



LISBON – LOCAL DIVISION

UPC_CFI_757/2024

ORDER

**of the Court of First Instance of the Unified Patent Court
Local Division in Lisbon
delivered on 24 August 2026**

CLAIMANT

TELEFONAKTIEBOLAGET LM ERICSSON

21 Torshamnsgatan, Kista, 164 83 Stockholm, Sweden.

represented by Mr Wim Maas

DEFENDANT

ASUSTEK COMPUTER INC

15, Lide Road, Beitou Dist., Taipei City 112019, Taiwan.

represented by Mr Alexander Wiese

PATENT AT ISSUE:

EUROPEAN PATENT NO EP 2 819 131 B1

DECIDING JUDGE:

This order is issued by the Judge-rapporteur: Rute Lopes

LANGUAGE OF THE PROCEEDINGS:

English

SUBJECT-MATTER

Confidentiality R. 262A RoP

FACTS AND SUBMISSIONS

1 TELEFONAKTIEBOLAGET LM ERICSSON (hereinafter “Ericsson” or “Claimant”) and ASUSTEK COMPUTER INC (hereinafter “AsusTek” or “Defendant”) were opposing parties in the infringement action filed by Ericsson. AsusTek filed a counterclaim for revocation.

2 On 6 May 2026, a decision on the merits of the case was issued. The Court upheld the infringement claim and dismissed the counterclaim for revocation. The decision further ordered that AsusTek provide information as follows:

“Within 10 (ten) weeks of the date of service of this decision, AsusTek must inform the Claimant’s representative with a written statement, substantiated with appropriate documentation, drawn up and signed by an independent auditor, regarding its products incorporating AX201, from Q2 2019 and AX211, from Q3 2021, until 15 February 2025:

(i) the total number of Modules AX201 and AX211 that AsusTek, including any of its affiliates, has traded, sold, supplied, transferred and/or delivered to its customers and/or distributors in Belgium, Denmark, France, Germany, Italy, Netherlands, Portugal, and Sweden, as well as provide all copies of invoices pertaining to those acts which also show the price obtained for these products;

(ii) purchasing costs paid, as well as the sales prices obtained for the said products incorporating Modules AX201 or AX211 in the relevant said Contracting Member States, by AsusTek, including by its affiliates;

(iii) the total amount of net profit which AsusTek, including its affiliates, has gained as a result of trading Modules AX201 and AX211 in the said relevant Contracting Member States.”

3 On 13 August 2026, the Defendant filed an application requesting a confidentiality order with regard to the information to be provided to the Claimant following the Decision in accordance with Rule 262A RoP by analogy, as well as Rule 262.2 RoP (applied mutatis mutandis).

4 The Defendant requests the Court to order that:

I. The information to be communicated by AsusTeK pursuant to section I.3 of the decision of 6 May 2026, including the auditor's statement, the in-voices and all accompanying documentation (hereinafter “the Information”), may be used by Ericsson solely for the purpose of calculating and substantiating its claim for damages arising from the acts of infringement found in section I.1 of said decision, including in proceedings for the determination of damages pursuant to R. 125 et seq. RoP, and for no other purpose.

II. The Information shall be treated as confidential by Ericsson and its representatives, and shall not be disclosed to any third party, save to the extent strictly necessary for the purposes set out in section I. above and provided that any such third party is bound by a corresponding confidentiality undertaking.

III. For each culpable breach of the present order, Ericsson shall pay to the Court a penalty payment, the amount of which is left to the Court's discretion.

5 The Defendant has argued mainly as follows:

- The Information to be communicated to the Claimant constitutes trade secrets and other confidential information within the meaning of Art. 58 UPCA and R. 262A RoP, as it includes, inter alia, purchasing costs paid and sales prices obtained for the products incorporating the AX201 and AX211 modules traded in the relevant Contracting Member States, all copies of invoices about those acts showing the price obtained, and the total amount of net profit gained from trading said modules. This information is not generally known among or readily accessible to any person outside of the Defendant, and it also has significant commercial value.

- What is sought is solely that the Claimant does not use the Information for purposes other than the quantification of its alleged damages, which is what the Court itself identified as the purpose of the order.

- Even though it did not make a confidentiality request during the proceedings on the merits, it can still make such a request now as it prepares the Information to be communicated to the Claimant.

- The Application is made at the moment foreseen by R. 262A.3 RoP (applied *mutatis mutandis* to the present case), namely at the same time as the information in question is (about to be) communicated to the other party. The LD Mannheim has held that a specific application upon actual submission of the information is in principle sufficient, because the assessment of whether certain facts require confidentiality can generally only be made once the specific information is presented (LD Mannheim, 16 June 2026, UPC_CFI_86/2025 and UPC_CFI_490/2025 – InterDigital v. Disney, para. 192-193).

