



UPC_CFI_169/2024
Order
of the Court of First Instance of the Unified Patent Court
delivered on 11/10/2024

APPLICANT

- 1) **Daedalus Prime LLC** Represented by
(Claimant) - 75 South Riverside, unit B/C, Croton-on- Hudson - 10520 - New York - US Dr. Marc Grunwald

RESPONDENTS

- 3) **Xiaomi Technology Netherlands B.V.** Represented by Prof. Dr.
(Defendant) - Prinses Beatrixlaan 582 - 2595BM - The Hague (Den Haag) - DE Tilman Müller-Stoy
- 4) **Xiaomi Technology Germany GmbH** Represented by Prof. Dr.
(Defendant) - Niederkasseler Lohweg 175 - 40547 - Düsseldorf - DE Tilman Müller-Stoy

RELEVANT PARTY

- 5) **MediaTek Inc. (Headquarters)**
(Defendant) - No.1, Dusing Rd. 1, Hsinchu Science Park - 30078 - Hsinchu - TW

PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor/s</i>
EP2792100	Daedalus Prime LLC

DECIDING JUDGE – FULL PANEL

Presiding judge	Sabine Klepsch
Judge-rapporteur	Stefan Schilling
Legally qualified judge	Petri Rinkinen
Technically qualified judge	Patrik Rydman

LANGUAGE OF THE PROCEEDINGS:

English

SUBJECT OF THE PROCEEDINGS:

Panel review of confidentiality order, R. 333 RoP

PROCEDURAL HISTORY:

With preliminary order dated 30 July 2024 and with final order dated 3 September 2024 the judge-rapporteur granted the Defendants' 3) and 4) application that access to the passages highlighted in grey in Defendants' Statement of Defence ("SoD") filed on 26 July 2024 and the written witness statement submitted with the SoD as Exhibit BP7 is restricted to certain persons. In the final order the judge-rapporteur granted access to the Claimant's legal representatives in the present proceedings and its Managing Director, but not two US-attorneys. With respect to the parties' submissions and their evaluation by the judge-rapporteur reference is made to the contested order.

With application dated 13 September 2024 the Claimant requests a review of said order by the panel.

SUMMARY OF THE ARGUMENTS

Firstly, the Claimant argues, that it would be a matter of procedural economy to also include future information classified as confidential. Otherwise, the Parties and the Court would have to decide each time anew on the circle of persons to be granted access to new information classified as confidential in the future.

Secondly, it sees the Procedural Order also being incorrect with respect to the fact that the two US attorneys-at-law, ██████████ ██████████ and ██████████ ██████████ are not granted access to the confidential information. The exclusion of both US representatives from the confidentiality club would significantly violate Claimant's fundamental judicial right, including its right to an effective remedy, its right to be heard and its right to equality of arms. Both persons provide comprehensive advice to the Claimant, i.e. not only in the parallel US proceedings itself, but also by providing technical and strategic input in the UPC proceedings and by organizing the overall litigation strategy.

The Claimant states that Mr. ██████████ coordinates the litigation proceedings in the respective jurisdictions, advises the Claimant in negotiations and evaluates the prospects of success. In this capacity, he has to be aware of all legal and technical arguments brought forward in the respective proceedings in order to advise Claimant comprehensively, to align technical and legal arguments and to develop a coherent litigation strategy for Claimant. Mr. ██████████ advises the Claimant in all technical aspects concerning the infringing embodiment and the architecture as well as the functionality of the chips used in the infringing embodiment. Thus, he also must be aware of all arguments and information provided in the present proceedings, especially as to Defendants' technical statements in order to align the arguments and to provide the technical input in the US and the UPC proceedings.

As representatives who – in general – serve the interest of the parties in legal proceedings are to be granted access, at least legal representatives who are involved in the development of technical and legal arguments, strategic considerations and the decision-making process with

respect to the UPC proceedings should have access to confidential information. The litigation in the USA concerns inter alia the MediaTek Dimensity chip 9200 which is also the subject matter of the present proceedings. As attorneys-at-law, [REDACTED] and [REDACTED] are bound to strict ethical rules of professional conduct for lawyers.

To exclude outside counsel from access would result in a considerable disadvantage for small and medium sized companies and violates Claimant's right to an effective remedy and to a fair trial, in particular in relation to large companies or groups like Defendants.

