



Procedural order
of the Court of First Instance of the Unified Patent Court
local division Düsseldorf
issued on 24 June 2024
concerning EP 3 490 258 B1

LEADERSHIPS:

1. R. 9.3 (a) VerfO authorises the court to extend time limits. However, this option should only be utilised with caution and only in justified exceptional cases.
2. Such an exceptional case regularly exists if access to a document in the unredacted version was initially restricted to the representatives due to an application for protection of confidential information (R. 262A VerfO). Only by granting access to the relevant information to the party's knowledgeable employees can it be ensured that the party concerned can exchange information with its representatives, develop a strategy taking into account the arguments of the other party and, if necessary, provide technical and/or economic input.
3. The Rules of Procedure provide for a period of two months for the submission of the defence to the statement of defence containing the action for annulment (R. 29 (a) of the Rules of Procedure). This period must be available to the applicant and his representatives to jointly develop a strategy based on all the facts and to submit documents on the basis of this strategy.
4. The same applies to the action for annulment. The principles of fair procedure and the right to be heard require that a party must be able to reconcile its arguments on (non-)infringement with those on validity and possible amendment of the claims, especially in its first submission on validity.

KEYWORDS:

Extension of time limit; exceptional case; protection of trade secrets; R. 262A application; limited access

Plaintiff:

Dolby International AB, represented by its EMEA Finance Director Susan Way, 77 Sir John Rogerson's Quay, Block C, Grand Canal Docklands, Dublin, D02 VK60, Ireland,

represented by: Attorney Dr Volkmar Henke, Attorney Dr Tilmann Müller, Bardehle Pagenberg Partnerschaft mbB, Bohnenstraße 4, 20457 Hamburg,

Patent attorney Dr Georg Anetsberger, patent attorney Dr Johannes Möller, Bardehle Pagenberg Partnerschaft mbB, Prinzregenten- platz 7, 81675 Munich,

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defendant :

1. **ASUS Computer GmbH**, Harkortstraße 21 - 23, 40880 Ratingen, Germany, represented by its Managing Director Li-Hsiang Chen,
2. **ASUSTek COMPUTER INC.**, 15, Li-Te Rd, Taipei 112, Taiwan, represented by the members of the 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,
3. **ASUSTEK (UK) LIMITED**, 1st Floor, Sackville House, 143 - 149 Fenchurch Street, London, EC3M 6BL England, United Kingdom, represented by its directors,
4. **ASUS FRANCE Société à responsabilité limitée**, Immeuble Copernic 2-Bat Neptune 1 Rue Galilée, 93160 Noisy-le-Grand, France, represented by its managing directors,

Defendants 1), 3) and 4) represented by: Dr Alexander Wiese, Wildanger Kehrwald Graf von Schwerin und Partner mbB, Couvenstrasse 8, 40211 Düsseldorf,

electronic Zustelladresse:wiese@wildanger.eu STREITPATENT:

European Patent No. EP 3 490 258 B1

ADJUDICATING BODY/CHAMBER:

Judges of the Düsseldorf local division:

This Order was issued by presiding judge Thomas, deputising for the rapporteur Dr Thom.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: R. 9.3 (a) RP - Extension of the time limit for replying to the action for infringement and the time limit for responding to the action for annulment

BRIEF DESCRIPTION OF THE FACTS:

In a document dated 23 April 2024, the defendants 1), 3) and 4) requested that access to individual passages of the statement of defence highlighted in grey be restricted to certain persons, as they are business or trade secrets.

By Order of the following day, the Düsseldorf local division initially restricted access to the information in question to two named plaintiffs' representatives who were fully sworn to secrecy.

Following an exchange of correspondence between the parties, the Düsseldorf local division issued a procedural order on 28 May 2024 granting the plaintiff and its legal representatives, among others, access to the information marked as confidential under an obligation of confidentiality.

APPLICATIONS BY THE PARTIES:

The applicant claims that the Court should,

1. declare that the time-limit for lodging the Reply to the Statement of Defence expired on 28 May 2024 has begun to run;
2. declare that the time limit for filing the defence to the action for annulment began to run on 28 May 2024;
3. in the alternative: to extend the time limit for filing the Reply to the statement of defence pursuant to Rule 29(a) of the Rules of Procedure and/or the time limit for replying to the action for annulment pursuant to Rule 29(a) of the Rules of Procedure until 28 July 2024 in each case.

In any case, the defendants 1), 3) and 4) agreed to the extension of the deadline requested by the plaintiff and left it to the discretion of the court to decide whether the respective deadlines would not begin to run until 28 May 2024.

REASONS FOR THE ORDER:

R. 9.3 (a) VerfO authorises the court to extend time limits. However, this option should only be used with caution and only in justified exceptional cases (UPC_CFI_363/2023 (LD Düsseldorf), Order of 20 January 2024, GRUR-RS 2024, 5106).

Such an exceptional case exists in the present case.

Pursuant to R. 29(a) of the Rules of Procedure, the plaintiff must file a defence to the counterclaim for a declaration of invalidity, together with any defence to the statement of defence and any application for amendment pursuant to R. 30 of the Rules of Procedure, within two months of service of a statement of defence containing a counterclaim for a declaration of invalidity. It follows that the time limit runs from the date of service, even if an application for protection of confidential information (R. 262A RP) has been filed in relation to this response, on

which an Order will be issued at a later date (other opinion: UPC_CFI_54/2023 (LD Hamburg), Order of 28 November 2023, ORD_589355/2023 - Avago v. Tesla).

However, this does not mean that the party affected by a request and/or an Order for the protection of confidential information is defenceless. Rather, their interests can be taken into account by extending the time limit for filing the Reply to the statement of defence and the time limit for replying to the nullity counterclaim upon application (UPC_CFI_355/2023 (LK Düsseldorf), Order of 4 April 2024, ORD_18050/2024 - Fujifilm v. Kodak). The defendants 1), 3) and 4) have agreed to such an extension.

ORDER:

1. The time limit for filing the Reply to the statement of defence pursuant to R. 29 (a) of the Rules of Procedure and the time limit for replying to the action for annulment pursuant to R. 29 (a) of the Rules of Procedure are each extended until 28 July 2024.
2. The remainder of the applicant's applications are dismissed.

ORDER DETAILS:

App_34724/2024 and App_34727/2024 concerning the main file numbers ACT_590109/2023 and CC_21152/2024

UPC number: UPC_CFI_456/2023

Type of proceedings: Action for infringement

Issued in Düsseldorf on 24 June 2024 NAMES

AND SIGNATURES

Presiding judge Thomas

Ronny
Thomas



Digitally signed by Ronny
Thomas Date: 2024.06.24
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