

UPC_CFI_2231/2025
Procedural order
of the Court of First Instance of the Unified Patent Court,
delivered on: 16/07/2026

CLAIMANT

**Fraunhofer-Gesellschaft zur Förderung der angewandten
Forschung e.V.,**
(Claimant) - Hansastraße 27c - 80686 - München – DE

Represented by: Dr. Volkmar Henke, Tilman Müller, Dr. Ronja Schregle, Max Weller

DEFENDANTS

1. **Acer Computer GmbH**, Kornkamp 4, 22926 Ahrensburg, Germany,
2. **CPYou B.V.**, Europalaan 89, 5232 BC 's-Hertogenbosch, The Netherlands,
3. **Acer Italy s.r.L**, Viale Delle Industrie, 1/A, 20044 Arese (MI), Italy,
4. **Acer Computer B.V (Benelux)**, Europalaan 89, 5232 BC 's Hertogenbosch, The Netherlands,
5. **Acer Computer France**, Immeuble Seine 2-8 rue Sarah Bernhardt, CS 90045, 92601, Asnieres-sur-Seine Cedex, France,

All represented by: Sven Krause, Dr. Andrew Lin, Roeland Grijpink, Rosalie ten Wolde,
Sabine Agé, Paul Puche

THIRD PARTY

[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]

Represented by: Dr. Volkmar Henke, Tilman Müller, Max Weller

PATENT IN SUIT

Patentnr.	Inhaber
EP2304723	Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V.

DECIDING JUDGE

Judge-rapporteur Dr. Schilling

SUBJECT OF THE APPLICATION:

Claimant's Requests for Production of Evidence and Confidentiality, R. 190.1 and 2 RoP

MOTIONS OF THE PARTIES:

1. Claimant seeks an order pursuant to R. 190 RoP ordering a third party - [REDACTED] [REDACTED] [REDACTED] - to produce the comparable license agreements relating to the Opus standard, concluded by [REDACTED] on behalf of the [REDACTED] [REDACTED] [REDACTED] [REDACTED] licensors, alongside a confidentiality order protecting those agreements and further material as "Highly Confidential Information".
2. Claimant argues that in order to properly respond to Defendants' FRAND defense it has to rely on third party material, in particular the comparable license agreements which are held by [REDACTED] as administrator of the [REDACTED] [REDACTED] [REDACTED] [REDACTED] and party to those agreements. Claimant asserts to not have them in its possession and hence could rely on them only once they are produced by [REDACTED] pursuant to an order of this Court. [REDACTED] is bound by confidentiality vis-à-vis its licensees absent such an order and [REDACTED] licensees have not agreed to the disclosure of their agreements in the present proceedings. In parallel proceedings before the LD The Hague (UPC_CFI_1536/2025), to which Defendants are a party, the same documents have been ordered to be produced.
3. Claimant points out that Defendants' representatives have expressly confirmed by e-mail as of 6 July 2026 no to have any objections to this request for document production. Also on prior notification, [REDACTED] declared not to object to the production requests under the proposed confidentiality regime.
4. Claimant is of the opinion that given the manifestly commercially sensitive nature of executed license agreements and of the material relating to the establishment and governance of the pool — which contain royalty rates, rebate structures, licensee identities and internal governance terms — these materials warrant the highest level of protection as "Highly Confidential". Claimant argues that the proposed regime is proportionate, as it does not prevent Defendants from using the information for these proceedings. It limits access to UPC Representatives, external advisers and experts, and a small number of identified party representatives with a genuine need to know.
5. With submission dated 8 July the third party concerned [REDACTED] represented by UPC Representatives affiliated with Bardehle Pagenberg confirmed that it does not object to Claimant's request of the production of the comparable Opus license agreements under the confidentiality regime requested therein, and is prepared to produce those agreements

without delay once the Court has issued the corresponding order, which may be served to the aforementioned representatives

6. With submission dated 15 July, the Defendants confirmed not to object to the Claimant's requests, either.

REASONS FOR THE ORDER:

