Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Düsseldorf Local Division
UPC_CFI_1034/2025
UPC_CFI_931/2026

Order
of the Court of First Instance of the Unified Patent Court
issued on 17 August 2026
concerning EP 3 909 047

CLAIMANT:

Yangtze Memory Technologies Co., Ltd., No.88 Weilai 3rd Road, East Lake High-tech Development Zone, Wuhan, Hubei 430000, China

represented by:	Attorney-at-law Oliver Jan Jüngst, Attorney-at-law Lucas Brons, Bird & Bird LLP, Carl-Theodor-Straße 6, 40213 Düsseldorf, Germany
electronic address for service:	oliver.jan.juengst@twobirds.com
participating:	Patent Attorney Dr. Felix Landry, Patent Attorney Leonard Lotz, Bird & Bird LLP, Am Sandtorkai 50, 20457 Hamburg, Germany

DEFENDANTS:

1. **Micron Technology, Inc.,** 8000 South Federal Way Boise, Idaho 83707-0006, USA
2. **Micron Europe Ltd.,** Venture House 2 Arlington Square, Downshire Way, Bracknell, Berkshire, RG12 1WA, United Kingdom
3. **Micron Semiconductor (Deutschland) GmbH,** Leopoldstrasse 250 B, 80807 München, Germany
4. **Micron Semiconductor France SAS,** Immeuble Iliade, 23 Avenue Carnot, 91300 Massy, France

represented by:	Attorney-at-law Prof Dr Tilman Müller-Stoy, Attorney-at-law Dr Jan Bösing, Patent Attorney Tobias Kaufmann, Patent Attorney Dr Christian Haupt, Bardehle Pagenberg, Prinzregentenplatz 7, 81675 Munich, Germany

PATENT IN SUIT:

European Patent n° 3 909 047

PANEL/DIVSION:

Panel 1 of the Local Division in Düsseldorf

DECIDING JUDGES:

This order was issued by Presiding Judge Thomas acting as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT: Art. 58 UPCA, R. 262A RoP – Protection of confidential information

SUMMARY OF THE FACTS:

1. The Claimant is suing the Defendants for infringement of EP 3 909 047 (hereafter: the patent in suit).

2. On 20 July 2026, the Defendants submitted their "Rejoinder to Reply to Statement of Defence, Reply to the Defence to the Counterclaim for Revocation and Defence to the Application to amend the patent." At the same time, the Defendants filed an application for the protection of confidential information.

3. In their application, the Defendants categorised the information they regard as confidential into two groups:

4. According to the Defendants, the information highlighted in grey in their abovementioned brief, in the separately filed brief on enforcement security of 20 July 2026 and in the accompanying written witness statements of Mr [redacted] (Exhibits BP 13 and BP 13a), is confidential information, which must be treated as strictly confidential and may not be used or disclosed outside the present legal dispute, even after its conclusion. This information contains specifically the estimated revenue and gross profit the Defendants will attain with the challenged embodiments in France and Germany, as well as values that were calculated with the estimate. Access to these information shall be restricted to the Claimant's UPC representatives and their internal assistants, insofar as their access to the confidential information is required for their work in these proceedings, and to the four employees named in section II.2. of the operative part of the Court's confidentiality order dated 11 May 2026.

5. Since the Claimant did not object to this part of the application, the Court, by order of 28 July 2026, classified the aforementioned information as confidential and restricted the group of authorised persons as requested.

6. The second category for which the Defendants are seeking protection is highlighted in turquoise in the aforementioned brief and in the accompanying written witness statement of Mr [redacted] (Exhibit BP 12). This information shall also be treated as strictly confidential and may not be used or disclosed outside the present legal dispute, even after its conclusion. This information contains technical details specifically about the features and functionalities of the Z01M die.

7. The information falling in the second category was also classified as confidential by the Court in its order of 28 July 2026. For the time being, the Court has granted access to this information exclusively to the Claimant's UPC representatives and their internal assistants. The

Court has postponed its decision on whether to grant access to additional persons and, if so, to what extent, in order to provide the Parties with the opportunity to submit further comments first.

