



Munich local division
UPC_CFI_515/2026
UPC_CFI_1797/2026

Decision
of the Court of First Instance of the Unified Patent Court,
Munich local division
issued on 29 July 2026

HEADNOTES

1. An 'unedited document' within the meaning of Rule 262A.3 of the RoP is, in accordance with the spirit and purpose of the provision, a document from which the information or evidence arises in respect of which access is to be restricted under Rule 262A.1 of the RoP. In this respect, an extract from a complete document may constitute an 'unedited document'. It need not be unedited in the technical sense.
2. Rule 262A.3 of the RoP does not confer any right on the party subject to restrictions under Rule 262A.1 of the RoP to inspect the entire document from which the extract was taken, which has been introduced into the proceedings (here as an annex) and which contains the confidential information that is the subject of the application for confidentiality.
3. Rule 262A.3 of the RoP has been complied with if the party affected by the requested confidentiality measures had access to both versions of the document introduced (here as an annex) (with and without confidential information, i.e. redacted and unredacted) and was thus, in principle, in a position to submit a sufficiently informed response to the application for confidentiality, Rule 262A.4 of the RoP.

CLAIMANT AND COUNTER-DEFENDANT (HEREINAFTER 'CA')

CA, Inc., 1320 Ridder Park Drive, San Jose, California 95131, USA, legally represented by the Board of Directors, *ibid*.

represented by:

Dr Bernd Allekotte and Mr Sebastian Ochs, Attorney-at-law, as well as all Attorneys-at-law of Grünecker PartG mbB, Leopoldstraße 4, 80802 Munich, who are admitted to practise in the Federal Republic of Germany.

DEFENDANTS AND COUNTER-CLAIMANTS (HEREINAFTER 'TELEKOM')

1. **Deutsche Telekom AG**, represented by its Executive Board, Friedrich-Ebert-Allee 140, 53113 Bonn
2. **Telekom Deutschland GmbH**, represented by its management, Landgrabenweg 149, 53227 Bonn

represented by:

Klaus Haft, Attorney-at-law, Dipl. Phys., HOYNG ROKH MONEGIER, Steinstr. 20, 40212 Düsseldorf, Germany

PATENT AT ISSUE

EP 1 955 151

PANEL/CHAMBER

Panel 2 of the Munich local division

JUDGES

This order was issued by the presiding judge Dr Daniel Voß, Judge Dr Georg Werner (judge-rapporteur) and Judge Dr Walter Schober.

LANGUAGE OF THE PROCEEDINGS

German

SUBJECT

Action for infringement and counterclaim for annulment – application under Rule 262A – in this case: application under Rule 333.1 of the RoP

FACTS, APPLICATION AND POINTS AT ISSUE BETWEEN THE PARTIES

- 1 CA lodged an application for review on 7 July 2026 against the confidentiality order issued by the judge-rapporteur on 22 June 2026.
- 2 According to CA, the application for review challenges the decision contained in the order of 22 June 2026 that Rule 262A.3 of the RoP had been complied with in respect of Annex B5, even though the defendants had only submitted a partial extract of the underlying document as Annex B5 and (only) this partial extract was available in an unredacted form. The application for review is further directed against the assumption that CA was therefore able to submit a sufficiently informed statement within the meaning of Rule 262A.4 of the RoP.
- 3 **CA requests:**
 - I. that the judge-rapporteur's confidentiality order of 22 June 2026 (Case Nos. UPC_CFI_515/2026 and UPC_CFI_1797/2026) within the meaning of Rules 220.3 and 333.3
Of the RoP, it is to be submitted to the full panel for review, with regard to the question of whether the defendant's application for confidentiality in respect of Annex B 05 is well-founded;
 - II. to amend the order for confidentiality issued by the judge-rapporteur on 22 June 2026 (Ref. UPC_CFI_515/2026 and UPC_CFI_1797/2026) to the effect that
 1. the defendants are ordered to submit the docume[REDACTED]
[REDACTED] of which page 45 has already been submitted as redacted Annex B 05 to the statement of defence of 21 May 2026, in its full and unredacted version (115 pages) in electronic form within 7 days of the issuance of the relevant order;
 2. in the alternative to 1), the defendants are ordered to submit a version of the docu[REDACTED] within 7 days after the relevant order is issued, in which, at the very least, the table of contents and the [REDACTED] and the sections are included unredacted;

3. the Claimant be given the opportunity, following the submission of Annex B 05 in the version set out in paragraph II.1 or paragraph II.2, to comment, within a reasonable period to be determined by the court, on any confidentiality concerns regarding the information [REDACTED] contained in the document;
;
4. following the Claimant's response, a new decision is to be made within a reasonable period as to whether Annex B 05 requires confidentiality.

