



Düsseldorf Local Division
UPC_CFI_351/2024
UPC_CFI_595/2024

Order
of the Court of First Instance of the Unified Patent Court
issued on 30 April 2026
concerning EP 3 686 683

CLAIMANT:

Canon Kabushiki Kaisha, represented by its chief executive officer Mr Fujio Mitarai, 30-2, Shimomaruko 3-chome, Ohta-ku, Tokyo, 146-8501, Japan

represented by: Attorney-at-law Boris Kreye LL.M., Attorney-at-law Anika Boche, Maximiliansplatz 22, 80333 Munich, Germany

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DEFENDANTS:

1. **Katun Germany GmbH**, represented by its managing directors Mr Thomas Arthur Meij and Mr Robert Henry Moore, Hammfelddamm 4a, 41460 Neuss, Germany
2. **Katun (E.D.C.) B.V.**, represented by its managing director Mr Robert Henry Moore, De Prinsenhof 11, 4004 LN Tiel, The Netherlands
3. **Katun Corporation**, represented by its chief executive officer Mr Robert Henry Moore, 7760 France Ave. So., Suite 340, Minneapolis, Minnesota 55435, United States
4. **General Plastic Industrial Co., Ltd.**, represented by its chairman Mr Jack Wang and its president Mr Jerry Wang, 50, Tzu-Chiang Road, Wu-Chi Dist., Taichung, Taiwan 43547

Defendants 1-4 represented by: Attorney-at-law Dr Thure Schubert, Attorney-at-law Dr Matthias Jentsch, Attorney-at-law Luisa Huber, Patent Attorney Arnold Asmussen, Patent Attorney Dr Axel Leins, VB Vossius & Brinkhof UPC Litigators, Siebertstraße 3, 81675 München, Germany

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PATENT AT ISSUE:

European patent n° EP 3 686 683

PANEL/DIVISION:

Panel 1 of the Local Division in Düsseldorf

DECIDING JUDGES:

This order was issued by Judge Dr Schumacher acting as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT OF THE PROCEEDINGS: R. 262A RoP – Protection of confidential information

SUMMARY OF FACTS:

1. The Claimant sued the Defendants for infringing the European Patent with unitary effect EP 3 686 683 (patent in suit) before the Düsseldorf Local Division. The infringement action targeted certain toner bottles manufactured by Defendant 4 in Taiwan and subsequently offered and distributed by the Defendants in several UPCA Member States (challenged embodiments).
2. In its decision of 11 February 2026, the Düsseldorf Local Division found that the challenged embodiments infringed the patent in suit. The Defendants were ordered, inter alia, to provide the Claimant with information on the extent to which they had committed acts of infringement. Item IV of the operative part of the decision reads as follows:

'Defendants 1, 2, 3 and 4 are ordered, under penalty of a periodic fine of up to EUR 1,000 for each day of delay, within a period of one month from the date of service of the decision, to inform the Claimant of the extent to which the Defendants have committed the actions referred to in item I. since 13 March 2024, by specifying:

- 1) *the origin and distribution channels of the infringing products,*
- 2) *the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the infringing products,*
- 3) *the identity of any third person involved in the production or distribution of the infringing products,*
- 4) *the number and product data of the infringing products offered,*
- 5) *the advertising carried out, broken down by advertising medium, its circulation, the marketing period and marketing area, including evidence for these advertising activities,*
- 6) *the costs, broken down by individual cost factors and the profit obtained,*

whereby

- the list with the data has to be transmitted electronically in a form that can be evaluated by means of EDP (e.g. Excel table), and*

- *copies of the relevant purchase documents (namely invoices, alternatively delivery bills) are to be submitted as proof of the information provided, whereby confidential details outside the information subject to disclosure may be redacted.'*
- 3. On 18 February 2026, the Defendants filed an application for the protection of confidential information under R. 262A RoP with regard to information to be disclosed in accordance with item IV of the decision. The Defendants opposed the application.
- 4. On 11 March 2026, the Defendants requested a provisional confidentiality order, limiting access to the legal representatives only. They submitted emails (Exhibit VB 12), in which the Claimant's UPC representatives agreed that the information would only be disclosed to legal representatives and not be shared with the Claimant, pending a decision by the Court.
- 5. The judge-rapporteur informed the parties that, in light of the statement submitted by email (Exhibit VB 12), the Court did not consider the requested interim order to be necessary.
- 6. On 12 March 2026, the Defendants informed the Court that they had provided the Claimant with the information required under item IV of the decision. In light of the confidentiality agreement, the Defendants have granted exclusive access to a secured shared platform for the Claimant's representatives.