Thirdly, the Claimant asserts that the Procedural Order is too vague. Furthermore, even the redacted information in the non-confidential version can easily be derived from parts that are unredacted in the non-confidential version (comp. the schematics shown in marg. no. 69 and 70 of the non-confidential version). Contrary to Defendants' submission, it is clear from the redacted version of the SoD dated 26 July 2024 that the two illustrations on pages 37 and 38 are not confidential. The term "statements" does not comprise pictures or illustrations. The reproduction of an illustration is neither an expression in speech nor in writing.

The Defendants 3 and 4 defend the order of the judge-rapporteur.

They state that an extension to all future information classified as confidential is not to be granted. The type of confidential information may change with every brief filed. The party seeking to protect its trade and business secrets has to have the possibility to file reasonable requests for adjusting the confidentiality club.

They claim that the judge-rapporteur correctly denied access for [REDACTED] and [REDACTED] to the confidential information. The confidential information of the present UPC case, in particular the confidential information relating to the architecture as well as to the functionality of the chips used in the attacked embodiments, is not on file in the parallel US proceedings. In case access would be granted to the US representatives, in particular to the confidential information relating to the architecture as well as to the functionality of the chips used in the attacked embodiments, it cannot be excluded that such knowledge influences their strategic and technical advice for the parallel US proceedings.

Since Mr. [REDACTED] and Mr. [REDACTED] are located in the USA with no ties to Europe and are not authorized to practice before the UPC, they do not fall under the jurisdiction of the UPC. Denying access by these two individuals does not impair Claimant's fundamental judicial rights. It is not apparent that strategic and technical advice for the pending UPC proceeding could only be provided by Claimant's US counsel. The LD Paris had expressly declined to grant access to other representatives of the respondent in parallel US proceedings. The decision of the LD Mannheim does not concern access by representatives in parallel litigation before a US court. The decision of the LD Milan was made in the context of an application for provisional measure.

In terms of the principle of equality it cannot be argued that the Claimant would suffer any disadvantage from the fact that Defendants have uncommonly limited themselves to three persons in the present case.

Regarding the scope of the protection order the Defendants claim that it is clear from the redacted version of the Statement of defence, filed on July 26, 2024, that the two illustrations on pages 37 and 38 have not been properly redacted unintentionally as they show a grey frame. Thus, it is without doubt that these illustrations are also confidential information and have to be treated accordingly. The Procedural Order classified all statements on the architecture of the

CryptoCore and security design of the attacked Dimensity 8000 series and Dimensity 9000 series systems-on-a-chip in the Statement of defence of 26 July 2024, highlighted in grey as confidential information. That includes the two illustrations that have been highlighted with a grey frame. Since only the Court and the parties – to the extent as ordered – have access to the information classified as confidential and must keep it secret, the public has no knowledge of this information.

THE PARTIES' REQUESTS

The Claimant requests,

I. The Panel reviews the Procedural Order of the Judge-rapporteur delivered on September 03, 2024.

II. The Procedural Order dated September 03, 2024 and the preliminary order dated July 26, 2024 are dismissed as well as the application pursuant to R. 262A RoP dated July 26, 2024 by Defendants 3) and 4).

In the alternative:

III. The preliminary order dated 30 July 2024 is amended with regard to its sect. 2. by the following sentence:

“Additionally, access to the confidential version of the Defendants’ Statement of Defence (“SoD”) filed on 26 July 2024 and the written witness statement submitted with the SoD as Exhibit BP7, and to all future information classified as confidential (in submissions, exhibit etc.) by the Court is extended to:

- ██████████ Managing Director at Daedalus Prime LLC
- ██████████ ██████████ Partner at Blue Peak Law Group, USA, Houston, Texas
- ██████████ ██████████ Partner at Blue Peak Law Group, USA, Houston, Texas.”

IV. to grant leave to appeal the decision

And with submission dated 4 October,

To dismiss the Defendants’ motion to replace the redacted version of the Statement of defence of July 26, 2024 in the court file with an amended redacted version of the Statement of defence.

The Defendants 3 and 4 request,

I. To reject the application;

II. To replace the redacted version of the Statement of defence of July 26, 2024, filed on the same day, in the Court’s file with the redacted version of the Statement of defence of July 26, 2024, filed on September 26, 2024.

REASONS FOR THE ORDER:

The application for panel review is admissible, but remains unsuccessful on the merits.

I.

