

***Non-binding Guidance
for the use of the
“General Template for Order – UPC CFI”***

Order to communicate information

ORDER

of the Court of First Instance of the Unified Patent Court

Local division in ... / Regional division in ... / Central division (Paris Seat or Munich Section)

issued on ... [dd month in words yyyy]

concerning ... [EP/UP/SPC/EP application at issue]

HEADNOTES: ... [required by R. 67 RegR] [to be provided by the Judge-rapporteur]

KEYWORDS: ... [required by R. 67 RegR] [to be provided by the Judge-rapporteur] application for communication of information; justified and proportionate request; information re. origin and distribution channels of infringing products or processes / quantities produced, manufactured, delivered, received or ordered / price obtained / identity of third person involved; order to party / to third party; third party found in possession of infringing products / found to be using the process; commercial scale; Set party found to be providing services used in infringing activities; third party involved in the production / manufacture / distribution of the infringing products or processes; information reasonably necessary to advance party's case; interests of third party; self-incrimination [yes/no]; attorney-client privilege; ... (non-exhaustive list for illustrative purposes)

REFERENCE CODE ECLI: ... [required by R. 67 RegR] [to be provided by the Deputy-Registrar]

CLAIMANT:

... [name and postal address]

represented by ... [academic title (where applicable), name, national professional title, firm]

assisted by ... [academic title (where applicable), name, national professional title, firm]

DEFENDANT:

... [name and postal address]

represented by ... [academic title (where applicable), name, national professional title, firm]

assisted by ... [academic title (where applicable), name, national professional title, firm]

[and/or]

THIRD PARTY:

... [name and postal address]

represented by ... [academic title (where applicable), name, national professional title, firm]

assisted by ... [academic title (where applicable), name, national professional title, firm]

PATENT AT ISSUE (data to be retrieved in databases of the EPO)

European patent n° ... [hereafter referred to by its last three digits, e.g. EP 789]

[or European patent with unitary effect n° ... [e.g. UP 789]

[or Supplementary protection certificate ... [e.g. SPC 789]

[or European patent application n° ... [e.g. EP application 789]

PANEL/DIVISION

Panel [in divisions having more than one panel number of the panel: ...] of the Local [or: Regional] Division in ... [or: of the Central Division (Paris Seat) or: of the Central Division (Munich Section)]

DECIDING JUDGES: [R. 350.1(c) ROP]:

[in case the panel is issuing the Order]

This Order has been issued by the presiding judge ..., the judge-rapporteur ..., the legally qualified judge ... and the technically qualified judge ...

[or: ... by the presiding judge..., the legally qualified judge... and the legally qualified judge ...]

[in case a single judge is issuing the Order]

This order has been issued by the single judge ...

SUMMARY OF FACTS [MANDATORY, R. 351.2 (b) ROP]

[Free text]

STATEMENT OF FORMS OF ORDER SOUGHT BY THE APPLICANT [MANDATORY, R. 351.2 (a) ROP]

- Request by ... [a party] to order ...
 - ... [the other party] [or]
 - the Third Party [any third party]to communicate information ... [as specified in Art. 67.1 UPCA] [For optional standard text see below "Order (Operative Part, Optional Standard Text)"]
- Request by ... [the other party] or the Third Party
 - to dismiss ... [a party's] request
 - to disclose the information only to a certain person that shall keep such information secret and confidential and shall not use it for a purpose other than that for which it was provided.
 - ... [to be specified by the other party or third party]

POINTS AT ISSUE

[Free text]

GROUNDS FOR THE ORDER [MANDATORY, R. 351.2 (c) RoP]

Aspects to be addressed:

- Is the information reasonably necessary for the purpose of advancing that party's case [Art. 67(1) UPCA, R. 191 RoP]?
- Is the information in control of the other party/third party [Art. 67(1) UPCA, R. 191 RoP]?
- Shall the information to protect trade secrets, personal data or other confidential information of the other party [or] the third party
 - be disclosed to certain named persons only [and/or]
 - be subject to appropriate terms of non-disclosure [Art. 58 UPCA, R. 190.1 2nd sentence, 191 RoP]?
- Aspects to be additionally addressed with regard to a third party:
 - Interests of the third party shall be duly taken into account [R. 190.6, 191 RoP].
 - Is the third party
 - in the possession of the infringing product on a commercial scale or to be using an infringing process on a commercial scale [Art. 67.2(a) UPCA]
 - providing on a commercial scale services used in infringing activities [Art. 67.2(b) UPCA]
 - indicated by the third party referred to in the aforementioned points as being involved in the production, manufacture or distribution of the infringing products or processes or in the provision of the services? [Art. 67.2(c) UPCA]?
- Sanctions if party fails to comply with the order [Art. 82.4 UPCA, R. 190.7, 191 RoP].
- Witness privilege under R. 179.3 RoP, attorney-client privilege under R. 287 and litigation privilege under R. 288 RoP, if relevant [R. 190.6, 191 RoP].

ORDER (OPERATIVE PART) [R. 351.1(e) RoP]

Optional standard text

- The ... [the other party or the Third Party] is ordered
 - to provide the ... [the other party] regarding the following ...
 - product [*wording of the product patent claim as specified by a party's or the third party's requests and found appropriate by the Court*]
 - process [*wording of the process patent claim as specified by a party's or the third party's requests and found appropriate by the Court*]
 - with information of
 - the origin and distribution channels of this product/process
 - the quantities of this product produced, manufactured, delivered, received or ordered and the price obtained
 - identity of any third person involved in the production or distribution of this product or in the use of this process [*to be specified by the party and found appropriate by the Court*]

- The ... [the other party or the Third Party] shall communicate the information referred to above on a confidential basis to Mr / Ms (hereafter “the Named Person”). The Named Person shall keep such information secret and confidential and shall not use it for a purpose other than that for which it was provided.
- The information referred to above shall be communicated before [*dd month in words yyyy*].
- Failure to communicate the information according to this Order may result in a recurring penalty payment, payable to the Court, in the amount of EUR ... per day of delay.

Issued on ... [R. 351.1(b) RoP]

NAMES AND SIGNATURES	
<p>Judges [Art. 8 UPCA, Art. 35(5) UPCS] Presiding judge ... Judge-rapporteur ... Legally qualified judge ... Technically qualified judge ... [Or: Single judge: ...]</p>	<p>Deputy-Registrar [Art. 35(5) UPCS] Deputy-Registrar</p>

Information about appeal (Art. 73(2)(a), 67 UPCA, R. 220.1(c), 224.1(b), 190.6, 191 RoP)

The adversely affected party may bring an appeal against the present Order within 15 days of service of this Order.

Information about enforcement (Art. 82 UPCA, Art. Art. 37(2) UPCS, R. 118.8, 158.2, 354, 355.4 RoP)

An authentic copy of the enforceable decision or order will be issued by the Deputy-Registrar upon request of the enforcing party, R. 69 RegR.