Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Düsseldorf Local Division
UPC_CFI_2043/2026

Order
of the Court of First Instance of the Unified Patent Court
issued on 27 November 2026
concerning EP 3 079 153

CLAIMANT:

Dolby International AB, represented by its Board of Directors, 77 Sir John Rogerson's Quay Block C Grand Canal Docklands, Dublin, D02 VK60, Ireland

Represented by:	Attorney-at-law Dr Tilman Müller, Attorney-at-law Dr Volkmar Henke, Attorneys-at-law and UPC Representatives of BARDEHLE PAGENBERG Partnership mbB Patent attorneys, attorneys at law, Bohnenstraße 4, 20457 Hamburg, Germany Patent attorney Tobias Kaufmann, Patent attorneys and UPC Representatives of BARDEHLE PAGENBERG Partnership mbB Patent attorneys, attorneys at law, Prinzregentenplatz 7, 81675 Munich, Germany
Electronic address for service:	mueller@bardehle.de

DEFENDANTS:

1. **ASUS Computer GmbH**, represented by its CEO Chen, Li-Hsiang, Harkortstraße 21-23, 40880 Ratingen, Germany

2. **ASUSTeK COMPUTER INC.**, represented by its Board of Directors Jonney Shih, Jonathan Tsang, H.C. Hung, Ivan Ho, Tony Chen, Eric Chen, Tze-Kaing Yang, Chung-Jen Cheng, L.H. Yang, 15, Li-Te Rd., Taipei 112, Taiwan

3. **ASUSTEK UK Ltd.**, represented by its Directors, 1st Floor, Sackville House 143-149 Fenchurch Street, London EC3M 6BL, United Kingdom

4. **ASUS GLOBAL PTE. LTD.**, represented by its Directors, 10 Changi Business Park Central 2 #02-01 Hansapoint, Singapore 486030

Defendants 1 and 3 represented by:	Attorney-at-law Dr Alexander Wiese, Wildanger Kehrwald Graf v. Schwerin & Partner mbB Rechtsanwälte, Couvenstraße 8, 40211 Düsseldorf, Germany
Electronic address for service:	wiese@wildanger.eu

PATENT IN SUIT:

EUROPEAN PATENT NO. EP 3 079 153

PANEL/DIVISION:

Panel 1 of the Düsseldorf Local Division

DECIDING JUDGES:

This order was issued by legally qualified judge Dr Schumacher acting as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT: R. 262A RoP – Protection of confidential information

SUMMARY OF THE FACTS:

1. The Claimant (hereinafter referred to as 'Dolby') is suing the Defendants for infringement of European Patent 3 079 153. With regard to Defendants 2 and 4, the statement of claim has not yet been served. Following the opening of insolvency proceedings with regard to former Defendant 5, Dolby withdrew the action in this regard.

2. In the statement of claim, which was filed alongside a R. 262A RoP request, Dolby addressed negotiations between Defendant 2 and Vectis IP Ltd. (hereinafter referred to as 'Vectis'). Protection of confidential information under R. 262A RoP was ordered in this regard.

3. On 11 September 2026, Defendants 1 and 3 (hereinafter collectively referred to as 'ASUS') submitted their statement of defence and counterclaim for revocation. In a separate submission (statement of defence FRAND), ASUS raised a FRAND objection.

4. With regard to the statement of defence FRAND, ASUS requested that the use of certain information and evidence relating to correspondence between ASUS and Vectis be prohibited in the proceedings. Alternatively, ASUS requested that certain information be classified as confidential and access to it be restricted.

5. Dolby has been heard on ASUS' request to exclude evidence from the proceedings. It submitted its comments on 19 November 2026.

REQUESTS:

Exclusion of evidence

6. ASUS requests:

that all information contained in the Claimant's statement of claim and the Defendants' statement of defence relating to correspondence between ASUS and Vectis IP, and the use of the respective evidence in the pleadings is prohibited in the proceedings and excluded from the Court's assessment, in particular:

References in the Statement of Claim of 9 June 2026	**Paragraphs in the pleading:** 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 **Exhibits:** BP 8, BP 9, BP 10, BP 11, BP 12, BP 13, BP 14, BP 15, BP 16, BP 17, 18
References in the Statement of Defence FRAND ("SoD FRAND")	**Paragraphs in the pleading:** 14, 16, 18, 22, 29-48, 62, 64, 65, 67-71, 74, 75-86, 89, 91-114, 117, 119-135, 137, 142-152, 155-158, 164, 167, 169-171
	Exhibits: WKS FRAND 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

7. Dolby requests:

Regarding the statement of claim:

I. Defendants' request to prohibit in the proceedings the use of all information and respective evidence contained in Claimant's statement of claim relating to correspondence between ASUS and Vectis IP, and to exclude the respective information and evidence from the Court's assessment, is rejected.

