



Procedural order
of the Court of First Instance of the Unified Patent Court
local division Düsseldorf
issued on 14 February 2024
concerning EP 2 697 391 B1

GUIDELINES:

1. The Case Management System (CMS) provides a graduated procedure for the protection of confidential information as part of the R. 262A workflow, in which the confidentiality interests of both parties can be fully taken into account.
2. Before the unredacted version of a document submitted with a confidentiality request is released to the other party, CMS gives the judge-rapporteur the opportunity to issue orders for the provisional protection of the (allegedly) confidential information within the aforementioned workflow.
3. As a rule, such an order will initially limit the circle of persons authorised to access the information on the other side until the final decision on the application for secrecy protection. If, based on the content of such an application, the judge-rapporteur considers a provisional secrecy protection order to be unnecessary in exceptional cases, he must inform the party requesting secrecy protection of his opinion before releasing the unredacted version. The opportunity to comment to be granted at the same time offers the party concerned the opportunity to react to the threat of unprotected disclosure of the information it considers to be confidential and, if necessary, to declare that the documents in question should not or not fully be made the subject of the proceedings.
4. In order to enable the court to make a decision with knowledge of the allegedly confidential submission, it must be provided with a request for protection of secrecy in accordance with
R. 262A VerfO to always submit completely unredacted versions of the document in question. All documents submitted are subject to provisional secrecy protection.

KEYWORDS:

Protection of secrets; Application for protection of secrets; Trade secrets;
262A application;
R. 262A-Workflow; order in advance; right to be heard

APPLICANT:

10x Genomics, Inc, 6230 Stoneridge Mall Road, 94588-3260 Pleasanton, CA, USA, legally represented by the Board of Directors, which is represented by the CEO ..., *ibid*,

represented by: Lawyer Prof. Dr. Tilman Müller-Stoy,
Attorney at Law
Dr. Martin Drews, Patent Attorney Dr. Axel Berger,
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Electronic delivery address: ...

APPLICANT:

Curio Bioscience Inc, 4030 Fabian Way, Palo Alto, CA 94303, USA, represented by its CEO ..., *ibid*,

represented by: Lawyer Agathe Michel-de Cazotte, European
Patent Attorney Cameron Marschall, 1 Southampton Row WC1B
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PENALTY PATENT:

EUROPEAN PATENT NO. EP 2 697 391 B1

DECISION-MAKING BODY/CHAMBER:

Judges of the Düsseldorf local division:

This order was issued by presiding judge Thomas as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: R. 262A VerfO i.V.m. R. 331, 334 and 336 VerfO

PRESENTATION OF THE FACTS:

In a document dated 4 December 2023, the applicant filed an application for an order for provisional measures against the defendant.

Immediately before the expiry of the opposition period (R. 209.1 (a) VerfO) and before filing the notice of opposition, the defendant seeks an order for measures for the provisional protection of confidential information.

APPLICATIONS BY THE PARTIES:

The defendant applies,

1. access to the text in red in the confidential version of the objection against

the application for provisional measures, including the attached annexes (together referred to as "the Notice of Opposition"), which constitutes confidential business information of the Respondent (the "Confidential Information"), to the personal representatives of the Applicant, i.e. Prof. Dr jur. T.-Müller-Stoy and Dr jur. M. Drews, and

2. the two representatives of the applicant to be bound to secrecy until that date, also vis-à-vis their client, i.e. the applicant, with regard to the confidential version of the information contained in the notice of opposition.

REASONS FOR THE ORDER:

A graduated procedure has been implemented in the Case Management System (CMS) for the protection of confidential information in accordance with R. 262A VerfO.

If the defendant considers a secrecy protection order to be necessary with regard to certain information contained in the notice of opposition or its annexes, it is up to the defendant to upload a redacted version of the documents concerned to the CMS together with the unredacted version and at the same time to file a secrecy protection request for these documents via the workflow provided for this purpose in accordance with R. 262A VerfO. If they make use of this option, only the redacted version is initially visible to the other party until the unredacted version is released by the sub-registry of the local division on the explicit instruction of the judge.

Prior to this release, CMS gives the judge-rapporteur the opportunity within the R. 262A workflow to issue orders for the provisional protection of the (allegedly) confidential documents. In this context, the court must take into account both the content of the information in question and the grounds for the application for confidentiality protection in its considerations. It is therefore imperative that a completely unredacted version and not a redacted or partially redacted version is submitted to the court for its decision. As a rule, the judge-rapporteur will follow the applicant's initially unilateral assessment of the confidential nature of the document and, by means of such an order, limit the group of persons authorised to access the document on the other side until the final decision on the application for secrecy protection. In a first step, the document is initially only released to the opposing party's representative, unless the applicant himself authorises the release to other persons yet to be named by the opposing representative. If, on the basis of the content of the application for the protection of confidential information, the judge-rapporteur considers such a provisional secrecy protection order to be dispensable in exceptional cases, the principles of equity and fairness, which must always be observed in accordance with point 5 of the preamble to the Rules of Procedure, require that the party seeking secrecy protection be informed before the unredacted version is released. The opportunity to comment, which must be granted at the same time, offers the party concerned the opportunity to react to the threat of unprotected disclosure of the information it considers to be confidential and, if necessary, to declare that the documents concerned should not or not fully be made the subject of the proceedings.

As a result, all documents submitted together with an application for secrecy protection pursuant to R. 262A VerfO are subject to provisional secrecy protection. For

There is therefore no need for confidentiality protection orders prior to the submission of such completely unredacted documents.

ORDER:

The decision on the applications submitted in the document dated 13 February 2024 is postponed until the defendant has filed its statement of opposition and submitted an application for the protection of confidential information.

In order to expedite the proceedings after receipt of the notice of opposition and - if applicable - a corresponding application for secrecy protection, the defendant is ordered to also comment on the group of persons named in the applicant's document of 14 February 2024 (App_8029/2024) in any application for secrecy protection.

A restriction of the group of persons to only two attorney representatives, as requested by the defendant, is probably not compatible with the applicant's interest in an effective conduct of the proceedings, if only against the background of the tight deadlines to be observed in summary proceedings and the prompt date for the oral hearing. In order to take account of the special features of summary proceedings, a preliminary assessment suggests that a limitation to four legal representatives (two partners and two associates to support them), two patent attorney representatives and three representatives of the client may be authorised.

DETAILS OF THE ORDER:

App_7937/2024 and App_8029/2024 concerning the main file reference ACT_590953/2023

UPC number: UPC_CFI_463/2023

Type of proceedings: Application for provisional measures

Issued in Düsseldorf on 14 February 2024 NAMES

AND SIGNATURES

Presiding judge Thomas