Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC Court of Appeal
UPC_CoA_930/2025

Order

of the Court of Appeal of the Unified Patent Court
issued on 18 March 2026
concerning an appeal against an order denying a request under R. 262.2 RoP

HEADNOTES:

Trade secrets or other confidential information lose their character as trade secrets or other confidential information if they are disclosed to the other party without an order pursuant to R. 262A RoP, or without any other restriction, for example an agreement between the parties or a voluntary undertaking. A request under R. 262.2 RoP does not automatically lead to protection against the other party disclosing the information.

KEYWORDS:

- R. 262 RoP
- R. 262A RoP
- Trade secrets

APPELLANT (AND DEFENDANT BEFORE THE COURT OF FIRST INSTANCE)

EOFlow Co., Ltd., Hwangsaeul-ro, Bundang-gu, Seongnam-si, Gyeonggi-do, Republic of Korea
(hereinafter: "EOFlow")

represented by attorney at law Mirko Weinert, Hoyng ROKH Monegier, Düsseldorf, Germany

RESPONDENT (AND APPLICANT BEFORE THE COURT OF FIRST INSTANCE)

Insulet Corporation, Acton, United States of America
(hereinafter: "Insulet")

represented by attorney at law Marc Grunwald, Peterreins Schley, Munich, Germany

PATENT AT ISSUE

EP 4 201 327

PANEL AND DECIDING JUDGES

Panel 2

This order has been adopted by
Rian Kalden, presiding judge and legally qualified judge
Patricia Rombach, legally qualified judge and judge-rapporteur
Ingeborg Simonsson, legally qualified judge
Steven Kitchen, technically qualified judge
Udo Matter, technically qualified judge

ORAL HEARING

The parties agreed that the Court of Appeal may decide on the basis of the written submissions only.

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Milan Central Division, 4 December 2025, UPC_CFI_1167/2025

LANGUAGE OF THE PROCEEDINGS

English

FACTS

1. EOFlow is a manufacturer based in South Korea. It manufactures an insulin pump named "EOpatch" and "GlucoMen Day Pump" (hereinafter "attacked embodiments"). EOFlow shipped the attacked embodiments to the exclusive European distributor A. Menarini Diagnostics s.r.l in Italy (hereinafter Menarini).

2. In its order in preliminary injunction proceedings of 30 April 2025 initiated by Insulet (UPC_CoA_768/2024, APL_64374/2024, ORD_69078/2024, "the order on provisional measures"), the Court of Appeal found that the attacked embodiments infringe Insulet's patent and ordered EOFlow to refrain from making, offering, placing on the market, using or possessing for the purposes mentioned, or importing or storing the attacked embodiments *inter alia* in the territories of the Italian Republic and/or the Kingdom of Sweden.

3. Furthermore, the Court of Appeal ordered that if EOFlow fails to comply with this prohibition, periodic penalty payments are payable to the Court of up to EUR 250,000 for each individual violation.

4. In parallel, on 22 July 2025 in the counterclaim for infringement action CFI 787/2024, brought by Insulet against EOFlow, the Milan Central Division adjudicated on the merits. The Central Division *inter alia* ordered EOFlow to provide Insulet with complete information on the extent to which EOFlow had committed acts of infringement since 19 June 2024.

5. Insulet filed an application seeking the imposition of a penalty.

6. EOFlow filed applications under R. 262.2 RoP.

7. With the impugned order, the Milan Central Division as far as relevant ordered penalty payments in the amount of EUR 150,000 for non-compliance with the order on provisional measures ("penalty payment order") and dismissed EOFlow's R. 262.2 RoP requests. EOFlow was ordered to bear the costs of the proceedings in the amount of EUR 10,000.00, payable to Insulet.

8. EOFlow appealed the order with regard to the penalty payment as well as with regard to the dismissal of its 262.2 RoP requests.

9. On 4 February 2026 the Court of Appeal dismissed the appeal against the penalty order and the cost order (UPC_CoA_930/2025).