In the alternative:

II. The second sentence in mn. 32 and the second sentence in mn. 34 in the statement of claim, in which information from emails is paraphrased, may not be used or referred to in further proceedings, unless Defendants resubmit this information into the proceedings and/or it is reintroduced by way of proceedings for the production of evidence.

Regarding the statement defence:

The Claimant does not oppose Defendants' request.

Restriction of access

8. ASUS requests:

1. The text passages highlighted in grey in the pleading of 11 November 2026, as well as the following exhibits and/or evidence, are to be classified as confidential (R. 262.2, 262A RoP), the following text passages and documents and/or evidence marked as "Confidential" and „Highly Confidential“ being involved:

Confidential information from the pleading dated 11 November 2026	**Margin number and exhibits of the pleading of 11 November 2026**
Information regarding the licensing negotiations between the parties	**Pleading of 11 November 2026:** **paras.** 3, 15, 16, 49-55, 66, 67-71, 73, 74, 123, 137, 138-141, 142, 146, 153-158, 160, 166, 169-171 **Exhibits:** WKS FRAND 18, 19, 20, 22
Highly Confidential information re-garidng the licensing negotiations between ASUS and Vectis IP Ltd.	**Pleading of 11 November 2026:** **paras.** 14, 16, 18, 22, 29-48, 62, 64, 65, 67-71, 74, 75-86, 89, 91-114, 117, 119-135, 137, 142-152, 155-158, 164, 167, 169-171 **Exhibits:** WKS FRAND 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

The information referred to in section 1 must be treated as confidential by parties, their legal representatives, witnesses, experts, other representatives, and all other persons involved in the present proceedings or who have access to documents related to such proceedings. The information may not be used or disclosed outside of these proceedings, unless it has become known outside of these proceedings on a non-confidential basis from a source other than Claimant or Defendants, provided that this source is not bound by a confidentiality obligation towards Claimant.

2. Pursuant to Art. 58 UPCA in conjunction with R. 262A.1 sentence 1 RoP, access to the Highly Confidential information referred to in the second row in section 1 (in the pleading highlighted in dark grey) is to be restricted to the following persons on the Claimant’s side:

a) Legal representatives of the Claimant, in particular Claimant’s UPC representatives and their internal assistants, insofar as their access to the confidential information is required for their work in these UPC proceedings;

b) Two natural persons of the Claimant, whom the Claimant must name.

3. The obligations shall continue to apply even after the conclusion of the court proceedings. This shall not apply if the Court has denied the existence of the trade secret in dispute by means of a final decision or order, or as soon as the information in dispute becomes known or readily accessible to persons in the circles who usually deal with such information.

4. In the event of a culpable breach of this order, the Court may impose a recurring penalty payment on the obligated party for each infringement and enforce it immediately.

5. Persons other than those named in section 1 shall be excluded from the oral hearing in accordance with Rule 115 RoP if the information classified as restricted access in accordance with section 1 is to be the subject of the oral hearing; and the persons present at the interim hearing and/or oral proceedings, including the parties' representatives, their legal representatives, and the patent attorneys appointed to participate in the legal dispute, shall be obliged to keep confidential from third parties any facts relating to the information referred to in Section 1 which come to their knowledge for the first time during the interim hearing and/or oral proceedings, and to use such facts only for the purposes of the present proceedings.

6. Persons other than those named in section 2 shall be excluded from the oral hearing in accordance with Rule 115 RoP if the information classified as restricted access in accordance with the second row in section 1 (Highly Confidential information) is to be the subject of the oral hearing.

7. Persons other than those named in section 1 shall be excluded from part of the pronouncement of the grounds for the judgment in accordance with R. 115 RoP, insofar as information classified as restricted access in accordance with section 1 is concerned.

8. Persons other than those named in section 2 shall be excluded from part of the pronouncement of the grounds for the judgment in accordance with R. 115 RoP, insofar as information classified as restricted access in accordance with the second row in section 1 (Highly Confidential information) is concerned.

9. Confidential information referred to in Section 1 shall be excluded from inspection of the files by third parties (Art. 58 UPCA in conjunction with R. 262.1 lit. b), 262.2 RoP). 10. Prior to the publication of the grounds for the decision or other announcements, all information contained therein that falls under Section 1 shall be redacted in accordance with R. 262.1(a) and 262.2 RoP.