4 In support of its case, CA essentially argues:

- 5 The order effectively renders the element of an 'unedited document' in Rule 262A.3 of the RoP meaningless and replaces it with the assumption that it is sufficient for merely a partial excerpt selected by the defendants themselves to be submitted unredacted. In doing so, it places the decisive reference point of Rule 262A.3 of the RoP at the discretion of the applicant for confidentiality and fails to fulfil the spirit and purpose of the provision. This consists in striking a fair balance between the applicant's interest in confidentiality and the defendant's interest in disclosure, and in ensuring that confidentiality proceedings are conducted promptly and fairly. This can only be guaranteed if an unredacted ('unedited') version is submitted at the same time as a redacted version. Only then can the defendant assess whether the claimed confidentiality is justified and whether, in the overall context, the submitted passage conveys the meaning attributed to it. The same applies to the assessment of the need for confidentiality of the information referred to in Annex B5. The scope of any justified confidentiality can only be assessed on the basis of the full context of the documents. There cannot be a category of 'confidential and not accessible to anyone'. The term 'unedited' version in Rule 262A.3 of the RoP must therefore not be understood in a purely formal sense; rather, the version submitted must be genuinely comprehensible with regard to the parts to which reference is made. On page 45, the partial document implicitly refers to redacted parts. This applies to the [REDACTED] which has not been fully disclosed. Similarly, the passage [REDACTED] and its [REDACTED] where [REDACTED] [REDACTED] as part [REDACTED] relevant, and [REDACTED] the unedited version of Annex B5 from CA. Rather, TELEKOM must submit it on grounds of procedural equality of arms. The court may subsequently order protective measures for the confidential information.

6 TELEKOM **moves** to dismiss the application for review.

- 7 It essentially argues that the subject matter of its application for confidentiality is the need for confidentiality of specific confidential information that has been introduced into the proceedings, and not the need for confidentiality of information that has not been introduced and is not the subject of the proceedings. Its application for confidentiality does not relate to the remaining, unsubmitted parts of the document. The claimant's interpretation is incorrect. CA has not demonstrated why the information contained in the submitted Annex B5 does not constitute information requiring confidentiality. This information relates to the function of the contested embodiment. The need for confidentiality is apparent from the grounds set out in the application. It is for the party to decide which documents or parts of documents it introduces into the proceedings. It is irrelevant whether CA considers documents not submitted or parts of a document not introduced to be potentially relevant. Whilst it is incumbent on a claimant to substantiate their claim, the defendant is free to decide how to respond to this. The defendant may determine the scope and content of its response. CA's further considerations are beside the point.
- 8 For further details of the facts of the case, reference is made to the order of 22 June 2026 (submitted for review) and to the parties' pleadings of 7 July 2026 and 20 July 2026.

REASONS FOR THE ORDER

- 9 The admissible application for review is unfounded.
- 1.
- 10 The judge-rapporteur correctly distinguished as follows:
- 11 The subject matter of TELEKOM's application for confidentiality is not the complete document on which Annex B5 is based, but rather an extract from that complete document, which TELEKOM introduced into the proceedings as Annex B5. Accordingly, in its statement of facts and legal arguments, TELEKOM appeals exclusively to the specific document submitted as Annex B5. In this respect, the subject matter of its applications for confidentiality is therefore merely Annex B5 in its unredacted form (and not the complete document).
- 12 Contrary to CA's objection, the judge-rapporteur has not thereby established a third category 'confidential and not accessible to anyone'. No decision has been taken regarding the need for confidentiality of the full document. On the one hand, this is not the subject matter of the proceedings. On the other hand, there is no application for confidentiality in this respect.
- 2.
- 13 No different assessment follows from the objections raised by CA:

a)