6 The Claimant has opposed this request, requesting that the Court dismiss it.

7 The Claimant has argued mainly as follows:

- The Defendant could and should have raised its confidentiality concerns at an earlier stage. The Defendant provides no reasons why it could not have filed this request earlier. The Defendant argues that the Court of Appeal, in *Kodak v Fujifilm*, explicitly stated that a confidentiality application can be filed after the proceedings on the merits. However, being possible does not automatically make it applicable. The Court of Appeal is clear that where confidentiality could reasonably have been foreseen, the issue should be raised during the proceedings on the merits, as this would allow the Court to incorporate appropriate measures into the relevant order or decision.
- Submitting the Application after closure of the proceedings and just before the expiry of the deadline to provide the information pursuant to section I.3 (“Information”) of the decision of 6 May 2026 (“Final Decision”) was a choice.
- The Defendant’s statement that it does not seek to restrict access to the information to certain individuals, nor does it wish for a “confidentiality club”, and that what it seeks is to limit how the Claimant can use the information cannot be allowed because the Final Decision did not limit the use of information. If granted, the confidentiality application would disproportionately restrict the Claimant’s rights in relation to the information. This would directly alter the Final Decision’s content, reflecting substantially on the contained order to communicate information. Substantial assessments are not to be made in the enforcement proceedings and should be restricted to the proceedings on the merits.

Grounds for the Order

8 The Defendant’s request does not meet the legal requirements, so it cannot be granted.

The request is late

9 Pursuant to R. 262A.1 RoP, a party may request the Court for an order that certain information contained in its pleadings or the collection and use of evidence in proceedings may be restricted or prohibited or that access to such information or evidence be restricted to specific persons.

10 Although such information and documents do not fall within the literal wording of Rule 262A RoP, the Court of Appeal has recognised that the provision may be applied *mutatis mutandis* where a party is ordered to disclose information pursuant to a Court order (Decision of 29 January 2026, UPC_CoA_930/2025, *EOFLOW v Insulet*, para. 26). However, where a party can reasonably foresee that compliance with such an order may require disclosure of confidential information, it should, as a rule, raise that issue during the main proceedings so that, where necessary, appropriate measures to protect such confidential information can be included in the order or decision (Decision of 14 October 2025,

UPC_CoA_699/2025, Kodak v Fujifilm, para. 45).

- 11** The Defendant argues that the fact that it did not request confidentiality pending main proceedings does not impose any preclusive effect on its right to present it now, as it derives from the decision of the CoA of 14 October 2025.
- 12** The Court does not agree with the Defendant's assessment. As the Düsseldorf Local Division made clear in its orders of 27 May 2026 (UPC_CFI_779/2024) and 30 April 2026 (UPC_CFI_351/2024), and in line with the Court of Appeal's position (see para. 10 above), an application for the protection of confidential information is not automatically inadmissible merely because it is filed after the decision on the merits. However, where the circumstances justifying the protection of confidential information already existed during the main proceedings and that could reasonably have been foreseen, the application should have been made during those proceedings. This interpretation is consistent with the Court of Appeal's view that confidentiality issues should, "as a rule", be raised in the main proceedings. Consequently, a party which requests confidentiality only after the conclusion of the main proceedings bears the burden of justifying that request by explaining why it did not make it earlier.
- 13** The Defendant did not request confidentiality in the main proceedings. It has now done so more than three months after the Decision was rendered and around one week before the deadline to provide the information to the Claimant. The Defendant has presented no justification for requesting confidentiality at this date, nor has it argued that it only now became aware, or could only recently have become aware, that the information and documents should be dealt with as confidential by the Claimant.
- 14** The Defendant further relies on the Decision of the Local Division Mannheim (16 June 2026, UPC_CFI_86/2025 and UPC_CFI_490/2025 – InterDigital v. Disney, para. 192-193). However, the said decision does not favour the Defendant's position. In that case, the Defendants requested confidentiality in the main case, and the Court acknowledged this (para. 186). The Court also recognised that, in that case, the specific assessment of whether certain facts require confidentiality and, where applicable, justify access restrictions can generally only be made once the specific information is presented. Accordingly, in the main proceedings, Defendants were granted the possibility to file a reasoned request for protection of confidential information pursuant to R. 262A RoP when said information was to be submitted.
- 15** Finally, the request was filed after the administrative closure of the main proceedings (of which the parties were informed beforehand). As argued by the Local Division The Hague (13 August 2026, UPC_CFI_1048/2025), allowing applications (in that case, for reimbursement of fees) after the case is administratively closed would mean reimbursement requests could be filed in closed proceedings indefinitely, without any time limit. The rationale underlying that decision requiring that, in the interests of procedural fairness, the parties should not be permitted to submit new procedural requests indefinitely after the closure of proceedings, applies to the present case. In this regard, proceedings may only be reopened in exceptional circumstances, and a party submitting a request after the closure of the proceedings must justify such exceptionality before the Court.

Scope of the request

- 16** Even if the request were admissible, it would have to be rejected in part. In particular, the Defendant requests that the information be used by the Claimant solely for the purpose of calculating and substantiating its claim for damages arising from the acts of infringement found in section I.1 of the Decision, including in proceedings for the determination of damages pursuant to R. 125 et seq. RoP, and for no other purpose. This request finds no basis in the confidentiality regime. The primary purpose of that regime is to regulate and restrict access to confidential information and evidence. The Defendant's request does not concern access to information. Rather, it seeks to limit the purposes for which the Claimant may use it (LD Düsseldorf, 30 April 2026, UPC_CFI_351/2024) and therefore falls under substantive law. Accordingly, any such request should have been raised during the main proceedings.

ORDER

The Defendant's request of 13 August 2026 is dismissed.

Issued on 24 August 2026