The Defendants rightfully did not contest that the application for panel review is admissible. An order under R. 262A of the Rules of Procedure (RoP) limits the parties' right to unrestricted access to the dispute, which arises from the fundamental right to a hearing in court. The order therefore influences the conduct of the proceedings and is thus an order directing the proceedings according to R. 333.1 RoP.

II.

The application for panel 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.

The scope of the protective order is neither drawn too broad nor too vague. The order defined “the statements on transfer of the patent suit from Intel Corp. to Daedalus Prime in the Reply highlighted in grey” and “The partially redacted Patent Transfer Agreement between Intel Corp. and Daedalus Prime (Exhibit PS 9b)” as being confidential. Initially, the Claimant did not contest that the information of MediaTek which the Defendants asked protection for would constitute trade and business secrets of MediaTek. When the Claimant now asserts that the illustrations on pages 37 and 38 of the SoD were not part of this definition, the panel dismisses this assertion. The initially lodged SoD showed that the illustrations were in fact “highlighted in grey”. This made sufficiently clear that this part of information is part of the protection order. The mere fact, that the Defendants insufficiently blacked-out these two illustrations in the redacted versions, though they were highlighted in grey in the redacted versions, cannot be considered as a waiver of the right to protection of what was requested at the same time. Therefore, the Defendants are granted the right to replace the insufficiently blacked-out version, with the subsequently filed redacted versions, where all passages highlighted in grey are blacked-out.

2.

The panel confirms the decision of the judge-rapporteur to have Mr. ██████████ and Mr. ██████████ excluded from access to the confidential information.

a) Article 9(1) and (2)(a) of Directive (EU) 2016/943 provides that, in judicial proceedings, access to documents submitted by the parties or third parties containing trade secrets or alleged trade secrets may be restricted, in whole or in part, to a limited number of persons on application. The protection of confidential information is provided for in the UPCA in Art. 58 and implemented in in R. 262A RoP. According to R. 262A.5 RoP the Court may allow the Application considering in particular whether the grounds relied upon by the applicant for the order significantly outweigh the interest of the other party to have full access to the information and evidence in question. Therefore, the Court has to weigh the parties’ interests against each other in the light of the circumstances of the individual case. The Court has to weigh in particular the right to be heard and the right to a fair hearing of the party affected by the access restriction, and the interest of the party requesting confidentiality protection in the protection of its confidential information.

b) As a starting point a Claimant generally needs access to all information presented before the Court in order to be able to argue its case. But when it comes to the number and individuality of persons authorised to have access the number generally should not be larger than necessary to comply with the right of the parties to an effective remedy and a fair trial and has to include at least one natural person from each party and the respective lawyers or (other) representatives of

these parties to the proceedings (comp. LD Mannheim, 03.07.2024, UPC_CFI_471/2023, APP_26934/2024; LD Düsseldorf, 27.03.2024, UPC_CFI_355/2023 ORD_7096/2024). Insofar as the access authorisation of a specific person is at issue, it depends in particular on that person's reliability and the guarantee that the person will not abuse the knowledge of the confidential information obtained. Furthermore, it depends in particular on the specific interest the party concerned has in allowing access to that individual person (comp. LD Mannheim, 03.07.2024, UPC_CFI_471/2023, APP_26934/2024).

aa) The Panel acknowledges that US patent attorneys are themselves bound by strict ethical and professional rules and can on a general basis be considered as trustworthy, when it comes to the treatment of confidential information (comp. LD Mannheim, 22.07.2024, UPC_CFI_471/2023, APP_40350/2024).

bb) On the other hand, the Court has to acknowledge that the Defendants provided the confidential technical information in question in order to properly defend themselves in a legal action brought to Court by the Claimant. This means, that the information in question cannot be considered to be disclosed deliberately, but because the Defendants saw the necessity to disclose and use this information as a part of their defence. Therefore, their interest in a confidentiality order and a restricted number of persons getting access to this information has to be weighed significantly high. The Claimant did not sufficiently contest the allegation of the Defendants that the confidential information relating to the architecture and functionality of the chips in the infringing embodiment is at present *not on file* in the parallel US proceedings. It has to be born in mind, that giving access to information, that is at present not accessible, is a non-reversible act. Following the Claimant's request, the purpose to grant access to Mr. ██████████ and Mr. ██████████ is "to align technical and legal arguments and to develop a coherent litigation strategy for Claimant" and "to align the arguments and to provide the technical input in the US and the UPC proceedings".

