



Local division Mannheim
UPC_CFI_219/2023

Order
of the Court of First Instance of the Unified Patent Court, Mannheim
local division
issued on 03 September 2024
concerning EP 2 568 724
concerning
App_49142/2024

Plaintiff:

Panasonic Holdings Corporation - 1006, Oaza Kadoma, Kadoma-shi - 571-8501 - Osaka - JP
represented by Christopher Weber

defendant:

Xiaomi Represented by Dr Corin Gittinger
Technology
Germany GmbH
(party to the main
proceedings - Not
provided) -
Niederkasseler
Lohweg 175 -
40547 -
Düsseldorf - DE

Xiaomi Represented by Dr Corin Gittinger
Technology
France S.A.S
(Party to the main
proceedings - Not
provided) - 93 rue
Nationale
Immeuble
Australia - 92100 -
Boulogne-

Billancourt - FR

**Xiaomi
Technology Italy
S.R.L** Represented by Dr Corin Gittinger
(Party to the main proceedings - Not provided) - Viale Edoardo Jenner 53 - 20158 - Milan - IT

**Xiaomi
Technology
Netherlands B.V.** Represented by Dr Corin Gittinger
(Party to the main proceedings - Not provided) - Prinses Beatrixlaan 582 - 2595BM - Den The Hague - NL

Odiporo GmbH Represented by Dr Corin Gittinger
(party to the main proceedings - Not provided) - Formerweg 9 - 47877 - Willich - DE

**Shamrock Mobile
GmbH** Represented by Dr Corin Gittinger
(Party to the main proceedings - Not provided) - Siemensring 44H - 47877 - Willich - EN

STREITPATENT:

EUROPEAN PATENT NO. EP 2568724

ADJUDICATING BODY/CHAMBER:

Mannheim local division JUDGES:

This Order was issued by the Chairman and judge-rapporteur Prof Dr Tochtermann.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: Application for protection of secrets pursuant to R. 262A RoP

Facts of the case:

On 30 April 2024, in the three parallel proceedings UPC_CFI_218/2023, UPC_CFI_219/2023 and UPC_CFI_223/2023, submission orders were issued against the plaintiff itself regarding third-party licence agreements at the plaintiff's application. On 28 August 2024, the (extended) deadline for the Reply to the non-technical part expired. With their corresponding duplicate, the defendants submitted three third-party licence agreements on 28 August 2024 and made submissions in this regard. At the same time, they filed applications for secrecy protection which, with regard to access restrictions for two of the three third-party licence agreements at the request of the respective contracting parties, partially go beyond the secrecy protection regime established to date, in particular in the Order of 14 February 2024 and then practised after hearing the parties. At the same time, in the event that their revised applications for secrecy protection were not fully complied with in this respect, they have alternatively requested the issuance of submission orders for the two third-party licence agreements against the former defendant No. 6, which belongs to their group of companies and whose proceedings had been severed, in order, in their opinion, to obtain a basis for the use of the two third-party licence agreements independently of the consent of the contracting parties. In the alternative, they also seek an order that the information and/or the documents submitted which are the subject of their applications concerning the restriction of access shall be deemed not to have been filed and may not be used in the proceedings by the opponent and the court if the defendants [do not] expressly declare within 14 days of receipt of the final decision that the information and/or the documents submitted shall nevertheless be deemed to have been filed and may be used in the proceedings by the opponent and the court.

With today's Order, an order pursuant to R. 262A RoP with access restrictions has been issued, which corresponds to the confidentiality regime practised in the proceedings to date and thus falls short of the access restrictions requested for the two third-party licence agreements in question.

REASONS FOR THE DECISION:

1. The submission in the defendant's duplicate of 28 August 2024, insofar as it concerns the two third-party licence agreements that are the subject of the requested further access restrictions and the requested submission order, will not be taken into account in the further proceedings, Rule 9.2 RoP.

A party that, in its opinion, is reliant on the issuance of a subpoena against itself or a company belonging to its group of companies for its submission on third-party licence agreements, must regularly create the necessary basis for this in good time so that it can make its submission within the applicable time limits. If, in the event that the requested access restrictions pursuant to R. 262A RoP are not granted in full, the party makes its submission subject to the further condition that the submission shall be deemed not to have been filed and may not be used in the proceedings by the opponent and the court if it does not expressly declare within a certain period of time that the information and/or documents shall nevertheless be deemed to have been filed and may be used in the proceedings by the opponent and the court, nothing else applies. In this respect, too, the party must regularly obtain an Order restricting access to third-party licence agreements in good time so that it can make its submission within the applicable time limits.

In the case in dispute, the defendants would have had cause to apply for secrecy protection orders and, alternatively, for subpoena orders against the former defendant no. 6 at the latest since the submission orders of 30 April 2024 issued on the plaintiff's application. Since then, the parties have been aware of the practice of the adjudicating body. It is neither submitted nor otherwise apparent why the defendants waited until the duplicate and until a few weeks before the scheduled hearing date to file their submissions.

Moreover, the defendants directed the request for service against the group company based in Hong Kong SAR China, for which the representatives of the defendants still in the proceedings - before the proceedings against the company based in Hong Kong SAR were severed - did not appoint themselves. In the proceedings then separated against this group company, service was impossible because the receiving authorities appointed in accordance with the HZÜ refused to effect service without redactions requested by the authority. Consequently, there is a risk of at least a considerable delay in the proceedings, if service and thus enforcement of a subpoena would ever be possible at all. The defendant has not stated the reasons why a submission would only be possible for the very group company against which the defendant's application is directed.

2. For these reasons, the requested submission orders must also be rejected.

ORDER:

1. The submissions in the defendant's duplicate of 28 August 2024, insofar as they concern the two third-party licence agreements that are the subject of the requested further access restrictions and the requested submission order against the former defendant no. 6, will not be taken into account in the further proceedings.
2. The defendant's application of 28 August 2024 for an Order for Production against the former defendant no. 6 regarding third-party licence agreements is dismissed.

NAMES AND SIGNATURES

Issued in Mannheim on 03 September 2024

Peter Michael
Dr
Tochtermann

Digitally signed by Peter
Michael Dr.
Tochtermann Date:
2024.09.03
17:16:16 +02'00'

Prof Dr Tochtermann
Presiding judge and judge-rapporteur