8. Regarding this information, the Defendants have recently requested the following access restrictions:

   a. Access shall be restricted to Claimant's UPC representatives and their internal assistants, insofar as their access to the Confidential Information is required for their work in these proceedings ("attorneys' eyes only").

   in the alternative:

   b. Access shall be restricted to Mr. [redacted] Patent Dispute Manager; in his capacity as employee of Claimant, Mr. [redacted] shall not participate in or advise upon technical design, research and development of SDRAM products for five years from the date of this order, except with Defendants' prior written consent.

   alternatively, to b.

   c. Access shall be granted to no more than the four persons identified by Claimant in its submission of 30 July 2026; in their capacity as employee of Claimant, each person granted access shall not participate in or advise upon technical design, research and development of SDRAM products for five years from the date of this order, except with Defendants' prior written consent.

9. In support of their application, the Defendants argue that the Claimant previously waived its right of access to the technical details of the Defendants' Y52P die. Whilst the Claimant previously accepted and agreed to fully entrust the legal and technical assessment of the Y52P die to its outside counsel and thus effectively left a significant part of the infringement action solely and entirely in the hands of an outside counsel, the Defendants are of the opinion that the Claimant cannot argue the need to get access to the same type of information for the assessment of an argument raised by the Defendants.

10. Furthermore, Defendants assert that they are legally precluded from disclosing the technical details of the Z01M die to the Claimant, since Z01M dies are subject to US export control regulations. Although the Z01M die does not appear on the Commerce Control List (CCL) and is therefore not a product subject to export control per se, the Defendants refer to the Claimants listing as an entity believed to be involved in activities contrary to the national security for foreign policy interests of the United States. According to the Defendants, the Claimant is subject to licence requirements for all items subject to the EAR (including EAR 99 items), whereas the licence review policy indicates a presumption of denial of such licence. The Defendants therefore conclude that the Claimant is not entitled to any disclosure of information on the Z01M dies. In light of this, the Defendants argue that an "attorneys eyes only" order is justified in this case.

11. In any case, the Defendants claim that access for the Claimant should be restricted to one natural person. In this context, the Defendants argue that, according to the wording of R. 262A.6 RoP, the number of persons to whom access is restricted shall be no greater than necessary in order to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial. Therefore, in the Defendants' view, it is for the

Claimant to explain why access is required by more than one person. According to the Defendants, the Claimant has not complied with this sufficiently.

12. In addition, the Defendants submit that granting access to multiple persons would increase the risk that technical information on the Z01M die could be misused for the benefit of the Claimant. More specifically, Defendants claim that they have reason for concern that [redacted] whom the Claimant identified as one of four persons within the Claimant who should get access, in his capacity as Senior Patent Engineer, may be assigned to research and development work relating to SDRAM technology in the future. Similarly, [redacted] whom the Claimant also identified as one of the four employees to be granted access, in his capacity as Chief IP Counsel, might contribute his knowledge of the Defendants' technology when drafting or filing future patent applications. Since humans can generally not "unlearn" knowledge they have previously acquired, in any case, a bar should be imposed on the persons to whom confidential information was disclosed, namely in such a way that each person within the Claimant who is granted access to the Defendants' highly confidential information should be barred for five years from participating in any technical design, research or development activity relating to SDRAM technology.

13. The Claimant has objected to the Defendants' application insofar as the Defendants seek to restrict the confidentiality club beyond the four persons named by the Claimant.

14. In addition, reference is made to the Parties' entire written submissions.

GROUNDS FOR THE ORDER:

15. The Defendants' application for the protection of confidential information is admissible. However, it is only successful on the merits to the extent set out in the operative part of this order.

No Attorneys eyes only

16. The issuance of the "attorneys eyes only" order sought by the Defendants is out of question from the outset in the present case, given that the Claimant has objected to such an order.

17. Pursuant to R. 262A.6 RoP, the number of persons to whom access is restricted shall be no greater than necessary in order to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and the respective lawyers or other representatives of those parties to the legal proceedings. In the event that one of the parties is a legal person, that party should be able to propose a natural person or natural persons who ought to form part of that circle of persons entitled to have access so as to ensure proper representation of that legal person, subject to appropriate judicial control to prevent the objective of the restriction of access to evidence and hearings from being undermined (UPC_CoA_631/2025, Order of 26 January 2026, mn. 18 seq. – Ericsson v. ASUSTeK; UPC_CFI_355/2023 (LD Düsseldorf), Order of 27 March 2024, Headnote 4 and p. 6 – Fujifilm v. Kodak).

