

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 29 January 2026
Request for confidentiality pursuant to R. 262.2 RoP

HEADNOTES:

There is no implicit limitation on the use of information received as a result of the other party's compliance with an order to communicate information pursuant to Art. 67 UPCA and R. 191 RoP. It is necessary to file a confidentiality request with regard to information which has to be communicated according to a Court order or decision (see CoA 14 October 2025, UPC_CoA_699/2025, Kodak v Fujifilm, para. 45). R. 262A RoP applies at least mutatis mutandis.

KEYWORDS:

- R. 262A RoP
- Art. 67 UPCA
- R. 191 RoP
- Communication of confidential information due to a court order or decision

APPELLANT (AND DEFENDANT BEFORE THE COURT OF FIRST INSTANCE)

EOFflow Co., Ltd., Hwangsael-ro, Bundang-gu, Seongnam-si, Gyeonggi-do, Republic of Korea
(hereinafter: "EOFflow")

represented by attorney at law Mirko Weinert, Hoyng ROKH Monegier, Düsseldorf, Germany

RESPONDENT (AND APPLICANT BEFORE THE COURT OF FIRST INSTANCE)

Insulet Corporation, Acton, United States of America
(hereinafter: "Insulet")

represented by attorney at law Marc Grunwald, Peterreins Schley, Munich, Germany

PATENT AT ISSUE

EP 4 201 327

PANEL AND DECIDING JUDGE

Panel 2

This order has been adopted by

Rian Kalden, presiding judge and legally qualified judge

Patricia Rombach, legally qualified judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

Steven Kitchen, technically qualified judge

Udo Matter, technically qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Milan Central Division, 4 December 2025, on a request for determination of penalty payments,
UPC_CFI_1167/2025

LANGUAGE OF THE PROCEEDINGS

English

FACTS

1. EOFlow is a manufacturer based in South Korea. It manufactures an insulin pump named “EOPatch” and “GlucoMen Day Pump” (hereinafter “attacked embodiments”). EOFlow shipped the attacked embodiments to the exclusive European distributor A. Menarini Diagnostics s.r.l in Italy (hereinafter ‘Menarini’).
2. Between Insulet and Menarini a settlement (hereinafter “the settlement”) was reached regarding the attacked embodiments.
3. On 30 April 2025 (UPC_CoA_768/2024, APL_64374/2024, ORD_69078/2024, “the order on provisional measures”) the Court of Appeal found that the attacked embodiments infringe Insulet’s patent and ordered by way of a preliminary injunction EOFlow to refrain from making, offering, placing on the market, using or possessing for the purposes mentioned, or importing or storing the attacked embodiments *inter alia* in the territories of the Italian Republic and/or the Kingdom of Sweden.
4. Furthermore, the Court of Appeal ordered that if EOFlow fails to comply with this prohibition periodic penalty payments are payable to the Court of up to EUR 250,000 for each individual violation.
5. In addition, EOFlow was ordered to communicate information about the origin and distribution channels of the infringing devices and the identity of any party involved in the production or distribution of the devices, in the UPC Contracting Member States.

6. In parallel, on 22 July 2025 in the counterclaim for infringement action CFI 787/2024, brought by Insulet against EOFlow, the Milan Central Division adjudicated on the merits. The Central Division *inter alia* ordered EOFlow to provide Insulet with complete information on the extent to which EOFlow had committed acts of infringement since 19 June 2024.
7. On 14 October 2025, Insulet lodged an application with the Milan Central Division seeking the imposition of penalties for non-compliance with the order on provisional measures, alleging that EOFlow has continued to distribute infringing products after 30 April 2025. In this application, Insulet relied on information it had obtained as a result of the above-mentioned orders to communicate information.
8. EOFlow filed requests under R. 262.2 RoP.
9. With the impugned order, the Milan Central Division ordered penalty payments in the amount of EUR 150,000 for non-compliance with the order on provisional measures and dismissed *inter alia* EOFlow's R. 262.2 RoP request. EOFlow was ordered to bear the costs of the proceedings in the amount of EUR 10,000.00, payable to Insulet. The order was published.
10. The Milan Central Division granted leave for appeal with respect to the confidentiality request.
11. EOFlow appealed the order with regard to the penalty payment as well as with regard to the dismissal of its 262.2 RoP request.

