



UPC Court of Appeal

UPC-CoA-42/2026

Order
of the Court of Appeal of the Unified Patent Court,
issued on 16 July 2026
concerning applications for confidentiality and a change in the language of the proceedings

HEADNOTE:

An application to include a person who is no longer employed by a party within the circle of persons bound by confidentiality may be granted on condition that the information subject to confidentiality may only be disclosed once that person has entered into a confidentiality agreement with the party concerned, backed by a contractual penalty.

An order of the Court of First Instance pursuant to Rule 262A of the RoP, which is not challenged on appeal and which restricts access to certain information or evidence to specific persons, remains in force after the conclusion of the proceedings and thus also during the appeal proceedings, unless otherwise specified in the order (UPC_CoA_101/2024, Order of 28 March 2024, Curio Bioscience v 10x Genomics). However, the Court of Appeal may amend the order of the Court of First Instance if new facts arising after the conclusion of the proceedings at first instance so require.

KEYWORDS:

Rule 262A of the RoP

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

Fives ECL, Ronchin, France

(hereinafter “Fives”)

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

RESPONDENT AND RESPONDENT ON APPEAL (AND DEFENDANT AT 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 Cadwalader International LLP, Munich, Germany, as well as other Attorneys-at-law of the law firm Jones Day, Paris, France

PATENT AT ISSUE

EP 1 740 740

LANGUAGE OF THE PROCEEDINGS

German

JUDGES

Rian Kalden, presiding judge and legally qualified judge
Ingeborg Simonsson, legally qualified judge and judge-rapporteur
Patricia Rombach, legally qualified judge
Steen Wadskov-Hansen, technically qualified judge Graham
Ashley, technically qualified judge

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. 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 contain 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. On 11 February 2026, 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 17 March 2026, Fives lodged an appeal against the decision.
4. On 11 June 2026, Fives submitted its grounds of appeal, which included a request for confidentiality pursuant to Rules 262.2 and 262A of the RoP.

5. The Court gave the parties the opportunity to comment on the issues which, in its view, required clarification. The parties availed themselves of this opportunity. For further details, reference is made to the contents of the file.

APPLICATIONS BY THE PARTIES

6. Fives requests

- I. 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, and the entirety of 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,
- II. to restrict access to the information referred to under No. I 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)
- III. to oblige the persons referred to to treat the information referred to in Section I as confidential until further notice and not to use or disclose it outside these legal proceedings, unless such information 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,
- IV. 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 assessed in the light of the circumstances of the individual case,

V. the restrictions on access on the part of REEL pursuant to paragraphs II, III and IV above do not apply to those sections of the grounds of appeal highlighted in grey, which relate to 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, last paragraph of p. 30 and 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, specifically the first, third, fourth and fifth blacked-out sections)
- 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

VI. Fives further requests [REDACTED] to be included in the group of persons authorised to access [REDACTED] and [REDACTED] to exclude from this group. REEL agrees with this [REDACTED].

11. REEL requests

- [REDACTED]'s membership of the 'Confidentiality Club', even though he has left the company, and that the confidential information discussed within this club be subject to certain restrictions (see below).
- REEL agrees that [REDACTED] the information classified as confidential under paragraph 1 of the confidentiality application may only be made available on condition that REEL enters into a confidentiality agreement with him relating to that information. REEL accepts this for

pragmatic reasons, in order to facilitate the prompt issuance of a confidentiality order, and without acknowledging that the imposition of such a condition would be necessary.

- In the event that the oral hearing is conducted wholly or partly in English, REEL requests that it be permitted to submit the response to the appeal (R. 235 et seq. RoP) and any further pleadings on the merits of the case in these appeal proceedings exclusively in English. In REEL's view, German may otherwise remain the language of the proceedings. However, REEL would also agree to a change in the language of the proceedings for the entire appeal proceedings, should the court so wish.