18. Based on these principles, excluding all natural persons may only be considered if the legal entity affected by the confidentiality order consents to it. This was precisely the case with regard to the order to protect confidential information, which the Claimant had already sought in the present proceedings. As the Claimant was the sole party by the order they have

applied for, the Claimant was able to waive the right of access set out in R. 262A.6 RoP. The Claimant made use of this option.

19. However, the order to protect confidential information sought by the Defendants is not comparable to this. This order is being sought against the Claimant. Such an order would therefore restrict the Claimant's rights. Consequently, only the Claimant would be able to waive access under R. 262A.6 RoP. The Claimant has not issued such a waiver. Instead, they have objected to the confidentiality regime sought by the Defendants.

20. Defendants' argument that the Claimant had waived their right to access certain information and cannot now object to the "attorneys eyes only" regime sought by the Defendants is therefore unconvincing. In this respect, the starting point is already not comparable. Regarding the infringement, the Claimant had to decide whether to introduce certain information that was subject to contractual obligations regarding confidentiality into the proceedings. The Claimant therefore had to decide whether to submit this information and, in return, waive their right of access to it. With regard to the present application, it was the Defendants who incorporated new submissions regarding an alleged right of prior use into their pleadings, to which the Claimant must now respond. The initiative therefore lay with the Defendants, although it is not their rights but those of the Claimant that are restricted by the requested confidentiality order. It is therefore solely for the Claimant to determine whether, in relation to the Defendants' submission, they wish to waive their right of access under R. 262A.6 RoP. If the Claimant does not waive this right and requests access, as in this case, they are not acting inconsistently. They are merely exercising their rights as granted by the Rules of Procedure.

21. Initially, the Defendants attempted to justify their claim for an "attorneys eyes only" regime on the grounds that the Parties are competitors. However, they were right not to return to this argument. Clearly, such a competitive relationship alone cannot suffice to justify an "attorneys eyes only" regime. Otherwise, R. 262A.6 RoP would be rendered meaningless in the vast majority of patent infringement proceedings.

22. For the first time in their response to the Claimant's objection to the confidentiality regime sought, the Defendants attempted to justify the need for an "attorneys eyes only" regime by referring to US export restrictions. They argue that the provisions of R. 262A.6 RoP are not intended to circumvent US export control regulations.

23. This attempt cannot be successful for several reasons.

24. Firstly, it is not the Court's role in infringement proceedings to examine whether certain information may be introduced into the proceedings or whether there are any restrictions in this regard. Rather, it is the duty and responsibility of the party introducing or wishing to introduce information to ensure that they are in fact and in law in a position to do so. In the present case, it is the duty of the Defendants, as the party subject to potential export restrictions, to examine the requirements arising from these restrictions and determine whether these requirements can be met. In doing so, they must take into account not only potential export restrictions, but also the requirements set out in the Rules of Procedure. This includes R. 262A.6 RoP, which states that at least one natural person from the other party must granted access if that party is a legal entity. If the Defendants decide to introduce the information in question into the proceedings, the Rules of Procedure apply, and under these Rules access must be granted to at least one natural person. If granting this access

would breach export restrictions, the responsibility would lie solely with the Defendants, who had the discretion to decide whether to introduce the information into the proceedings. If they decide to do so, it is their responsibility to find ways of achieving this within the existing legal framework, including R. 262A.6 RoP.

25. Secondly, it is unclear whether US export restrictions necessarily and without exception prevent the Claimant's employees from gaining access. According to the Defendants, the Z01M die does not appear in the Commerce Control List (CCL). Therefore, it is not subject to export control per se. Rather, the alleged restriction arises from the fact that, according to the Defendants' submission, the Claimant is listed as an entity believed to be involved in activities contrary to the national security or foreign policy interests of the United States. Even though the licence review policy cited by the Defendants indicates that there is a presumption of denial of such a licence, it has not been argued by the Defendants, nor is it apparent, that, on this basis, a refusal to grant authorisation must necessarily be assumed in every case. There is also no indication that the Defendants had at least attempted to obtain such authorisation.