REQUESTS:

- 7. The Defendants request:
 - I. All information and documents disclosed by Defendants in compliance with item IV. of the Local Division Düsseldorf of 11 February 2026 (case numbers: UPC_CFI_351/2024, UPC_CFI_595/2024) (hereinafter: 'Confidential Information') are hereby classified as confidential within the meaning of Art. 58 UPCA and R. 262A RoP. By way of exception, any information provided by Defendants within the proceedings on the merits or related settlement discussions, in particular overall sales figures of the attacked embodiment, shall not be classified as confidential pursuant to R. 262A RoP. This information shall remain confidential within the meaning of R. 262.2 RoP and be subject of the confidentiality agreement agreed upon between the parties on 16 October 2024.
 - II. Pursuant to R. 262A.1 RoP, access to the Confidential Information referred to in paragraph I. shall be restricted exclusively to:
 - a. Claimant's authorised UPC representatives, including their assistants and employees; and
 - b. two (2) designated natural persons on the side of Claimant, to be named by Claimant.
 - c. Auxiliary to lit. (b) if Claimant can substantiate that effective enforcement of its claims pursuant to the purposes of the Information Order is not possible by granting access to only two designated natural persons, as many persons as necessary (to be named by Claimant), however not more than the necessary limited number.

- III. The Confidential Information referred to in paragraph I. shall be treated as strictly confidential by all persons granted access pursuant to paragraph II.

The Confidential Information shall not be used or disclosed outside these proceedings, except to the extent that it has come to the knowledge of the receiving party outside of these proceedings, provided that the receiving party has obtained it on a non-confidential basis from a source other than Defendants or their affiliates, provided that such source is not bound by a confidentiality agreement with or other obligation of secrecy with Defendants or their affiliates.

By way of exception, the receiving party may use the Confidential Information for the purpose of calculating or substantiating its claims for damages in these proceedings and in related or subsequent proceedings, or for enforcing the patent in suit against other alleged infringers, provided that any disclosure to third parties for this purpose is limited to what is strictly necessary and, to the extent reasonably possible, subject to a corresponding confidentiality undertaking by such third parties. Third parties pursuant to this provision does not include Claimant itself or its employees.

The confidentiality obligations set out herein shall apply equally to Claimant itself and its authorized natural persons pursuant to paragraph II.(b). The persons granted access to the Confidential Information pursuant to paragraph II. shall also maintain the confidentiality of the Confidential Information referred to in paragraph I. vis-à-vis Claimant.

This obligation of confidentiality shall continue to apply after the termination of these proceedings.

- IV. The persons granted access to Confidential Information pursuant to paragraph II. shall not participate in or advise upon any business negotiations with Defendants' customers as contained in the Confidential Information for a period of three years from the date of this order, save with Defendants' consent.
- V. In the event of a culpable breach of this order, the court may impose a periodic penalty payment for each violation, the amount of which shall be determined having regard to the circumstances of the individual breach.

