



**Local division Mannheim**  
**UPC\_CFI\_471/2023**

**Order**  
**of the Court of First Instance of the Unified Patent Court, issued**  
**on: 22/07/2024**  
**concerning EP 2 479 680**  
**concerning App\_26934/2024**  
**(Protection of secrecy pursuant to R. 262A RoP on the defence of the defendants 1) to 3))**  
**regarding App\_40530/2024**  
**(Application by the defendants 1) to 3) for review pursuant to R. 333 RoP)**

PLAINTIFFS/RESPONDENTS

- 1) **DISH Technologies L.L.C.** represented by Denise Benz  
- 9601 South Meridian Boulevard - 80112  
- Englewood - US
  
- 2) **Sling TV L.L.C.** represented by Denise Benz  
- 9601 South Meridian Boulevard - 80112  
- Englewood - US

DEFENDANTS/APPLICANTS

- 1) **AYLO PREMIUM LTD** represented by Tilman Müller-Stoy  
- 195-197 Old Nicosia-Limassol Road, Block 1  
Dali Industrial Zo-ne - 2540 - Nicosia - CY
  
- 2) **AYLO Billing Limited** represented by Tilman Müller-Stoy  
- The Black Church, St Mary's Place, Dublin 7 -  
D07 P4AX - Dublin - IE
  
- 3) **AYLO FREESITES LTD** represented by Tilman Müller-Stoy  
- 195-197 Old Nicosia-Limassol Road, Block 1  
Dali Industrial Zo-ne - 2540 - Nicosia - CY

FURTHER DEFENDANTS

- 4) **AYLO BILLING US CORP.**  
- 21800 Oxnard Ste 150 - 91367 - 7909 -  
Woodland Hills - US
  
- 5) **BROCKWELL GROUP LLC**  
- 19046 Bruce B. Downs Blvd #1134 - 33647 -  
Tampa - US
  
- 6) **BRIDGEMAZE GROUP LLC**  
- 12378 SW 82 AVENUE - 33156 - Miami - US

PATENT IN DISPUTE:

European Patent No. EP 2 479 680

SPRING BODY:

Mannheim local division JUDGES:

This Order was issued with the participation of presiding judge Dr Tochtermann, legally qualified judge Böttcher and legally qualified judge Dr Schober.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: Protection of secrets pursuant to R. 262A RoP - Review pursuant to R. 333 RoP

PROPERTY

The defendants 1) to 3) and the plaintiffs are in dispute about the Order of access restrictions pursuant to R. 262A RoP, which the defendants 1) to 3) requested by application of 13 May 2024 (App\_26934/2024) with regard to information on the functioning of the contested embodiments, which are contained in their statement of defence of 13 May 2024 and in the attached Annex BPV 5.

On 3 July 2024, the judge-rapporteur issued a final secrecy protection order pursuant to R. 262A RoP. Although the information claimed to be protected is listed there as

classified as confidential. At the same time, however, a restriction of access was ordered, rejecting the further request of the defendants 1) to 3), which provides for the authorised access of the plaintiffs' legal representatives and their assistants without numerical limitation and without naming individuals as well as three natural persons named by the plaintiffs, whom the defendants 1) to 3) considered to be excluded. For the further contents of the Order, including the further facts of the case and the parties' applications, reference is made to the said Order.

The defendants 1) to 3) challenge the Order with their application of 9 July 2024 for review by the panel pursuant to R. 333 RoP.

Repeating and deepening their previous submissions, the defendants re 1) to 3) that the three natural persons named by the plaintiffs should not be given access to the confidential information because, according to the plaintiffs' own statements, they are appointed in particular to make strategic decisions with regard to the litigation proceedings in the USA, which are parallel to the present litigation proceedings. Once they had obtained knowledge of the confidential information on the functioning of the challenged embodiments, they could not ignore it in this context. Without the present litigation, the three named persons would have no knowledge of the confidential information and would not be able to use it in other proceedings in other jurisdictions as a basis for strategic decisions to be made. Against this background, the interests of the defendant outweigh the interests of the plaintiff.

For further details, please refer to the documents exchanged between the parties and the annexes (see workflows for App\_26934/2024, App\_36698/2024 and App\_40530/2024).

By Order of 9 July 2024 (ORD\_40677/2024), the judge-rapporteur temporarily postponed the granting of access to the three persons named by the plaintiffs until the decision of the panel on the application pursuant to R. 333 RoP.

The defendants 1) to 3) apply,

the review of the judge-rapporteur's Order pursuant to R. 262A of 03.07.2024 by the panel pursuant to R. 333 RoP.

## REASONS FOR THE DECISION

The admissible application (I.) remains unsuccessful on the merits (II.).

I. The application is admissible, in particular admissible.

The term "procedural decision or Order" within the meaning of R. 333.1 RoP is to be interpreted broadly (see Court of Appeal, Order of 21 March 2024, UPC\_CoA\_486/2023, GRUR-RS 2024, 9289 para. 33 et seq.). The Order deciding on an application pursuant to R. 262A RoP

is such a procedural Order. Upon application, it is used to order whether and, if so, which information from documents and, if so, which evidence in the relationship between the parties contains confidential information and who, if any, of the parties is granted access to this information. An Order pursuant to R. 262A RoP restricts the parties' fundamental right to unrestricted access to the matter in dispute (see R. 262A.3, R. 264 RoP), which arises from the right to be heard. The Order therefore has an influence on the organisation of the proceedings and is therefore a procedural order.

II. The application for review is not successful on the merits. The panel exercises the power to order measures under R. 262A RoP in the same way as the judge-rapporteur.

