

ORDER

of the Court of Appeal of the Unified Patent Court
issued on 26 January 2026
regarding a request pursuant to R. 262.2 RoP

HEADNOTES

- According to case-law, only R. 262A RoP allows the Court to restrict the use of confidential information by the opposing party and its representatives. A request under R. 262.2 RoP that certain information of written pleadings or evidence be kept confidential does not automatically grant provisional protection against the disclosure of information by the other party (UPC_CoA_70/2025, order of 1 August 2025, Strabag vs Swarco et al, paras 19 and 20). Furthermore, and as set out repeatedly, a decision on a request according to R. 262.2 RoP is generally not made until a reasoned request from the public under R. 262.1(b) RoP is lodged. This is because requests under R. 262.2 RoP are made in relation to future requests for access to information by the public, not in relation to the other parties to the proceedings.
- An Application for a confidentiality order, with or without establishment of a confidentiality club, under R. 262A RoP shall be made at the same time as lodging a document containing the information or evidence. In this case the information should be uploaded as HC (highly confidential). Where the information is of such confidential nature that only a limited number of people should be allowed access to it, a so-called confidentiality club can be set up in accordance with R. 262A.6 RoP. Alternatively, it may - and must - be subject of a R. 262A RoP request if it is requested that the other party is only limited in its use of the confidential information in that it shall only be used for the purpose of the legal proceedings and may not be disclosed to third parties.
- As is apparent from R. 262A.3 RoP, a party's written submissions and evidence are, in principle, made directly accessible to the other party without any restrictions as to its use or recipients, unless a simultaneous request is made under R. 262A.1 RoP when the document is lodged, or a statement is made that this information is protected under a previous order pursuant to R. 262A RoP either at first instance or on appeal.

- Absent an explicit request for a confidentiality order, or a statement that this information is protected under a previous order pursuant to R. 262A RoP either at first instance or on appeal, the Court will not treat a document as potentially containing confidential information in the sense of R. 262A RoP.
- This also applies if the document was uploaded by that party under HC code. Uploading a document under this code prevents access to it by the other party. A legal basis for uploading a document under HC code is lacking, and is also contrary to the legitimate interest of the other party to have unrestricted access to the documents lodged by the other party without delay, if there is no simultaneous application pursuant to R. 262A RoP.
- In such a situation, the Court will therefore as a matter of routine change the code to M to make it immediately available to the other parties to the procedure.

KEYWORD

Request for confidentiality

APPLICANTS AND APPELLANTS (AND APPLICANTS BEFORE THE COURT OF FIRST INSTANCE)

1. **Merz Pharmaceuticals LLC**, Raleigh, United States of America
2. **Merz Therapeutics GmbH**, Frankfurt am Main, Germany
3. **Merz Pharma France**, Courbevoie, France

(hereinafter jointly 'Merz')

represented by attorneys at law Laëtitia Bénard and Charles Tuffreau, Allen & Overy Shearman Sterling LLP, Paris, France

RESPONDENT (AND DEFENDANT BEFORE THE COURT OF FIRST INSTANCE)

Viatris Santé, Lyon, France

(hereinafter 'Viatris Santé')

represented by attorneys at law Marc Lauzeral and Denis Schertenleib, Schertenleib, Paris, France

PATENT AT ISSUE

EP 2 377 536 (French Supplementary Protection Certificate No. 13C0033)

PANEL AND DECIDING JUDGES

Panel 2

Rian Kalden, presiding judge and legally qualified judge

Ingeborg Simonsson, legally qualified judge and judge-rapporteur

Patricia Rombach, legally qualified judge

Anna Hedberg, technically qualified judge

Jeroen Meewisse, technically qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Order of 21 November 2025 issued by the Paris Local Division, UPC_CFI_697/2025