8. The Claimant requests the Court to:

- I. dismiss Defendants' application for a confidentiality order of 18 February 2026,
in the alternative,
- II. in case the Court issues a confidentiality order,
 1. restrict the order to information received under item IV. of the Decision that was not already disclosed during the proceedings and/or is not otherwise (publicly) available to Claimant and/or has not come to the knowledge of Claimant outside of the underlying proceedings whether from Defendants and/or their affiliates and/or from a source other than Defendants;

2. allow Claimant to use information received under item IV. of the Decision for calculating and assessing damages and/or pursuing damages proceedings and/or patent infringement against third parties;
3. prohibit disclosure of information received under item IV. of the Decision towards third parties only, such that no intra-company restrictions apply on Claimant's side among its employees and its external counsel including their internal assistants and employees;

in the alternative,

limit access to information received under item IV. of the Decision to specific persons as follows:

- a) access to such information be granted to all natural persons within Claimant reasonably necessary (but not less than ten natural persons to be determined by Claimant) for the purposes of calculating and assessing damages and/or pursuing damages proceedings and/or patent infringement proceedings against third parties;
 - b) any person-based access restrictions to such information apply only to individual data points – such as individual transaction records, discounts or alike – that are not otherwise (publicly) available and that the restrictions do not extend to
 - i. aggregated figures and total sums derived from the disclosed information – including total revenues, total quantities sold, and total profits attributable to the infringing embodiments – and
 - ii. the identity of third parties involved in the supply chain and the extent of their involvement
 - c) in any case Claimant's external counsel, their internal assistants and employees shall have unrestricted access;
4. dismiss Defendants' application for a confidentiality order otherwise.

In case the Court limits the access of information received under item IV. of the Decision to a specific number of natural persons pursuant to item II.3a) above, Claimant requests the Court to

- III. order that the identity and capacity of these natural persons is 'Confidential Information' in the sense of Art. 58 UPCA;
- IV. restrict access to the Confidential Information to Defendants and its legal representatives in the underlying proceedings;
- V. order the persons authorized to access the Confidential Information pursuant to Request IV. not to disclose the Confidential Information to any third party outside of these court proceedings and not to use the Confidential Information for purposes

unrelated to these proceedings. These obligations shall continue to apply even after the conclusion of these proceedings;

- VI. order that prior to publication of an order in connection with Defendants' application for a confidentiality order or other announcements, any Confidential Information be redacted therein;
- VII. impose penalty-payments on Defendants in the amount of up to EUR 10,000.00 per individual act of non-compliance with the obligations set out in item V. to be paid to the Court.

PARTIES' SUBMISSIONS:

9. The Defendants essentially argue as follows:

- The information to be provided under the decision of 11 February 2026 is confidential information within the meaning of Art. 58 UPCA and Art. 2(1) of Directive (EU) 2016/943. The information is not publicly available, particularly not at the required level of detail. It has commercial value, and the Defendants have taken reasonable and appropriate steps to keep it secret.
- The Claimant's legal interest in receiving the information necessary to assess the scope of the alleged infringing acts and quantify their claim for damages does not require unrestricted access to the confidential information. Nor does it justify disseminating the information more widely within the Claimant's company than is strictly necessary to achieve the desired outcome. Disclosing the confidential information to a broader group within the Claimant's organisation, which competes indirectly with the Defendants as aftermarket sellers, would create a real and irreversible risk of competitive harm. It would also distort competition between the parties. Unrestricted disclosure would enable the Claimant to identify and target the Defendants' most profitable customers, distribution channels, and commercial strategies.
- The Claimant's interest in having unrestricted access to the confidential information is negligible, since the enforcement of the Claimant's patent rights and the enforcement of the Court's decisions are primarily and professionally carried out by the Claimant's UPC representatives. Granting access to more than the Claimant's legal representatives and two designated Claimant employees would significantly increase the risk of dissemination and misuse of highly sensitive information.
- A confidentiality order alone does not eliminate the risk of the Claimant's employees inadvertently using confidential information when negotiating sales contracts and other business relationships. Once learned, confidential information cannot be unlearned. Therefore, it is not disproportionate to impose a limited negotiation bar, namely that the Claimant's designated employees shall not participate in or advise on any business negotiations with the Defendants' customers containing the confidential information for a certain period.

10. The Claimant essentially argues as follows:

- The Defendants' application is inadmissible. By its express terms, R. 262A RoP is confined to the treatment of confidential information contained in pleadings, or the

collection and use of evidence in proceedings. This does not apply to the information in question, which must be provided directly to the Claimant as a consequence of an enforceable decision and which is not submitted to the Court.