PARTIES' REQUESTS

12. EOFlow requests

- 1) that the Court of Appeal classify the information listed in more detail in the following table (and which are highlighted in grey in the SoA and in case of exhibits are named correspondingly) as confidential within the meaning of Art. 58 UPCA, R. 262.2 RoP;

Para. (incl. screenshots)	Description
Statement and Grounds of Appeal: - para. 17-18 - para. 30-33 - para. 39 - para. 54-71 - para. 94-98 - para. 101-120 - para. 126-133 - para. 142-143	Business information of Appellant and its business partner A. Menarini Diagnostics srl
Exhibits: - HRM 6 - HRM 7 - HRM 7-1 - HRM 7-2 - HRM 7-3 - HRM 7-4 - HRM 8	Business information of Appellant and its business partner A. Menarini Diagnostics srl

in particular that the Court of Appeal

- 2) order that the aforementioned information must be treated as strictly confidential by anyone who becomes aware of it as a result of their involvement in the present legal dispute (as a party, intervener, lawyer, witness, expert, court employee or in any other way). They may not be used or disclosed outside the 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 from a source other than EOFFlow or its affiliates, provided that such source is not bound by a confidentiality agreement with or other obligation of secrecy with EOFFlow or its affiliates.

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 point 1) 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.

- 3) order that the above-mentioned information be treated confidentially and be excluded from the possibility of inspection by third parties and be not published in the register or otherwise disclosed.
- 4) redact prior to publication of the decision or notices, any information contained therein which concerns the information to be classified as confidential under 1).
- 5) order that the public shall be excluded from the interim hearing and/or oral hearing during the direct and indirect discussion of the information to be classified under 1 (R. 115 RoP).
- 6) order that the public shall be excluded from the reasoning of the judgment as far as the information to be classified as confidential under 1) is discussed directly or indirectly.
- 7) order prior to publication of the reasons of the judgment or other announcements, the information contained therein is to be classified as confidential under 1) and to be redacted.

13. Insulet requests that the Court of Appeal

- I. reject EOFFlow's confidentiality request insofar as it concerns information already contained in the accounting provided by EOFFlow to Insulet (see Exhibits PS 5-10) and the impugned order.
- II. grant the following persons on the part of Insulet access to the confidential information:
 - a) Insulet's legal representatives including staff, experts, further representatives of Insulet and all other persons involved in the present proceedings, and
 - b) the following reliable natural persons



ORDER 24 DECEMBER 2025

14. The Court of Appeal informed the parties that it understands EOFFlow's request for confidentiality as follows.

- a) Documents labeled "redacted" are subject of a R. 262.2 RoP application;
- b) Documents labeled "confidential" are subject of a R. 262A RoP application and may be made available to Insulet, without confidentiality club restriction, but under the obligation that these may not be disclosed to third parties.

15. EOFFlow was requested to clarify whether the understanding above is correct and, if not, clarify how its R. 262.2 RoP request must be understood in relation to the documents as uploaded.

16. Furthermore, the Court ordered that pending the decision on the confidentiality request, access to the documents labelled "confidential" shall be restricted to Insulet's authorized representative.

PARTIES' SUBMISSIONS

17. In essence, EOFlow submits the following.

- It has been the intention of EOFlow – as in 1st instance – to exclude access to the information in these proceedings labelled as “confidential” for third parties only. It has not been intended to limit access to the documents for Insulet or their representatives; and no such request according to 262A RoP has been filed. In response to Insulet's argument in 1st instance that the information obtained by Insulet due to the rendering of account by EOFlow would have become “public”, EOFlow referred to the legal argument that by performing under an obligation to render account such information cannot become public per se, since EOFlow did not disclose this information to an undefined scope of people and there is an implicit limitation on the use of this information by the successful patentee (i.e. for the purpose of calculating damages and for pursuing potential further patent claims).
- The information to be kept confidential relates to business data dealing with EOFlow's exclusive European distributor A. Menarini Diagnostics s.r.l and thus constitutes trade secrets within the meaning of Art. 2 (1) of Directive (EU) 2016/943 (“Trade Secrets Directive”).
- The information has commercial value, is not generally known, and is not available to third parties. The information relates to internal business processes, prices, business partners, shipping arrangements, and routes in which EOFlow has a legitimate interest in keeping them confidential and a legitimate expectation that such confidentiality will be preserved since it affects its ability to compete.
- EOFlow has also taken appropriate confidentiality measures (limited number of people having access, passwords for accounts) with regard to this information.

18. Insulet submits in summary the following.

- Certain information included in EOFlow's Statement of Appeal is based on accounting data that EOFlow previously provided to Insulet, in compliance with the order on provisional measures, and the Central Division Milan's decision dated 22 July 2025. The same information is already contained in the accounting records supplied by EOFlow to Insulet (Exhibits PS 5-10), was not subject to any confidentiality restrictions, and was therefore provided to Insulet without any confidentiality restrictions.
- EOFlow's assertion that accounting records may only be used for the determination of damages is incorrect. Rather accounting records are not purpose-bound in the sense that they would otherwise be subject to confidentiality.
- The impugned order was not subject to any confidentiality requirements.
- In all other respects, Insulet leaves it to the discretion of the Court to determine whether the information submitted by EOFlow requires confidentiality protection.