1. In the Order of 3 July 2024, the three persons named by the plaintiffs were rightly not excluded from access to the information to be classified as confidential on the functioning of the contested embodiments.

Whether and to what extent a party's access to certain confidential information contained in submitted documents or evidence is restricted must be assessed taking into account the circumstances of the individual case. The interests of the parties to the proceedings must be weighed against each other. On the part of the party affected by a possible restriction of access, in particular their right to be heard and their right to the effective exercise of their rights in a fair procedure, and on the part of the requesting party, in particular the interest of the person holding the confidential information in the protection of the confidential information must be weighed up. The court may grant the application in particular if the reasons cited by the applicant for the Order significantly outweigh the other party's interest in unrestricted access to the information or evidence in question (R. 262A.5 RoP). The number of persons authorised to have access must not be greater than necessary to ensure compliance with the right of the parties to the proceedings to an effective remedy and a fair trial and must include at least one natural person from each party and the respective lawyers or (other) representatives of these parties to the proceedings (R. 262A.6 RoP, cf. already Mannheim local division UPC\_CFI\_359/2023 of 21 March 2024 = GRUR Patent 2024, 253, 255 f. and Düsseldorf local division UPC\_CFI\_355/2023 ORD\_7096/2024 with identical content). Insofar as the access authorisation of a specific person is in question, it depends in particular on their reliability and the guarantee that the person will not misuse the knowledge of the confidential information obtained. It also depends in particular on the interest of the party concerned in the access of this person.

According to this provision, the three named persons of the plaintiffs must be granted access for the considerations stated in the Order of 3 July 2024. The fact that the defendants 1) to 3) are defending themselves against the accusation of patent use with the confidential information lends particular weight to their interest in confidentiality. Without the plaintiffs' patent infringement action, the defendants 1) to 3) would in all likelihood not have felt compelled to disclose the confidential information on the functionality of the accused embodiments to the plaintiff. Contrary to the

In the opinion of the defendants 1) to 3), however, the prominent function of the three persons named by the plaintiffs in relevant other pending and potential patent infringement disputes between the parties and their involvement in relevant property right applications, grant proceedings and validity proceedings are not decisive against granting access. Rather, the plaintiffs have a weighty interest in internally involving precisely those persons on their side who are particularly familiar with the relevant property rights situation and technology in order to prosecute the present legal dispute in an appropriate manner (local division Mannheim UPC\_CFI\_359/2023 v. 21 March 2024 = GRUR Patent 2024, 253, 254 and Local Division Düsseldorf UPC\_CFI\_355/2023 ORD\_7096/2024 = GRUR-RS 2024, 7098 para. 29; Local Division Düsseldorf UPC\_CFI\_463/2023 ORD\_8550/2024, procedural order of 11 March 2024). The defendants are adequately protected by the confidentiality order against the use of the confidential information for purposes unrelated to the proceedings. As representatives authorised by the US Patent and Trademark Office, the named persons are experienced in handling confidential information. There are no indications of a lack of reliability on the part of the designated persons, which must be demonstrated by the applicant of the application pursuant to R. 262A RoP.

2. In all other respects, the panel also exercises its power pursuant to R. 262A RoP in the same way as in the Order of 3 July 2024 and confirms the other measures taken in the Order.

In particular, the number of three natural persons to be granted access on behalf of the plaintiffs in the present dispute, as stated in the Order of 3 July 2024, is not objectionable. Furthermore, for the reasons stated in the Order of 3 July 2024, neither a numerical limitation nor the determination by name of the EPG representatives working for the plaintiffs in the present dispute and their internal assistants, who are each to be given access to the confidential information, can be justified. It is up to the plaintiffs and their legal representatives to decide who from this group will be called upon to handle the case for the purpose of appropriate legal prosecution in the present legal dispute, as long as there are no indications of the unreliability of a particular person to be presented by the applicant of the application pursuant to R. 262A RoP. As stated in the Order of 3 July 2024, the plaintiffs' authorised representatives must ensure compliance with confidentiality and purpose limitation on their side. A court-ordered exclusion of EPG representatives who manage the plaintiffs' IP applications or their IP rights in validity proceedings is not justified in the case in dispute, since such an exclusion is already out of the question for employees of the plaintiffs' side who are involved in such matters, as discussed above.

3. Since the Order of 3 July 2024 is confirmed, there was no need to invite the plaintiffs separately to comment on the application of the defendants 1) to 3) pursuant to R. 333 RoP.

4. There are no grounds for allowing the appeal. The decision on the application of the defendants 1) to 3) pursuant to R. 262A RoP is made on a case-by-case basis, taking into account the circumstances of the individual case.

There is no reason to postpone the effectiveness of the granting of access. Even if the granting of access should ultimately be restricted to certain persons, the named persons as well as the EPG representatives and their internal assistants on the part of the plaintiffs' authorised representatives offer a sufficient guarantee that such a restriction can also be implemented retrospectively and that the persons subsequently excluded from access will maintain confidentiality in the absence of any indications to the contrary.

## ORDER

The application of the defendants 1) to 3) of 9 July 2024 for a review by the panel of the judge-rapporteur's Order pursuant to R. 262A RoP of 3 July 2024 is dismissed.

## ORDER DETAILS

Order no. ORD\_42880/2024 in ACTION NUMBER: ACT\_594191/2023  
UPC number:UPC\_CFI\_471/2023  
Action type: InfringementAction  
Related proceeding no. Application No.: 40530/2024  
Application Type: APPLICATION\_ROP\_333

## **NAMES AND SIGNATURES**

Issued in Mannheim on 22 July 2024

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Dr Peter Tochtermann Presiding  
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