PARTIES´ REQUESTS

10. As far as relevant here, EOFlow requests that the Court of Appeal set aside the impugned order and order pursuant to R. 262.2 RoP:
    1. the information listed in more detail in the following table (and which are highlighted in grey in the briefs and in the case of exhibits are named correspondingly) is classified as confidential within the meaning of Art. 58 UPCA, R. 262.2 RoP

Para. (of submissions in UPC_CFI_1167/2025)	Description
Application dated 14 October 2025: – para. 10 incl. screenshot – para. 13 – - screenshots in paras. 14, 17, 19, 22	Business information of Respondent
Response to Application dated 30 October 2025: – para. 13-14 – para. 35-49 including screenshots – para. 64	Business information of Respondent
Respondent's brief dated 17 November 2025: – para. 32-34 – para 38-46 – para. 51-62	Business information of Respondent
Exhibits: – HRM 2-5 – PS 5-11	Business information of Respondent

    2. the above-mentioned information is excluded from any file inspection by third parties and is not to be published in the register and not otherwise to be made publicly available;
    3. to the extent that any order contains information, which is to be classified as confidential under 1), this information is to be redacted prior to publication of this order or decision;
    4. the public shall be excluded from any hearing in which the classification of the above-mentioned information as confidential is discussed;

5. if any order is announced and reasoned in public, the public shall be excluded from such public reasoning as far as the information to be classified as confidential under 1) is discussed directly or indirectly.

11. As far as relevant here and essentially, Insulet requests that the Court of Appeal reject EOFlow's request, save for information derived from, or directly pertaining to, the Settlement Agreement with Menarini and that EOFlow shall be liable for any costs that may arise in connection with these proceedings.

Parties' submissions

12. In essence and as far as relevant, EOFlow submits the following.
    - The legal test applied by the Court of First Instance (CFI) for assessing the R. 262.2 RoP confidentiality request is too harsh.
    - EOFlow requested confidential treatment of information relating to its business-contractual arrangements, invoices, packaging lists, turnover numbers, prices, E-mails from business partners. This is classical business information by its nature and not publicly accessible. There is no need to define a material or market value to that type of information as it relates to internal information of how a company runs its business, making it hard to impossible to put an "earmark" or "price tag" on such information. It is sufficient that generally third parties do not know about the inner functioning of an enterprise. Reference to Recital 14 of the Directive (EU) 2016/943 is made.
    - A potential commercial value is already present when use of the information could undermine the "ability to compete".
    - The mere fact that information has been provided to Insulet during an obligation to render accounts does not mean that it has become public either, since EOFlow is only allowed to use the information for the purposes of pursuing their claims resulting from patent infringement. Thus, there is an implicit procedural limitation to the use of the information provided. It still comes with the required "legitimate interest in keeping them confidential and a legitimate expectation that such confidentiality will be preserved."
    - Therefore, the fact and reference to the general nature as business information should be sufficient to block out public availability of this information in accordance with R. 262.2 RoP.

13. In essence, Insulet submits the following:
    - Confidentiality under R. 262 RoP is strictly limited to information qualifying as trade secrets and requires specific substantiation of secrecy, economic value, and effective protection measures. EOFlow has not provided any further substantiation regarding the confidential nature of the information at issue. Moreover, information disclosed pursuant to court-ordered accounting or information obligations cannot be treated as confidential vis-à-vis the opposing party. In any event publicly available information cannot justify restrictions on access.
    - The information addressed by EOFlow, namely mar. no. 10 (including the screenshot), marg. no. 13, as well as the screenshots in marg. no. 14, 17, and 19 of Insulet's Application for Determination of Penalty Payments dated October 14, 2025, merely reflects EOFlow's obligation to provide information pursuant to item e) of the Central Division´s Decision dated July 22, 2025.

- The same applies to information inter alia concerned in marg. no. 13-14, 35-49, and 64 of EOFlow´s Response to Insulet´s Application dated October 30, 2025, marg. no. 38-46 and 51-62 of EOFlow´s brief dated November 17, 2025, as well as Exhibits PS 5-11.
- With regard to marg. no. 35-49 of EOFlow's Response dated October 30, 2025, and marg. no. 38-46 of EOFlow's brief dated November 17, 2025, the submissions concerning certain Incoterms, i.e. standardized rules allocating legal risks in the delivery of goods, cannot per se qualify as confidential business information. These rules are publicly accessible, including via the ICC's website.
- Moreover, the majority of the information contained in marg. no. 51-62 of this brief concerns the application of law by the Central Division Milan. There is no apparent reason as to why such information should qualify as confidential business information of EOFlow, particularly given that the Order of the Central Division Milan, including its legal reasoning, is publicly available on the official UPC website.
- Insulet agrees that the information concerning the Menarini Settlement Agreement is of confidential nature.