SUBMISSIONS OF THE PARTIES

12. In summary, Fives submits, in essence:

- The information contained in the grounds of appeal and in the annexes BBY 46, BBY 47, BBY 48, BBY 49, BBY 50, BBY 51/BBY 51Ü and BBY 62 submitted in the appeal proceedings is confidential and not generally known business information belonging to Fives, relating in particular to tender prices, cost calculation bases and profit margins, which is worthy of protection, particularly against competitors and, in this case, specifically against REEL. Access to this information should therefore be restricted to trustworthy individuals who will not use it outside the context of the proceedings.
- Fives raised no objections to the inclusion of [REDACTED] the group of authorised persons.
- The composition of the confidentiality group established by the Hamburg local division on 18 September 2025 has changed on its part. [REDACTED] had left the company and no longer had access to REEL's confidential information. In their place, [REDACTED] has been appointed as the new Director of Contract Affairs and Litigation.
- Fives agrees with REEL's proposal to submit the response to the appeal and any further documents directly in the original English version. There is no need to submit a working copy in German. There are no objections to the proposal to designate English as the language of the proceedings for the entire appeal proceedings in accordance with Article 50(3) of the UPC Agreement.

13. In summary, REEL essentially submits:

- [REDACTED] that, as it is to become a member of the 'Confidentiality Club' pursuant to paragraph 2(c)(iii) and is already a member of the Confidentiality Club established at first instance, the [REDACTED] have since left the REEL group of companies. Since [REDACTED] a relevant source of information regarding the tender at issue, he should remain a member of the Confidentiality Club, as this is the only way REEL can, if necessary, ask him to verify Fives's allegations.
- The application is said to be too broad in relation to the information concerned and should therefore be dismissed in part. Fives had already disclosed certain (superficial) information about its own offers and those of REEL in the statement of claim. The statement of claim did not contain any

application for confidentiality, and no confidentiality order had been issued in this regard. The information contained therein had therefore been made available to REEL without restriction (and had, in part, originated from REEL anyway). REEL has no objections to this; on the contrary, it would welcome it if this information were classified as confidential in the sense that it is shielded from the public, i.e. excluded from any inspection of the case file, discussed in the closed part of the oral hearing and redacted in the court's decision.

- Similarly, Fives had already made page 3 of Annex BBY 49 freely accessible as Annex PBP 14b. The comments under point 3.1 therefore apply mutatis mutandis. The application for confidentiality should therefore be dismissed in this respect.
- In paragraph 5 of the application for confidentiality, Fives lists the information highlighted in purple which originated from REEL and should therefore be excluded from the orders set out in paragraphs 2 to 4 of the application. Two entries in the list should be amended as follows (changes underlined): para. 179 (first, second, third and last redactions) and para. 111 (table, second and third columns from the left).
- REEL agrees to the requested inclusion of [REDACTED] into the confidentiality group. [REDACTED] remains bound by the confidentiality order of the Hamburg local division of 30 October 2025 even after her departure, but will no longer be part of any confidentiality group with regard to the information first introduced in the response to the appeal.
- REEL suggests that the court issue a clarifying order stating that the time limit for the response to the appeal pursuant to Rule 235.1 of the RoP, shall not commence until the confidentiality order has been issued. In support of this, REEL refers to an email from Fives' representative dated 11 June 2026 to the law firm, in which this view was expressed.

GROUND

Application for confidentiality –

Legal framework

14. Pursuant to Article 58 of the UPC Agreement, the Court may, in order to protect trade secrets, personal data or other confidential information of a party to the proceedings or a third party, or to prevent the misuse of evidence, order that the taking and use of evidence in the proceedings before it be restricted or declared inadmissible, or that access to such evidence be restricted to specific persons.
15. Pursuant to Rule 262.1(b) of the RoP, pleadings and evidence filed with the Court and registered by the Registry shall be made available to the public upon a reasoned application addressed to the Registry. Pursuant to Rule 262.2 of the RoP, a party may apply for certain information contained in pleadings or evidence to be treated as confidential, in particular that the documents be made available to the public only in redacted form (see Rule 262.2, fourth sentence, of the RoP), and must provide specific grounds for this.

