



UPC Court of Appeal
UPC-CoA-42/2026

Order
of the Court of Appeal of the Unified Patent Court,
issued on 17 June 2026
concerning an application for confidentiality pursuant to Rule 262.2 and Rule 262A of the RoP

APPLICANT AND APPELLANT (AND CLAIMANT BEFORE THE COURT OF FIRST INSTANCE)

Fives ECL, Ronchin, France
(hereinafter “Fives”)

represented by Konstantin Schallmoser, Attorney-at-law, and other Attorneys-at-law of the law firm
Bonabry Partnerschaft von Rechtsanwälten, Hamburg, Germany

RESPONDENT AND RESPONDENT ON APPEAL (AND DEFENDANT BEFORE THE COURT OF FIRST INSTANCE)

REEL GmbH, Veitshöchheim, Germany
(hereinafter “REEL”)

represented by Dr Benjamin Schröer, Attorney-at-law, and other Attorneys-at-law of the law firm
Hogan Lovells International LLP, Munich, Germany

PATENT AT ISSUE

EP 1 740 740

LANGUAGE OF THE PROCEEDINGS

German

DECIDING JUDGES

This order was issued by
Ingeborg Simonsson, legally qualified judge and judge-rapporteur

CONTESTED DECISION OF THE COURT OF FIRST INSTANCE

Date: 11 February 2026, Hamburg local division,
Court of First Instance action number: UPC_CFI_274/2023

FACTS OF THE CASE

1. Fives is claiming damages from REEL for infringement of the patent at issue and is seeking compensation for the alleged loss of profit.
2. The Hamburg local division dismissed the claim on the grounds that Fives had failed to demonstrate sufficiently that it had in fact suffered a loss of profit and had not established the necessary causal link between the patent infringement and the alleged loss of profit.
3. On 29 July 2025, the Hamburg local division issued a confidentiality order restricting access to the information classified as confidential therein to a specific group of persons. The order noted that the text sections highlighted in grey in the statement of 18 July 2025 (with a few exceptions) and in Annexes BBY 23, 24 and 25 (with a few exceptions), pages 2 and 3 of Annex BBY 42, and the entirety of Annex BBY 43 contained information that must be treated as confidential. Furthermore, access to certain passages of text highlighted in grey in the statement and in Annex BBY 25 was restricted to the same specific group of persons.
4. On 17 March 2026, Fives lodged an appeal against the decision.
5. On 11 June 2026, Fives submitted its grounds of appeal, which included an application for confidentiality pursuant to Rules 262.2 and 262A of the RoP.
6. By order of 12 June 2026, the court requested Fives to confirm, within one working day, whether it was correct that 'the defendants' in Application No. 3 should be read as 'the Claimant' and whether, in that respect, the information for which confidentiality protection was sought was new in relation to the proceedings at first instance.
7. On 15 June 2026, Fives submitted its response. Fives confirmed that 'the Claimant' must be the correct reading in Application No. 3 and stated that the newly submitted annexes BBY 46, BBY 47, BBY 48, BBY 49, BBY 50, BBY 51/BBY 51Ü and BBY 62/BBY 62Ü are documents newly introduced into the appeal proceedings which are not covered by the confidentiality order issued by the Hamburg local division on 29 July 2025.
8. Furthermore, Fives added that the newly submitted Annex BBY 60 (REEL's application for an order for costs) is a document covered by the confidentiality order issued by the Hamburg local division on 20 March 2026 and that, in this respect, no further confidentiality order is required.

APPLICATIONS BY THE PARTIES

Fives moves

1. that the sections of text highlighted in grey in the unredacted version of the grounds of appeal dated 11 June 2026, the sections of text highlighted in grey in the unredacted versions of Annexes BBY 51 and BBY 51Ü, as well as Annexes BBY 46, BBY 47, BBY 48, BBY 49, BBY 50, and BBY 62 to be classified as subject to confidentiality within the meaning of Article 58 of the UPCA, Rule 262.2 and Rule 262a of the RoP,
2. to restrict access to the information referred to in point 1 on the part of REEL to the following persons:
 - a) REEL's legal representatives in the present proceedings,
 - b) their assistants (including experts and their team members), and
 - c) the persons listed below under Nos. (i) to (viii): (i)

(ii)

(iii)

(iv)

(v)

(vi)

(vii)

(viii)
3. to oblige the persons referred to to treat the information referred to in paragraph 1 as confidential until further notice and not to use or disclose it outside these legal proceedings, unless it has come to the knowledge of the receiving party outside these proceedings, provided that the receiving party has obtained it on a non-confidential basis from a source other than Fives or its affiliated companies and that source is not bound by a confidentiality agreement with Fives or its affiliated companies or by any other duty of confidentiality.
4. to order the aforementioned persons that, in the event of a wilful breach of the duty of confidentiality, the court may impose a penalty payment to be determined in accordance with the circumstances of the individual case.
5. The restrictions on access on the part of REEL pursuant to paragraphs 2, 3 and 4 above

do not apply to those sections of the grounds of appeal highlighted in grey, which are based on information introduced into the proceedings by REEL itself:

- paragraph 57
- Paragraph 97 (table, column C)
- paragraph 103 (table, second column from the left)
- Paragraph 107 (top of p. 29)
- paragraph 108 (top of p. 30, as well as the last paragraph on p. 30 and the top of p. 31)
- Paragraph 111 (table, second column from the left)
- Paragraph 113
- Paragraph 130
- Paragraph 142 (at the end)
- Paragraph 166 (point 1 at the end and point 4, the first, third, fourth and fifth blacked-out sections therein)
- Marginal note 178 (first blacked-out section)
- Marginal note 179 (first, third and last blacked-out sections)
- Paragraph 180
- Paragraph 195
- Paragraph 196
- Paragraph 199
- Paragraph 200
- Paragraph 313
- Paragraph 314
- Paragraph 372
- Paragraph 394
- Paragraph 395 (second blacking-out)
- Paragraph 405

ORDER

It is hereby provisionally ordered, pending a decision on the application for confidentiality, that:

1. access to the information listed below shall be granted, on a provisional basis, exclusively to REEL's legal representatives admitted to practise before the Unified Patent Court, who are subject to a professional duty of confidentiality, for the purpose of submitting a statement in accordance with Rule 262A.4 of the RoP:
 - the sections of text highlighted in grey in the unredacted version of the grounds of appeal dated 11 June 2026, the sections of text highlighted in grey in the unredacted versions of Annexes BBY 51 and BBY 51Ü, and the entirety of Annexes BBY 46, BBY 47, BBY 48, BBY 49, BBY 50, and BBY 62.
2. REEL's legal representatives authorised to appear before the Unified Patent Court are obliged to treat the aforementioned information as confidential and neither to use nor disclose it outside these court proceedings; this obligation shall continue to apply even after the conclusion of the proceedings.
3. In the event of a culpable breach of this order, the Court may impose a penalty payment of up to €250,000 on REEL for each breach, the amount of which shall be determined according to the circumstances of the individual case.
4. REEL is granted the opportunity, pursuant to Rule 262A.4 of the RoP (including paragraph 5 thereof), to submit its comments on the application for confidentiality **within 5 days**.

Issued on 17 June 2026

 Digitally signed
by Åsa Ingeborg
Simonsson
Date: 17 June
2026
11:51:29 +02'00'

Ingeborg Simonsson, legally qualified judge and judge-rapporteur