cc) When weighing the respective interests, the panel finds that the Claimant's right to argue its case is sufficiently preserved by granting access to the information to its legal team acting as representatives in the present proceeding and its managing director. The Claimant's interest in exchanging information in the present proceeding and the parallel proceedings before the United States District Court for the Eastern District of Texas for the purposes of effective and coordinated litigation establishes an additional interest that does not justify making the confidential information available to the Claimant's representatives in the US proceedings. This would undermine the legitimate expectation of a Defendant of effective protection of secrets when defending itself proceedings before the UPC (comp. LD Mannheim, 22.07.2024, UPC_CFI_471/2023, APP_40350/2024). The interest of formulating a universal strategy for international disputes, also regarding forums outside of the UPC Member States and even outside of the EU, might be advantageous for the Claimant. But this interest cannot be seen as essential for litigating the present case and therefore does not outweigh the Defendants' interest in confidentiality. It is not the task of the Defendants to provide the Claimant with information that it can use in other jurisdictions. These proceedings are independent and follow their own rules.

dd) While the Panel is aware that some divisions of the Court of First Instance granted access for attorneys involved in parallel proceedings in the United Kingdom (LD Munich, 04.07.2024, UPC_CFI_220/2023; LD Paris, 19.12.2023, UPC_CFI_230/2023, p. 6 – the latter explicitly excluding US attorneys), and some did not (LD Mannheim, 03.07.2024, UPC_CFI_471/2023, APP_26934/2024, confirmed by Panel, 22.07.2024, APP_40350/2024), the situation with US attorneys involved in parallel proceedings in the US has to be evaluated differently. The United

Kingdom signed the UPCA, before leaving the EU. According to Art. 48 (2) UPCA European patent attorneys domiciled on the UK are entitled to represent clients before the UPC, making them an integral part of the UPC System. However, the intention to align the arguments and to provide the technical input to proceedings outside of the UPC System – and even outside of the EU – is not a sufficient reason to broaden access to classified information to representatives outside the UPC system without the trade secrets' holder's consent (comp. LD Paris, 19.12.2023, UPC_CFI_230/2023, p. 6). Whereas the LD Milan granted access to the Claimant's legal representatives in the parallel US proceedings, this part of the decision was not executory with immediate effect but after the expiration of the appeal period, only, and leave to appeal was granted (LD Milan, 04.09.2024, UPC_CFI_400/2024, ORD_50143/2024). Thus, this leads the panel to give leave to appeal to this order, as well, to give the CoA the opportunity to define a standard for the UPC.

ee)

The fact that the Defendants themselves have restricted access to the confidential information and named three natural persons who shall have access to the confidential information does not demand a decision in favor of the Claimant, as this establishes a self-limitation of the Defendants', only. It cannot be argued that the Claimant does suffer any disadvantage from the fact that Defendants have uncommonly limited themselves to three persons in the present case, even though some of them might be domiciled in the US, as well.

3.

The request to also include *future* information classified as confidential as a matter of procedural economy is unfounded. It is clear, however, that information that is already declared by an order of the Court to be treated confidential, remains confidential, even when it is cited by the other party or repeated by the party that initially sought the declaration of confidentiality. As any non-compliance with the confidentiality order may lead to the imposition of a penalty payment, the scope of the order has to be determined in advance and cannot be left open with regard to yet unknown future information.

ORDER

I. The application to dismiss the procedural order of the judge-rapporteur dated 3 September, 2024 and the preliminary order dated 26 July, 2024, is rejected.

II. The Defendants 3 and 4 are entitled to replace the redacted version of the Statement of Defence of 26 July, 2024, filed on the same day, in the Court's file with the redacted version of the Statement of defence of 26 July, 2024, filed on 26 September, 2024.

III. Leave to appeal for the Claimant is granted.

INFORMATION ABOUT APPEAL

As the Panel granted leave to appeal, this order is subject to an appeal within 15 days of service of the Court's decision, R. 220.1 RoP.

ORDER DETAILS

Order no. ORD_51859/2024 in ACTION NUMBER: ACT_19012/2024

UPC number: UPC_CFI_169/2024

Action type: Infringement Action

Related proceeding no. Application No.: 51661/2024

Application Type: APPLICATION_ROP_333

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Presiding judge

Sabine Klepsch

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Judge-rapporteur

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