26. Finally, the Claimant was right to question why the Defendants did not cite the potential export restrictions as grounds for their application for protection of confidential information from the outset. Without further explanation, the Defendants' assertion that they only became aware of the alleged export restrictions after the Claimant's submission on 30 July 2026 is difficult to comprehend.

Confidentiality Club

27. The Court sees no reason to establish the Confidentiality Club in a manner that differs from the existing Confidentiality Club.

28. Whether the person proposed by a party may be granted access to the confidential information must be determined on the basis of the relevant circumstances of the case, including the role of that person in the proceedings before this Court, the relevance of the confidential information to the performance of that role and the trustworthiness of the person in keeping the information confidential (UPC_CoA_621/2024, order of 12 February 2025, mn. 12 – Daedalus v Xiaomi; UPC_CoA_631/2025, order of 26 January 2026, mn. 20 – Ericsson v ASUSTeK).

29. The fact that a person is an employee of a party is, as a general rule, not sufficient to deny access to that person. The exclusion of employees would severely restrict a party's freedom to choose who will represent it in the proceedings. Furthermore, an employee of a party will often be better placed to present the party's view, provide and review relevant information and instruct the representatives than persons external to the party's organization. Consequently, access for a party's employee will often be essential to ensure compliance with the right of that party to an effective remedy and to a fair trial. For that reason, and as a general rule, the interest of the party in having full access for at least one of its employees outweighs the interests of the applicant, even if the imposition of an external-eyes-only-regime would be preferable from the perspective of safeguarding confidentiality (UPC_CoA_631/2025, order of 26 January 2026, mn. 20 – Ericsson v ASUSTeK).

30. Pursuant to R. 262A.6 RoP, the number of persons having access to information classified as confidential shall not exceed what is necessary to ensure compliance with the right of the

parties to the proceedings to an effective remedy and to a fair trial. In other words, the number of persons entitled to access should not exceed what is necessary for a fair trial and the effective exercise of rights. Conversely, however, this also means that the group of persons required for these purposes must have access to the information marked as confidential.

31. The identity of such persons shall, in the first instance, be known to the party that nominates them. Unless there are compelling reasons to exclude the nominated person, they shall be granted access. It goes without saying that the exclusion of a person cannot be justified solely on the grounds that he or she is active in the technical field related to the patent in question. It is precisely for this reason that he or she is in a position to provide their company and its representatives with the information necessary for effective legal action, which is essential for protecting the company's interests. This does not mean that information classified as confidential is unprotected. Even if the individuals in question have access to the information, they must respect the confidentiality obligations imposed on them, and these obligations may be enforced if necessary (UPC_CFI_355/2023 (LD Düsseldorf), Order of 26 February 2024, p. 2 – Fujifilm v. Kodak).

32. In the present case, the Claimant is seeking access for those individuals who are already members of the established Confidentiality Club. Clearly, having as few different Confidentiality Clubs as possible is in the interests of both, the Claimant and the Court when it comes to ensuring that the proceedings are conducted effectively. Admittedly, this does not preclude the establishment of a further Confidentiality Club, if this is necessary to protect confidential information. However, such a need would have to be specifically demonstrated by the opposing party, in this case the Defendants. In other words, the Defendants would need to explain why the Z01M die information they have highlighted in turquoise, together with the accompanying witness statement, is so sensitive that the current confidentiality regime including the established Confidentiality Club is insufficient to protect it.

33. The arguments put forward by the Defendants are insufficient in this regard.

34. At no point have the Defendants provided a specific explanation as to why the information in question regarding the Z01M die requires such a high level of protection that the existing Confidentiality Club, already established for other information classified as confidential, is deemed insufficient.

35. The original application contains no sufficient information on this matter. The Defendants refer to the Parties being direct competitors and to the specific design of the Z01M die being their most secretive information. This justifies classifying the information as confidential, a point which the Claimant has not disputed. It also justifies the establishment of a "Confidentiality Club". However, the Defendants' submissions do not explain why this club must consist of only one natural person for the effective protection of confidential information rather than the four people it has consisted of to date.