GROUNDS:

14. Since the Court of Appeal has already dismissed the appeal against the penalty order and the cost order (4 February 2026, UPC_CoA_930/2025), the only remaining issue is the dismissal of the confidentiality requests. EOFlow's appeal relating to dismissal of the confidentiality requests, which has not yet been decided upon, is unfounded.

Legal Framework

15. Pursuant to R. 262.1(b) RoP, written pleadings and evidence, lodged at the Court and recorded by the Registry, shall be available to the public upon reasoned request to the Registry. Pursuant to R. 262.2 RoP, a party may request that certain information of written pleadings or evidence be kept confidential, in particular, by making documents available to the public in redacted form (see R. 262.2, fourth sentence, RoP) and provide specific reasons for such confidentiality.

16. Pursuant to Art. 58 UPCA, the Court may, to protect the trade secrets, personal data or other confidential information of a party to the proceedings or of a third party, or to prevent an abuse of evidence, order that the collection and use of evidence in proceedings before it be restricted or prohibited or that access to such evidence be restricted to specific persons.

17. Pursuant to R. 262A RoP, a party may make an Application to the Court for an order that certain information contained in its pleadings or the collection and use of evidence in proceedings may be restricted or prohibited or that access to such information or evidence be restricted to specific persons.

18. The classification of information as a trade secret requires that (a) the information is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; (b) the information has commercial value because it is secret; and (c) the information has been

subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret (see Art. 39 (2) TRIPS Agreement).

19. Where there are EU rules in a sphere concerned by the TRIPS Agreement, EU law will apply, which will mean that it is necessary, as far as possible, to adopt an interpretation in keeping with the TRIPS Agreement (General Court, judgment of 5 February 2018, *PTC Therapeutics International v EMA*, T-718/15, EU:T:2018:66, para 62 with references).

20. There is however no harmonisation in the EU of access to public documents, only national legislation (see decision of 19 December 2025, UPC_CoA_523/2024, *Docket Navigator*, paragraphs 18-19 with references).

21. Similarly, directive 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, concerns only the unlawful acquisition, use or disclosure of trade secrets and does not provide for measures to protect the confidentiality of trade secrets in other types of court proceedings (CJEU, judgment of 7 September 2021, Klaipėdos regiono atliekų tvarkymo centras, C-927/19, EU:C:2021:700, at para 97).

22. Although the TRIPS Agreement does not have direct effect under EU law (judgment of 14 December 2000, Dior and Others, joined cases C-300/98 and C-392/98, EU:C:2000:688, para. 44), it is, as far as relevant here, a source of law on which the Court shall base its decisions by virtue of Art. 24(1)(d) UPCA (decision of 24 February 2026, UPC_CoA_9/2026, Gowling, paragraph 19). The TRIPS Agreement is an international agreement applicable to patents. All the UPC Contracting Member States are, as EU Member States, parties to the TRIPS Agreement (judgment of 11 September 2025, Duca di Salaparuta, C-341/24, EU:C:2025:693, para 6).

23. The matter at hand is governed by R. 262 RoP and R. 262A RoP. These provisions refer not only to trade secrets in this sense, but also to other confidential information (cf. Art. 58 UPCA: “for the protection of trade secrets, personal data or other confidential information”, CoA, 1 August 2025, UPC_CoA_70/202, S*trabag v Swarco Futurit et al.*, para. 17).

Information which was communicated due to the Court ordered obligation to communicate information

24. The Central Division based its rejection of the request under R. 262.2 RoP on the fact that most of the information was obtained based on an order issued by the same court. There is no evidence that all this information was kept secret through protective measures taken by the parties.

25. EOFlow argues without success that the mere fact that information has been provided to Insulet during an obligation to render accounts does not mean that it has become public because Insulet would only be allowed to use the information for the purposes of pursuing their claims resulting from patent infringement. As such, there is an implicit procedural limitation to the use of the information provided, so EOFlow submits.