7. The Claimant's request is justified and follows the unanimous consent of the Defendants and the third party concerned by the order.
8. According to R. 190.1 RoP 1. the Court may where a party has presented reasonably available and plausible evidence in support of its claims and has, in substantiating those claims, specified evidence which lies in the control of the other party or a third party, order on a reasoned request by the party specifying such evidence, that the other party or a third party to produce such evidence. Thus, R. 190 RoP, read in conjunction with Art. 59 UPCA and the broader framework of the Rules of Procedure, empowers the Court to order the production of specified evidence which lies in the control of the opposing party or of a third party, provided that the requesting party has presented reasonably available evidence supporting the plausibility of its claims (CoA, Order of 29 June 2026 – UPC_CoA_57/2026 – Polytechnik v Dall, mn. 19 ff.). For the protection of confidential information, the Court may order that the evidence be disclosed to certain named persons only and be subject to appropriate terms of non-disclosure. According to R. 190.5 RoP where the Court orders a third party to produce evidence, the interests of that third party shall be duly taken into account.
9. The purpose of R. 190 RoP and Art. 59 UPCA is to ensure that the party who has the burden of proof will have access to the tools for carrying this burden (comp. CoA, Order of 24 September 2024, UPC_CoA 298-300/2024, Oppo et al v. Panasonic, mn. 32 ff.). If a FRAND defense is raised this leads to conflicting interests, where either the alleged infringer seeks to obtain evidence to support its FRAND defense or where the patent holder seeks to support its or its affiliates licensing practice.
10. According to the CoA, the Court of First Instance has discretionary powers when deciding on an application for an order to produce evidence pursuant to R. 190 RoP (CoA, Order of 24 September 2024, UPC_CoA 298-300/2024, Oppo et al v. Panasonic, mn. 32 ff.). The discretionary power also includes the judge-rapporteur's decision on the chronological order in which questions are to be decided in accordance with R. 334(e) RoP. The assessment of an application for an order to produce evidence may also depend on the stage of the proceedings.
11. In light of the stage of the proceedings, it makes sense that the Claimant files a request for the production of evidence to obtain the comparable license agreements relating to the Opus standard before submitting its Reply to the Statement of Defence. Those possible license agreements relate to the [REDACTED] [REDACTED] [REDACTED] [REDACTED] The standard incorporated the patent in suit, and an [REDACTED] is said to have concluded license agreements on behalf of the pool licensors.
12. It is undisputed that the Claimant itself is not in possession of those agreements, but that they are held by [REDACTED] as administrator of the [REDACTED] [REDACTED] [REDACTED] and party to those agreements. It is furthermore undisputed, that also [REDACTED] is not in a position to produce the agreements absent a Court order as [REDACTED] licensees have not agreed to the disclosure of their agreements in the present proceedings. However, the agreements underly a confidentiality

clause which permit disclosure to third parties (only) pursuant to an order of a competent court.

13. As both, [REDACTED] and the Defendants confirmed not to object to the Claimant's requests, and as the presentation of the comparable license agreements levels the playing field for both parties, the discretion of the Court is to be executed in a way that leads to the grant of the request (comp. LD Mannheim, order of 16 September 2025, UPC_CFI_247/2025 – Huawei v MediaThek et al.). It matches the request the Defendants have submitted in the parallel Opus standard related proceedings before the LD The Hague.
14. The Claimant reasonable conditioned its own request to a confidentiality regime that safeguards the third party's (Vecits') interest, including its pool members, R. 190.5 RoP. It appears necessary that the executed license agreements and materials relating to the establishment, administration and governance of the licensing pool be classified as Highly Confidential Information and that access be restricted in accordance with the confidentiality regime requested by the Claimant. The Defendants eased the proceedings by expressing their consent to the requested confidentiality measures in advance.
15. The parties are given the opportunity to name external economic experts and natural persons that are to be granted access to the highly confidential versions of the documents to be produced.

ORDER

The Court hereby orders,

A. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (hereinafter [REDACTED] to produce, within two weeks of the date of the order, subject to the confidentiality regime under B. below, the following documents:

- (1) all comparable licence agreements, including any settlement agreements, entered into by [REDACTED] relating to one or more patents that form part of the portfolio of patents allegedly essential to the Opus standard; and
- (2) any side letters, modifications, amendments, supplementary agreements and similar documents relating to one or more of the agreements referred to in (i) above.

B. that access to the documents produced under A. above shall be governed by the following regime:

- (1) The documents produced under A. and all information included therein are classified as "Highly Confidential Information".
- (2) Access to the Highly Confidential Information shall be limited, on the side of the receiving party, to:
 - (a) the team of UPC Representatives assisting the receiving party in the present proceedings before the LD Hamburg (court ref. UPC_CFI_2231/2025) and any appeal proceedings related thereto, including personnel (paralegals, trainees and support staff) working under their supervision;
 - (b) a maximum of three external economic experts of the receiving party who (i) are not employees of the receiving party and (ii) have a legitimate need to access the Highly Confidential Information;

(c) a maximum of three representatives of the receiving party who (i) have a legitimate need to access the information and (ii) will not participate in or advise upon any licensing negotiations with the counterparties to the disclosed agreements for a period of two years after ceasing to have access to such agreements, save with the relevant counterparty's consent.

(3) The persons named under (2) a)–c) shall:

(a) use the Highly Confidential Information solely for the purpose of these proceedings, including any settlement thereof;

(b) keep the Highly Confidential Information confidential and not disclose it to any unauthorized third party;

(c) implement adequate physical and electronic measures to ensure that only the designated persons have access.

(4) In the event of a culpable breach of points (2) and (3), the Court may impose a penalty payment for each breach, to be determined in light of the circumstances.

(5) The Court preliminarily:

(a) excludes the Highly Confidential Information from inspection by third parties and not publish it in the register or otherwise disclose it;

(b) excludes the public from the oral hearing during any direct or indirect discussion of the Highly Confidential Information;

(c) redacts, prior to publication of any decision or notice, any information concerning the Highly Confidential Information;

subject to any subsequent order on an application based on R. 262.3 RoP.

C. The parties are given the opportunity to name external economic experts and natural persons that are to be granted access under item B. (2) (b) and (c) to the highly confidential versions of the documents to be produced within two weeks.

INSTRUCTION TO REGISTRY

The Order can be served on [REDACTED] via Claimant's UPC representatives.

ISSUED IN HAMBURG, 16 JULY 2026

**Stefan
Schilling**
Digital signiert von Stefan Schilling
DN: cn=Stefan Schilling, c=DE,
email=stefan.schilling@unifiedpatentcourt.org
Datum: 2026.07.16 13:40:01 +02'00'

Judge-rapporteur