36. Defendants' have failed to demonstrate this, also taking into account their further submissions.

37. They state that no members of the Claimant's technical team shall be members of the Confidentiality Club. This would at least reduce the risk that the Claimant can analyse and exploit the design of details of the Z01M die for their own purposes. However, this argument

fails because the Defendants introduced the Z01M die to establish prior use rights. In order for the Claimant to be able to defend itself against this, it is essential that they carry out a technical analysis of the Z01M die, for which the Claimant requires the relevant expertise. Insofar as the Defendants refer in this context to the expertise of Claimant's external counsels, including patent attorneys, this argument is unsuccessful simply because R. 262.6 RoP is specifically intended to enable representatives to communicate with their client. This also includes the exchange of technical information.

38. The fact that the information in question relating to the Z01M die comprises only nine pages does not justify a different assessment. The arguments concerning prior use rights cannot be considered in isolation. Rather, they form part of a comprehensive defence submission that the Claimant must consider in its entirety in order to adapt their litigation strategy where necessary. This is particularly true given that the present proceedings are part of a series of proceedings between the Parties.

39. The mere possibility that two members of the Confidentiality Club may transfer to the R&D department in the future does not justify their exclusion from the Confidentiality Club, since they would still be subject to the duty of confidentiality following such a transfer. Given that they have fulfilled their duty of confidentiality in the past, there is no reason to believe that they will not do so in the future.

No Bar

40. To the extent that the Defendants seek an order preventing the named employees from participating in or advise upon technical design, research and development of SDRAM products for five years from the date of this order, except with Defendants' prior written consent, such an order would disproportionately interfere with the employees' right to practice their profession (UPC_CFI_355/2023 (LD Düsseldorf), Preliminary Order of 7 February 2023 – Fujifilm v. Kodak). Therefore, there is no justification for such an order in the present case.

41. Insofar as the Court of Appeal accepted such a bar with regard to licence agreements between a party and third parties (CoA_631/2025, Order of 26 January 2026, Headnote 5 – Ericsson v. ASUTeK), the restriction set out there is very narrow in scope and not comparable to the much broader restriction sought by the Defendants.

Right to withdrawal Z01M die submission

42. To provide the Defendants with the opportunity to avoid sanctions for potential breaches of US export restrictions, the Court is granting them the option to withdraw the Z01M die submission in question within the time limit specified in the operative part of this order. If the Defendants choose this option, the Claimant's representatives must not disclose the relevant information to the Claimant's employees who are members of the Confidentiality Club. However, if they do so, the Court will not take the respective submissions into account when making its decision.

ORDER:

I. Access to the information classified in Section I.2. of the order dated 28 July 2026 as confidential shall be restricted, on the Claimant's side:

1. to Claimant's UPC representatives and their internal assistants, insofar as their access to this information is required for their work in these proceedings;

2. to the following employees of the Claimant:

Name	Name on passport (Surname, given name)	Title
[redacted]	[redacted]	Patent Dispute Manager
[redacted]	[redacted]	Deputy General Counsel, Chief IP Counsel
[redacted]	[redacted]	Senior Patent Engineer
[redacted]	[redacted]	General Counsel

II. Information classified as confidential in Section I.2. of the order dated 28 July 2026 shall be treated as strictly confidential – even after these proceedings – by the Claimant's representatives and their internal assistants and by the employees that have been granted access and shall not be used or disclosed outside of these court proceedings, except to the extent that it has come to the knowledge of the receiving party outside of these proceedings, provided that the receiving party has obtained it on a non-confidential basis from a source other than the Defendants or their affiliates, provided that such source is not bound by a confidentiality agreement with or other obligation of secrecy with the Defendants or their affiliates.

III. In the event of a culpable breach of this order, the Court may impose a penalty payment for each breach, to be determined having regard to the circumstances of each case.

IV. In order to provide the Defendants with the opportunity to avoid possible breaches of US export restrictions and associated sanctions, they are permitted to withdraw the information classified in Section I.2. of the order dated 28 July 2026 as confidential from the proceedings **by 20 August 2026**.

If the Defendants choose to do so, this information will be deemed not to have been submitted. The Court will disregard this information and will not grant the Claimant's employees who are members of the Confidentiality Club access to it under R. 262A.6 RoP.

The persons named in Section I.2. of this order shall only be granted access after the aforementioned deadline has expired, and only if the Defendants do not make use of the option to withdraw the information.

V. In all other respects, Defendants application is dismissed.

Issued in Düsseldorf on 17 August 2026

NAMES AND SIGNATURES
Presiding Judge Thomas

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