9. Dolby has not yet been heard on this request.

POINTS AT ISSUE:

10. ASUS essentially argues as follows:

Exclusion of evidence

11. According to ASUS, any information relating to negotiations between ASUS and Vectis was not intended to be shared with third parties, including Dolby. ASUS refers to an NDA signed between ASUS and Vectis on 18 December 2023, which remains in place until 18 December 2027. ASUS points out that the NDA explicitly states that Vectis could not share any confidential information under the NDA with licensors of the pool without ASUS' prior consent, which was not granted. Based on this, ASUS alleges that both Dolby and Vectis have breached the NDA, as it appears that Dolby has obtained a substantial portion of the correspondence exchanged between Vectis and ASUS, and has introduced this correspondence into the present proceedings. ASUS submits that it approached Vectis on 2 September 2026 to obtain clarification and establish the full factual background, but Vectis ignored the issue. ASUS therefore believes that the present application is necessary to safeguard the confidentiality of the information and prevent its further use by Dolby in these proceedings.

12. ASUS argues that the requested exclusion of evidence can be based on R. 262A.1, second alternative, RoP, in conjunction with Art. 58 UPCA. ASUS points out that Art. 58 UPCA expressly empowers the Court to prohibit, in whole or in part, the collection and use of evidence in proceedings before it. By distinguishing between the restriction ('restricted') and the prohibition ('prohibited') of the use of evidence, Art. 58 UPCA and R. 262A.1 RoP clarify that the Court can prohibit the use of certain evidence altogether where justified. ASUS claims that acquiring information through a breach of an NDA is a classic example of circumstances that justify the exclusion of evidence obtained in this manner. In ASUS' view, such a prohibition on use must necessarily extend to the Court itself. Accordingly, when the Court orders that certain evidence cannot be used in proceedings, this must also mean that the Court cannot take such evidence into consideration when deciding on the merits.

Restriction of access

13. ASUS further submits the relevant correspondence between ASUS and Vectis as a precautionary measure, solely in the event that the Court does not grant the requested exclusion of evidence. This is to ensure that the Court has a complete and accurate account of the negotiations, rather than relying solely on the documents submitted by Dolby. In order to safeguard the confidentiality obligations under the NDA, ASUS emphasises that it is submitting the relevant information and documents as strictly confidential, and expressly subject to the Court's prior determination as to whether such material may be admitted and used in the present proceedings.

14. Dolby essentially argues as follows:

15. Dolby claims that there has been no breach of the NDA. Firstly, Dolby points out that Vectis could only have breached the NDA by providing information belonging to Defendant 2 that was shared with Vectis (i.e. ASUS' information), and not by sharing information belonging to Vectis that was shared with Defendant 2 (i.e. Vectis' information). According to Dolby, ASUS has failed to make this distinction by claiming that the entire section on the FRAND

negotiations between Vectis and ASUS should be excluded. Secondly, Dolby argues that none of the information shared by Vectis constitutes 'Confidential Information' within the meaning of the NDA. None of the information disclosed in the statement of claim relates to economic value, nor was it identified as confidential when submitted to Vectis. Both of these requirements would need to be met for information to fall under the NDA.

16. Furthermore, Dolby points out that it is not a party to the NDA. Therefore, it cannot be subject to any obligations arising from the NDA.

17. If the Court believes that any of the information shared by Defendant 2 satisfies the criteria of the NDA (quod none), this would only concern the information in the second sentence of mn. 32 and the second sentence of mn. 34 of the statement of claim.

18. Dolby believes that even if sharing the information constitutes a breach of the NDA, ASUS has failed to substantiate why the alleged unlawful acquisition of the information should result in a prohibition on its use. Dolby points out that the UPC's procedural framework does not allow for the exclusion of evidence, as requested by ASUS. In particular, there is no provision that automatically prohibits the use of unlawfully acquired information in the proceedings.

19. Lastly, Dolby argues that it is part of ASUS' FRAND obligations either to submit information regarding the parties' licence negotiations to the proceedings or to permit its submission. In Dolby's view, ASUS' attempt to exclude the entire negotiation history from the proceedings only demonstrates that ASUS is aware that its communication history shows that it did not comply with the obligations under the Huawei v ZTE framework, and is now trying to conceal this by having the Court deem that no negotiations took place. Dolby states that ASUS' claim that it had approached Vectis but that Vectis had ignored the issue is incorrect.