16. Pursuant to Rule 262A of the RoP, a party may file an application with the court for an order restricting or declaring inadmissible access to certain information contained in its documents or the taking of evidence in the proceedings, or restricting access to such information or evidence to specific persons.
17. For information to be classified as a trade secret, it must be the case that: (a) the information is not generally known or readily accessible, either in its entirety or in the precise order and composition of its components, to persons within the circles that normally deal with this type of information; (b) the information has commercial value by virtue of its secrecy; and (c) the information is subject to reasonable measures of secrecy, appropriate to the circumstances, by persons who have lawful control over the information (see Article 39(2) of the TRIPS Agreement). Rule 262 of the Rules of Procedure (RoP) and Rule 262A of the RoP refer not only to trade secrets in this sense, but also to other confidential information (see Article 58 of the UPC Agreement: “for the protection of trade secrets, personal data or other confidential information”).
18. In the event of a breach of the obligations arising from the order pursuant to Rule 262A, a penalty payment may, pursuant to Rule 354.3 of the RoP, be imposed only on the party concerned and, in the event of a breach, may be set in accordance with Rule 354.4 of the RoP (see *Sun v Vivo* of 26 January 2026, UPC-CoA-755/2025 para. 51).
19. An application to include a person who is no longer employed by a party within the circle of confidentiality may be granted on condition that the information subject to confidentiality may only be disclosed once that person has entered into a confidentiality agreement with the party concerned, enforceable by contractual penalties. Whilst, in the case of an ongoing employment relationship, it can generally be assumed that the employee is obliged to maintain the confidentiality of information obtained in the course of that employment by virtue of the duty of loyalty arising from the employment relationship, this cannot automatically be assumed in the case of a former employee with regard to information obtained after their departure. This makes it necessary for the party to ensure, through a contractual agreement with the former employee, that the latter treats as confidential any information provided after their departure from the employment relationship.

Redaction of information in the decision

20. Insofar as an application is made to redact the information in the decision prior to its publication, there is currently no reason to rule on this matter.
21. No decision is currently required on the application under Rule 262.2 of the RoP. A decision on such an application is normally only made once an application under Rule 262.1(b) of the RoP has been lodged.

The application to include a natural person who is no longer employed by the company

22. For the reasons set out above (para. 19), REEL's application, [REDACTED] to be included in the circle of confidentiality, may only be granted on condition that the information subject to confidentiality [REDACTED] may only be transmitted once [REDACTED] has concluded a confidentiality agreement with REEL, enforceable by contractual penalties.

Late application regarding the information

23. Fives' applications, in so far as they relate to information from paragraph 156 of the statement of claim filed by Fives with the Hamburg local division, reproduced in paragraphs 66 and 117 of the grounds of appeal as well as in other parts of the grounds of appeal and in Annex BBY 51/51Ü, are out of time. Pursuant to Rule 262A(3), first sentence, of the RoP, an application under Rule 262A of the RoP must be made at the time of filing the document containing the information or evidence. An order under Rule 262A of the RoP requires that the application to restrict access to certain information or evidence to specific persons or to limit its use was made at the time the document was filed (Rule 262A(3) of the RoP). An application made for the first time during appeal proceedings concerning information and evidence that has already been submitted at first instance is therefore inadmissible (UPC_CoA_70/2025, Order of 1 August 2025, *Strabag v Swarco*).

24. For this reason, the applications relating to the information referred to in the previous paragraph must be rejected.

Other information

25. In so far as Fives requests that the remaining information be treated as confidential, the application is granted. The application was not lodged out of time. This information is confidential.

26. Fives has taken sufficient confidentiality measures in this respect.

Extension of the existing circle of confidentiality

27. An order of the Court of First Instance, not challenged on appeal, pursuant to Rule 262A of the RoP, which restricts access to certain information or evidence to specific persons, remains in force after the conclusion of the proceedings and thus also during the appeal proceedings, unless otherwise specified in the order (UPC_CoA_101/2024, Order of 28 March 2024, *Curio Bioscience v 10x Genomics*). However, the Court of Appeal may amend the order of the Court of First Instance if new facts arising after the conclusion of the proceedings at first instance so require.