26. As the Court of Appeal reiterated in this case in its order of 29 January 2026 concerning a request for confidentiality for information submitted in the Appeal proceedings, there is no implicit limitation on the use of information received as a result of the other party's compliance with an order to communicate information pursuant to Art. 67 UPCA and R. 191 RoP (see CoA, 14 October 2025, UPC_CoA_699/2025, *Kodak v Fujifilm*, para. 45). Only if the Court issued a R. 262A-RoP order, the use of confidential information is restricted.

27. Since Insulet received the information without any restriction (i.e. without a Court ordered obligation pursuant to R. 262A RoP, or without any other restriction, for example an agreement between the parties or a voluntary undertaking) from EOFlow, the information is at least no longer a trade secret or other confidential information (see CoA, 1 August 2025, UPC_CoA_70/2025, *Strabag v Swarco Futurit et al*. para. 24; 29 January 2026, UPC_CoA_930/2025, *EOFlow/Insulet* para. 27).

Information submitted in the CFI proceedings

28. The same applies to most of the information that was submitted by the parties during the proceedings.

29. Also with regard to this information, a request under R. 262.2 RoP does not automatically lead to protection against the other party disclosing the information (CoA, 1 August 2025, UPC_CoA_70/2025, Strabag v Swarco Futurit et al. para. 19). Only a R. 262A RoP application allows the Court to restrict the use of confidential information by the other party. Once the information has been communicated by serving the briefs without any restriction (for example a Court order pursuant to R. 262A RoP, or an agreement between the parties, or a voluntary undertaking), it is no longer confidential (see CoA, 1 August 2025, UPC_CoA_70/2025, Strabag v Swarco Futurit et al. para. 24).

30. Insulet received the information without any restriction, because EOFlow did not request a R. 262A RoP order. EOFlow clarified in its brief of 4 November 2025 that the issuance of an order under R. 262A RoP is not necessary.

Information relating to the settlement agreement

31. The same does not apply to the information relating to the settlement agreement. Insulet agrees that this information must be dealt with confidentially.

32. But the appeal is also unsuccessful relating to this information. It is stated in the published impugned order that EOFlow asserted that the settlement agreement provided for continued supply for patients still undergoing treatment with the infringing pumps.

33. This information (and not the settlement agreement as such, which is still to be kept confidential) is therefore readily accessible to the public and cannot qualify as trade secret anymore. The information contained in the EOFlow-requests concerns essentially this assertion.

Costs

34. In the order of 4 February 2026, the Court of Appeal did not decide on costs in the appeal proceedings with regard to the penalty order. As this decision concludes the proceedings, a decision must also be made regarding these costs. EOFlow as the unsuccessful party has to bear these costs (Art. 69(1) UPCA).

35. The same applies for the costs in relation to R. 262.2 RoP requests lodged prior to a R. 262.1(b) RoP request. These costs normally form part of legal costs in general (CoA, 5 May 2025, UPC_CoA_634/2024, *Meril/Swat*, para. 31).

ORDER

I. EOFlow's appeal against the dismissal of its 262.2 RoP requests in the order of the Milan Central Division of 4 December 2025, UPC_CFI_1167/2025 is dismissed.

II. EOFlow has to bear the legal costs and other expenses incurred by Insulet in the appeal proceedings.

Issued on 18 March 2026

Rian Kalden Date: 2026.03.18 10:26:01 +01'00'

Rian Kalden, presiding judge and legally qualified judge

Patricia Ursula Rombach Digitally signed by Patricia Ursula Rombach Date: 2026.03.18 09:26:33 +01'00'

Patricia Rombach, legally qualified judge and judge-rapporteur

Digitally signed by Åsa Ingeborg Simonsson Date: 2026.03.18 09:53:07 +01'00'

Ingeborg Simonsson, legally qualified judge

STEVEN RICHARD KITCHEN Digitally signed by STEVEN RICHARD KITCHEN Date: 2026.03.18 13:36:16 +01'00'

Steven Kitchen, technically qualified judge

Udo Matter Digital signiert von Udo Matter Datum: 2026.03.18 12:30:31 +01'00'

Udo Matter, technically qualified judge