LANGUAGE OF THE PROCEEDINGS

English

SUMMARY OF FACTS

1. Merz brought an application for provisional measures against Viatris Santé before the Paris Local Division, alleging infringement of French Supplementary Protection Certificate No. 13C0033 (SPC 033) based on the patent at issue.
2. The Local Division considered that Merz had failed to demonstrate that it was seeking provisional measures within the reasonable delay provided for by R. 211.4 RoP, rejected the application and ordered Merz to pay Viatris Santé's interim costs of the proceedings for 56.000 Euros.
3. Merz has appealed the order. An oral hearing is scheduled for 5 February 2026.
4. On 21 January 2026, Merz has applied for the admission of a new piece of evidence, Exhibit 823, into the proceedings. Merz requests that the Court order that Exhibit 823 be kept confidential and not be made accessible to the public pursuant to Art. 58 UPCA and R. 262.2 RoP. Merz submits that the information in Exhibit 823 is covered by French professional secrecy, and that it contains confidential information regarding a third party. When uploading Exhibit 823 in the CMS, Merz applied the HC code (highly confidential).

REASONS

5. When Merz lodged Exhibit 823 with code HC in the CMS, it made the exhibit inaccessible to Viatris Santé, until the Registry changes the code to M (mutual).
6. However, Merz has not applied for a confidentiality order pursuant to R. 262A RoP.
7. According to case-law, only R. 262A RoP allows the Court to restrict the use of confidential information by the opposing party and its representatives. A request under R. 262.2 RoP that certain information of written pleadings or evidence be kept confidential does not automatically grant provisional protection against the disclosure of information by the other party (UPC_CoA_70/2025, order of 1 August 2025, Strabag vs Swarco et al, paras 19 and 20). Furthermore, and as set out repeatedly, a decision on a request according to R. 262.2 RoP is generally not made until a reasoned request from the public under R. 262.1(b) RoP is lodged. This is because requests under R. 262.2 RoP are made in relation to future request for access to information by the public, not in relation to the other parties to the proceedings.
8. An Application for a confidentiality order, with or without establishment of a confidentiality club, under R. 262A RoP shall be made at the same time as lodging a document containing the information or evidence. In this case the information should be uploaded as HC (highly confidential). Where the information is of such confidential nature that only a limited number of people should be allowed

access to it, a so-called confidentiality club can be set up in accordance with R. 262A.6 RoP. Alternatively, it may – and must – be subject of a R. 262A RoP request if it is requested that the other party is only limited in its use of the confidential information in that it shall only be used for the purpose of the legal proceedings and may not be disclosed to third parties.

9. As is apparent from R. 262A.3 RoP, a party's written submissions and evidence are, in principle, made directly accessible to the other party without any restrictions as to its use or recipients, unless a simultaneous request is made under R. 262A.1 RoP when the document is lodged, or a statement is made that this information is protected under a previous order pursuant to R. 262A RoP either at first instance or on appeal.
10. Absent an explicit request for a confidentiality order, or a statement that this information is protected under a previous order pursuant to R. 262A RoP either at first instance or on appeal, the Court will not treat a document as potentially containing confidential information in the sense of R. 262A RoP.
11. This also applies if the document was uploaded by that party under HC code. Uploading a document under this code prevents access to it by the other party. A legal basis for uploading a document under HC code is lacking, and is also contrary to the legitimate interest of the other party to have unrestricted access to the documents lodged by the other party without delay, if there is no simultaneous application pursuant to R. 262A RoP.
12. In such a situation, the Court will therefore as a matter of routine change the code to M to make it immediately available to the other parties to the procedure.

ORDER

The Court will not at this stage issue a decision on Merz' request that the Court orders that Exhibit 823 be kept confidential and not be made accessible to the public pursuant to Art. 58 UPCA and R. 262.2 RoP.

Issued on 26 January 2026

Rian Kalden, presiding judge and legally qualified judge

Ingeborg Simonsson, legally qualified judge and judge-rapporteur

Patricia Rombach, legally qualified judge

Anna Hedberg, technically qualified judge

Jeroen Meewisse, technically qualified judge