- 14 An 'unedited document' within the meaning of Rule 262A.3 of the RoP is, according to the spirit and purpose of the provision, a document from which the information or evidence arises in respect of which access is to be restricted under Rule 262A.1 of the RoP. In this respect, an extract from a complete document may constitute an 'unedited document'. Irrespective of whether the document introduced into the proceedings is an extract from a complete document or not, it must reflect the information or evidence to be protected in order to qualify as an 'unedited document' within the meaning of Rule 262A.3 of the RoP. It need not be unedited in the technical sense; this is irrelevant.

b)

- 15 Rule 262A.3 of the RoP does not confer upon the party who is to be subject to restrictions under Rule 262A.1 of the RoP any right to inspect the entire document from which the extract was taken, which has been introduced into the proceedings (here as Annex B5) and which contains the confidential information that is the subject of the application for confidentiality. In this respect, it is merely necessary to disclose to that party the information and evidence to be protected by the restriction, so that it may comment, in full knowledge of the facts, on the application for confidentiality and, above all, on the question of whether the individual items of information or evidence require confidentiality. The full document from which the extract is taken, as well as the 'full documentary context' are generally not required for these purposes.
- 16 In the present case, CA has not sufficiently demonstrated why, in order to comment on the application for confidentiality, it would be necessary for the full document from which TELEKOM extracted the excerpt (submitted here as Annex B5) to be disclosed to it.
- 17 The (implicit) reference to other parts of the unproduced full document, as asserted by CA, is in any event insufficient in this context. It may well be of interest to CA to know what further information is contained in the full document. However, it has not been demonstrated, nor is it apparent, why this might be relevant to the decision on the specific confidentiality request. This is because the full document contains information to which TELEKOM does not refer and which (at least to date) is neither the subject of the proceedings nor of the confidentiality request. In this respect, CA's request is unrelated to TELEKOM's confidentiality request.
- c)
- 18 The breach of the principle of equality of arms cited by CA (namely that, unlike CA, TELEKOM is aware of the content of the entire document) is, in any event, unsuccessful.
- 19 For what is decisive in this regard is not who knows what, but solely what information (or evidence) has been introduced into the proceedings and formed the basis of the

statement of the case. In this respect, each party is, in principle, responsible for its own submission.

d)

- 20 Irrespective of this, however, it could possibly be a matter of the (secondary) burden of proof as to whether a party is fulfilling its associated responsibility and adequately discharging its obligations when it submits only extracts from a document and presents its case on that basis. The specific circumstances of the individual case are decisive in this respect. However, these are not the subject of the application for review submitted for decision here.

e)

- 21 That aside, CA has now, on 22 July 2026, lodged an application under Rule 190 of the RoP. In view of its request, such an application appears to be more appropriate than the approach taken here under Rule 262A.

3.

- 22 With regard to the confidential information contained in Annex B5, TELEKOM was right to apply for confidentiality measures, and the judge-rapporteur has ordered these. This concerns the functioning of the contested embodiment. In this respect, TELEKOM has sufficiently demonstrated the need for confidentiality of its information.

- 23 CA has (rightly) not contested the need for confidentiality regarding the functioning of the contested embodiment. In particular, CA has not explained why the specific information for which TELEKOM seeks confidentiality is not confidential information.

- 24 Rule 262A.3 of the RoP has been complied with, as the party affected by the requested confidentiality measures (in this case, the defendants) had both versions of the document submitted (here as Annex B5) – with and without confidential information (i.e. redacted and unredacted) – and was therefore, in principle, in a position to submit a sufficiently informed response to the application for confidentiality, Rule 262A.4 of the RoP.

4.

- 25 The appeal is not allowed.

- 26 No such leave has been sought, nor are there any apparent grounds for granting it.

DECISION

- 1. The application by CA dated 7 July 2026 is dismissed.
- 2. The order of the judge-rapporteur dated 22 June 2026 is upheld.
- 3. The appeal is not allowed.

Daniel Voß	Digitally signed by Daniel Voß Date: 28 July 2026 08:02:56 +02'00'
Georg Werner	Digitally signed by GEORG EDGAR WERNER Date: 27 July 2026 19:42:21 +02'00'
Walter Schober	Digitally signed by Walter Schober Date: 28 July 2026 08:26:07 +02'00'