GROUNDS

Legal framework

19. Pursuant to R. 262.1(b) RoP, written pleadings and evidence, lodged at the Court and recorded by the Registry, shall be available to the public upon reasoned request to the Registry. Pursuant to

R. 262.2 RoP, a party may request that certain information of written pleadings or evidence be kept confidential, in particular, by making documents available to the public in redacted form (see R. 262.2, sentence 4, RoP) and provide specific reasons for such confidentiality.

20. Pursuant to Art. 58 UPCA, the Court may, 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, 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.
21. Pursuant to R. 262A RoP, 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.
22. The classification of information as a trade secret requires that (a) the information is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; (b) the information has commercial value because it is secret; and (c) the information has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret (see Art. 39 (2) TRIPS Agreement). R. 262 RoP and R. 262A RoP refer not only to trade secrets in this sense, but also to other confidential information (cf. Art. 58 UPCA: "for the protection of trade secrets, personal data or other confidential information", *Strabag v Swarco Futurit et al.* para. 17).

Request number 2: Limitation of use of the information by Insulet

23. EOFflow uploaded the Statement of Appeal and the exhibits with the information at issue in the CMS as "HC" (highly confidential), which means that the documents are not accessible to the other party. Furthermore, EOFflow requests that the aforementioned information must be treated as strictly confidential by anyone who becomes aware of it as a result of their involvement in the present legal dispute (as a party, intervenor, lawyer, etc [...], see number 2 of the request).
24. Granting a request under R. 262.2 RoP does not automatically lead to protection against the other party disclosing the information (CoA, 1 August 2025, UPC_CoA_70/2025, *Strabag v Swarco Futurit et al.* para. 19). Only a R. 262A RoP application allows the Court to restrict the use of confidential information.
25. However, EOFflow made clear that it did not intend to file a R. 262A RoP application. EOFflow argues that there is an implicit limitation on the use of the information received by the successful patentee due to a court decision or order granting the communication.
26. The Court does not agree. There is no implicit limitation on the use of information received as a result of the other party's compliance with an order to communicate information pursuant to Art. 67 UPCA and R. 191 RoP. It is necessary to file a confidentiality request with regard to information which has to be communicated according to a Court order or decision (see CoA 14 October 2025,

UPC_CoA_699/2025, *Kodak v Fujifilm*, para. 45). This information does not necessarily concern information contained in pleadings or the collection and use of evidence in proceedings. Nevertheless, R. 262A RoP applies at least mutatis mutandis. This already follows from the fact that, according to R. 190.1, second sentence, RoP, the Court may for the protection of confidential information, order that the evidence be disclosed to certain named persons only and be subject to appropriate terms of non-disclosure. This is also applicable to communication of information “as is specified in Article 67 of the Agreement” pursuant to R. 191 RoP. The same must apply in cases where the court orders the communication of information pursuant to Art. 67 UPCA. For this reason, EOFflow would have been required to submit a R. 262A RoP application.

27. Furthermore, once the information has been communicated without restriction, it is no longer confidential. Since Insulet received the information without any restriction from EOFflow, there is therefore no longer any basis to restrict Insulet's use of this information (see CoA, 1 August 2025, UPC_CoA_70/2025, *Strabag v Swarco Futurit et al.* para. 24).
28. It follows that request number 2 is unfounded.
29. The documents were uploaded by EOFflow under HC code. Uploading a document under this code prevents access to it by the other party until a decision pursuant to R. 262A RoP has been issued by the Court. A legal basis for uploading the documents under HC code is lacking and it 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 or a respective Court order (see CoA, 26 January 2026, UPC_CoA_917/2025 *Merz v Viatris*).

Requests number 1, 3 - 7

30. There is no need to decide at this stage on the R. 262.2 RoP request (see CoA, 9 January 2024, UPC_CoA_769/2024, *Insulet v A. Menarini*, para. 13) and the requests regarding the redaction of decisions and the exclusion of the public from the hearing (*Strabag v Swarco Futurit et al.* para. 18).

ORDER

1. Access to the documents labelled “confidential” shall be granted to Insulet and its representatives.
2. Request number 2 is denied.
3. The Court will not at this stage issue a decision on the other requests.

Issued on 29 January 2026

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Rian Kalden
Rian Kalden, legally qualified judge and presiding judge

Patricia Ursula Rombach
Digitally signed by
Patricia Ursula Rombach
Date: 2026.01.29
14:56:17 +01'00'

Patricia Rombach, legally qualified judge and judge-rapporteur


Digitally signed by Åsa
Ingeborg Simonsson
Date: 2026.01.29
15:31:47 +01'00'

Ingeborg Simonsson, legally qualified judge

STEVEN RICHARD KITCHEN
Digitally signed by
STEVEN RICHARD
KITCHEN
Date: 2026.01.29
18:05:10 +01'00'

Steven Kitchen, technically qualified judge


Digital signiert von Udo
Matter
Datum: 2026.01.29
17:03:41 +01'00'

Udo Matter, technically qualified judge