GROUNDS FOR THE ORDER:

Exclusion of information and evidence

20. The request to exclude information and evidence from the proceedings is unfounded.

21. ASUS bases its request on Art. 58 UPCA, R. 262A RoP.

22. Pursuant to Art. 58 UPCA, the Court may, to protect the trade secrets, personal data or other confidential information of a party to the proceedings or of a third party, or to prevent any abuse of evidence, order that the collection and use of evidence in proceedings before it be restricted or prohibited or that access to such evidence be restricted to specific persons.

23. Pursuant to R. 262A.1 RoP, a party may make an application to 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 evidence be restricted to specific persons.

24. Art. 58 UPCA and R. 262A RoP provide procedural instruments to safeguard the confidentiality interests of the parties or third persons. These provisions are intended to protect confidentiality in proceedings before the Court. To this end, the Court may impose certain measures, such as restricting access to information. The fundamental objective and

character of these provisions as procedural instruments is not altered by the fact that they also refer to the prohibition of evidence ('use of evidence may be restricted or prohibited').

25. With regard to Dolby's submissions in the statement of claim, ASUS is not seeking protection for confidential information. Rather, ASUS is requesting the complete exclusion of substantial parts of Dolby's factual submissions and the corresponding evidence from the proceedings. By doing so, ASUS is seeking to prohibit the use of information and evidence based on substantive considerations, rather than seeking procedural protection of confidentiality. Art. 58 UPCA, R. 262A RoP provide no basis for this.

26. This finding is also confirmed by the fact that an exclusion would require the alleged breach of the NDA to be conclusively examined at this stage. Dolby disputes that Vectis breached the NDA on substantive grounds, and also points out that it was not a party to the NDA itself. Clearly, a final assessment of these issues is not possible within the framework of a procedural order and can only be achieved in the context of a decision on the merits of the case.

27. Furthermore, even if it were established that Vectis had breached the NDA and that Dolby was liable for the breach, prohibiting the use of evidence would not necessarily be mandatory under the UPC system. In this respect, too, a substantive examination would be required.

28. Regarding ASUS' own submissions in the statement of defence, the Court understands ASUS to mean that the Court should only exclude these if it also excludes Dolby's statements. As previously explained, this is not the case.

Classification as confidential and restriction of access

29. Since ASUS' submissions in the statement of defence FRAND are not excluded from the proceedings, a decision must be made on ASUS' request to classify this information as confidential and restrict access to parts of this information.

30. In this regard, Dolby must first be given the opportunity to be heard (R. 262A.4 RoP), and ASUS' confidentiality interests must be protected by means of a preliminary order.

ORDER:

1. The Defendants' request that all information and evidence contained in the Claimant's statement of claim and the Defendants' statement of defence relating to correspondence between ASUS and Vectis IP, and the corresponding exhibits, be prohibited from use in these proceedings and excluded from the Court's assessment is rejected.

2. The text passages highlighted in grey in the statement of defence FRAND of 11 November 2026, as well as the following exhibits and/or evidence, are preliminary classified as confidential (R. 262.2, 262A RoP), the following text passages and documents and/or evidence marked as 'Confidential' and 'Highly Confidential' being involved:

Confidential information from the pleading dated 11 November 2026	Margin number and exhibits of the pleading of 11 November 2026
Information regarding the licensing negotiations between the parties	**Pleading of 11 November 2026:** **paras.** 3, 15, 16, 49-55, 66, 67-71, 73, 74, 123, 137, 138-141, 142, 146, 153-158, 160, 166, 169-171 **Exhibits:** WKS FRAND 18, 19, 20, 22
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3. Until a final order has been made on the application for confidentiality, access to the information referred to as 'Highly Confidential' in the second row in section 2 (in the pleadings highlighted in dark grey) shall be restricted, on the part of the Claimant, to their legal representatives and their internal assistants, insofar as their access to the confidential information is required for their work in these UPC proceedings.

4. The parties, their legal representatives, witnesses, experts, other representatives, and all other persons involved in the present proceedings or who have access to documents related to such proceedings must treat the information referred to in section 2 as confidential until further notice. The information may not be used or disclosed outside of these proceedings, unless it has become known outside of these proceedings on a non-confidential basis from a source other than Claimant or Defendants, provided that this source is not bound by a confidentiality obligation towards Claimant.

5. 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.

6. The Claimant's UPC representatives have the opportunity to comment on Defendants' 1 and 3 R. 262A RoP request until **2 December 2026**.

   In their statement, the Claimant's UPC representatives shall name the persons who, in their opinion, should be granted access to the information classified as 'Highly Confidential' by Defendants 1 and 3.

Issued in Düsseldorf on 27 November 2026

NAME AND SIGNATURE

Judge Dr Schumacher

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