28. In accordance with this principle, the Court of Appeal considers it appropriate to order that the confidentiality order issued at first instance in these proceedings by order of 18 September 2025, which remains in force between the parties, shall apply equally to [REDACTED].

29. Since [REDACTED] has received confidential information (or is deemed to have received it) in accordance with the order of the Hamburg local division of 18 September 2025, and Fives is responsible for ensuring that it complies with this order (see Sun v Vivo), the Court of Appeal sees no reason to exclude her from the circle of confidentiality established by the Court of First Instance, as requested by Fives.

language of the proceedings

30. In exceptional cases and where it appears appropriate, the Court of Appeal may, with the consent of the parties, designate an official language of a Contracting Member State other than the language of the proceedings as the language of the proceedings for the whole or part of the proceedings (Article 50(3) of the UPC Agreement).

31. The conditions for changing the language of the proceedings to English pursuant to Article 50(3) of the UPC Agreement are met. Both parties have consented to the change of the language of the proceedings. English is an official language in Malta (a Contracting Member State).

Extension of time limit

32. Pursuant to Rule 9.3(a) of the RoP, the Court of Appeal extends the time limit for REEL to file its response to the appeal by 15 working days in respect of information not already made available to REEL at the time of receipt of the grounds of appeal. In all other respects, the time limit for filing the response to the appeal remains as set out in Rule 235.1 of the RoP.

ORDER

It is ordered:

I. Access to the information listed below is restricted to the following persons:

- a) the legal representatives of REEL 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)

[REDACTED]
[REDACTED]
[REDACTED] provided that the confidential
information [REDACTED] may only be disclosed after [REDACTED]
[REDACTED] has entered into a legally binding confidentiality agreement
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

(vi)

(vii)

(viii)

- the sections of text highlighted in purple in the unredacted version of the grounds of appeal dated 11 June 2026, the sections of text highlighted in purple 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 (with the exception of the information referred to in paragraph 17).

II. 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 purple 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, last paragraph of p. 30 and top of p. 31)
- Paragraph 111 (table, third column from the left)
- Paragraph 113
- Paragraph 130
- Paragraph 142 (at the end)
- Paragraph 166 (point 1 at the end and point 4, specifically the first, third, fourth and fifth blacked-out sections therein)
- Marginal note 178 (first blacked-out section)
- Marginal note 179 (first, second, 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

III. Those persons who, pursuant to Section I, have access to the confidential information are instructed not to disclose the confidential information to third parties outside these proceedings and not to use the confidential information for purposes unrelated to these proceedings. These obligations shall continue to apply after the conclusion of these proceedings. They shall not apply if and to the extent that the

information has become known outside these proceedings, provided that it was obtained on a non-confidential basis from a source other than Fives and that such source is not bound by a confidentiality agreement or any other duty of confidentiality towards Fives.

- IV. 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.
- V. The remaining applications are dismissed.
- VI. It is ordered that the non-disclosure order issued in these proceedings at first instance by order of 18 September 2025, when a confidentiality order was issued, which remains in force between the parties, shall apply equally to the following person: [REDACTED].
- VII. English is hereby designated as the language of the appeal proceedings with effect from this date.
- VIII. REEL may submit its response to the appeal exclusively in English.
- IX. The oral hearing will be conducted in English.
- X. The parties are requested to upload English translations of the documents filed with the Court of First Instance and the Court of Appeal, provided that these are already available or that the relevant party agrees to produce such translations.
- XI. The deadline for REEL to submit its response to the appeal is extended by 15 working days.
- XII. All other applications are dismissed.

Issued on 16 July 2026

**Rian
Kalden**

**Date: 16 July
2026
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Rian Kalden, Presiding Judge and legally qualified judge



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