworthiness of the person in keeping the information confidential.

Rule 262A.6 RoP does not require that the person to whom access is given be an employee of a party or a representative within the meaning of Art. 48 UPCA. Such a requirement does not follow from the wording of the provision (in particular

‘one natural person from each party’) and would unduly restrict a party’s freedom to choose its assistants in the proceedings (UPC_CoA_621/2024).

Apart from the fact that, according to the case law of the CoA, there is no requirement for the person to whom access is given to be an employee of the party itself, the case law concerning *economic units* as developed by the CJEU must be taken into account in this context. According to this case law, the concept of ‘undertaking’ covers any entity engaged in an economic activity, irrespective of the legal status of that entity, and thus defines an economic unit even if in law that economic unit consists of several persons, natural or legal (see decision of 6 October 2021, C-882/19).

Given that it is possible for a person who is not an employee of the party to join a confidentiality club, it seems in any case justified to admit employees from the party itself, including those from the party’s economic unit to a confidentiality club, depending on the relevant circumstances of the case.

2. Application of this legal standard in the present case

Applying this standard in the present case leads to the following result:

- a. It must be conceded that [REDACTED] [REDACTED] and [REDACTED] [REDACTED] are not employees of the claimant. However, according to the case law of the CoA, this is not a criterion to exclude them from the confidentiality club.

In this context, it must be noted that [REDACTED] [REDACTED] and [REDACTED] [REDACTED] are employees in claimant’s economic unit. In view of this, it is not appropriate to classify them as employees of a *third party* having no relation to the claimant.

Since Rule 262A.6 RoP does not require that the person granted access must be an employee of the party itself, the *third party*-argument cannot lead to the exclusion of [REDACTED] [REDACTED] and [REDACTED] [REDACTED] from the confidentiality club.

- b. When admitting [REDACTED] [REDACTED] and [REDACTED] [REDACTED] into the confidentiality club, it was also necessary to take into account that in an economic unit such as the Syensqo Group it is common that certain legal, business, organizational or

other functions are organised collaboratively. Consequently, within such an economic unit, not all functions are performed in parallel by every legal entity.

Defendants did not dispute that [REDACTED] [REDACTED] as *Head of Intellectual Assets Management* provides services related to prosecution, enforcement and defence of patents within the Syensqo Group also to claimant. Furthermore, defendants did not dispute that [REDACTED] [REDACTED] as *Deputy General Counsel* (Materials Segment) provides legal services in relation to litigation involving the patent at issue within the Syensqo Group, also to the claimant. On the side of claimant, [REDACTED] [REDACTED] and [REDACTED] [REDACTED] have the most relevant knowledge of the relevant facts underlying the dispute between the parties. In this respect, their involvement and cooperation for claimant's right to an effective remedy and a fair trial is necessary, especially since no employee of the claimant itself apparently performs a corresponding function. The tasks and functions in question are therefore not performed at the claimant's company, but in the economic unit. At least no employee of the claimant itself has been appointed to the confidentiality club, which is why it must be assumed that claimant does not have such personnel.

- c. Insofar as Defendants argue that [REDACTED] [REDACTED] position as *Board Secretary* at *Synorb Battery Material, LLC* should be considered critical, because *Synorb Battery Material, LLC* is a direct competitor of defendants, this does not justify [REDACTED] [REDACTED] exclusion from the confidentiality club.

Since claimant itself is a direct competitor of defendants, this argument would also require the exclusion of an employee of the claimant as a member of the confidentiality club. However, defendants have no objections to an employee of the claimant being a member of the confidentiality club ("A party must primarily rely on its own employees"). Based on the case law of the CoA, the panel cannot see why, under the circumstances given, an employee of the claimant should be allowed to be a member of the confidentiality club, while an employee from another company in the same economic unit who is effectively involved in the proceedings before this Court should be excluded. The fact that [REDACTED] [REDACTED]

is also engaged in *Synorb Battery Materials, LLC*, does not change the fact that he is an employee in claimant's economic unit.

In the case of the different entities in which [REDACTED] [REDACTED] is engaged, defendants merely have referred generally to their status as competitors. Regardless of the status as competitor given to all the entities mentioned, defendants did not demonstrate why [REDACTED] [REDACTED] function performed in *Synorb Battery Materials, LLC* makes admission to the confidentiality club particularly risky. In addition, defendant's statement does not provide any concrete reasoning to cast doubt on the trustworthiness of [REDACTED] [REDACTED] (and [REDACTED] [REDACTED] in keeping the information confidential.

- d. Insofar as defendants note that [REDACTED] [REDACTED] has no natural science degree and therefore does not need to have access to the details of the chemical composition of the attacked embodiment and their manufacturing process, it must be said that patent litigation always concerns both legal and technical aspects. In order to deal with the subject matter of the case at hand in a meaningful way and to ensure a productive dialogue between client and representative, it is not possible to separate technical and legal aspects. The contact person for the representative on the claimant's side must therefore be familiar with the technical circumstances of the case as well. A degree in natural sciences is not a prerequisite for involvement in patent litigation.

3. Right to be heard

In their written submissions dated 6 October 2025 and 7 November 2025, defendants explained why they oppose the admission of [REDACTED] [REDACTED] and [REDACTED] to the confidentiality club. Defendants therefore had sufficient opportunity to present their arguments for the panel review according to Rule 333 RoP. Defendants' rights to be heard were thus sufficiently observed before the contested order was reviewed and the panel had to decide on the composition of the club as part of its review.

4. Appeal

The panel sees no reason to grant leave to appeal. The CoA's case law clearly sets out the criteria for establishing a confidentiality club. These criteria have been applied by the panel to the case at hand.

Order

1. The judge-rapporteur's confidentiality order of 25 September 2025 is confirmed and amended as follows:

Claimant is obliged to make Mr. [REDACTED] [REDACTED] and Ms. [REDACTED] [REDACTED] aware of the confidentiality order of 25 September 2025 and that they have to treat the confidential information highlighted in grey and the grey-framed images/figures in Defendant's Statement of Defence and Counterclaim for Revocation as well as Exhibits B&B 6, B&B 7, B&B 8 and B&B 9 in strict confidence and may not use or disclose the confidential information outside these proceedings, unless it has been acquired by them outside these proceedings pursuant to R. 262A RoP.

This obligation shall continue to apply even after the conclusion of these proceedings; this shall not apply if the court has denied the existence of the disputed trade secret by a final judgment or as soon as the disputed information becomes known or readily accessible to persons in the circles that usually deal with such information.

2. In all other respects, Defendant's requests are dismissed.
3. Leave to appeal is refused.

Dr. Matthias Zigann Presiding judge	Matthias ZIGANN  Digital unterschrieben von Matthias ZIGANN Datum: 2025.11.11 13:04:05 +01'00'
Margot Kokke Legally qualified judge	Margot Elsa KOKKE  Digitally signed by Margot Elsa KOKKE Date: 2025.11.11 13:34:25 +01'00'
Tobias Pichlmaier Judge-rapporteur	Tobias Günther Pichlmaier  Digital unterschrieben von Tobias Günther Pichlmaier Datum: 2025.11.11 12:15:33 +01'00'