- The application is inadmissible within enforcement proceedings and the Defendants should have sought confidentiality protection during the main proceedings. The Defendants are essentially seeking to achieve a retrospective alteration to the operative part and scope of the decision, since Art. 67 UPCA and R. 191 RoP do not implicitly limit the use of the information received.
- The application has been filed late. R. 191 RoP, read in conjunction with R. 190.1 RoP, provides that an order to disclose information under Art. 67 UPCA may be made subject to appropriate confidentiality terms. This means that any potential confidentiality restrictions must be included in the disclosure order itself, i.e. the Court's decision in this case.
- In any case, the application is far too broad. It would not be appropriate to implement a person-based access limitation or a negotiation ban in connection with the provision of sales information and accounting.
- The Defendants' application under R. 262 RoP is also inadmissible and unfounded. R. 262.2 RoP concerns solely the restriction of public access and does not govern the relationship between the parties. Furthermore, as the Defendants have not elaborated on the content of the confidentiality agreement between the parties, the Court is unable to determine whether any information disclosed by the Defendants to the Claimant outside the court falls within the scope of that agreement.

GROUNDS FOR THE ORDER:

11. The Defendants are seeking protection for confidential information that must be disclosed in accordance with the Court's decision.
12. R. 262A RoP generally applies to confidentiality requests regarding such information. However, the application should have been made during the proceedings on the merits. As the application was submitted only after the decision had been made, it is inadmissible.

Applicability of R. 262A RoP for information which has to be communicated according to a Court order or decision

13. Pursuant to R. 262A.1 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.
14. Based solely on the wording of this provision, this is not the case. The Defendants are not seeking to protect confidential information contained in their pleadings. Rather, they are seeking protection for information that they are required to disclose under the operative part of the Court's decision.
15. However, as the Court of Appeal has already stated, R. 262A RoP applies at least mutatis mutandis. This already follows from the fact that, according to R. 190.1, second sentence,

RoP, the Court may, for the protection of confidential information, order that the evidence be disclosed to certain named persons only and be subject to appropriate terms of non-disclosure. This is also applicable to communication of information 'as is specified in Art. 67 of the Agreement' pursuant to R. 191 RoP. The same must apply in cases where the court orders the communication of information pursuant to Art. 67 UPCA (UPC_CoA_930/2025, Order of 29 January 2026, para. 26 – EOFlow v. Insulet).

Necessity of filing the application in the proceedings on the merits

16. The Court of Appeal has further stated that, if the defendant can reasonably foresee that the orders and evidence requested by the claimant may require it to disclose confidential information, this should be raised by the defendant during the proceedings on the merits, so that where necessary in the order or decision appropriate measures can be taken to protect such confidential information. Although it would still be possible to file a confidentiality request thereafter, confidentiality issues generally do not stay the time period set for compliance with a penalty reinforced order (UPC_CoA_699/2025, Order of 14 October 2025, para. 45 – Kodak v. Fujifilm).
17. The fact that it might be possible to file a confidentiality request after the proceedings on the merits have been closed does not mean that the application can be submitted in any case after this point. Rather, if it can be reasonably foreseen that confidentiality issues will arise, the application must be made during the proceedings on the merits.
18. In the case at hand, the Defendants could reasonably foresee that the Court's decision may require them to disclose confidential information. They justify the need for confidentiality on the grounds that they are required to disclose detailed information relating to the origin and distribution channels, quantities, the identities of third parties, sales figures, calculation data, advertising activities, costs and profits. This is precisely the information requested by the Claimant in the proceedings on the merits. Therefore, during the proceedings on the merits, the Defendants could have been aware that, should the court rule in the Claimant's favour, they would be required to disclose information that they regard as confidential.
19. The Defendants have not provided any reasons as to why they could not have made the application during the proceeding on the merits.

Limiting the use of information is a matter of substantive law

20. Even if it were possible for the Defendants to submit the application during the enforcement proceedings, they could not achieve the desired outcome in this case.
21. The Defendants are not merely seeking to restrict the access to the information to certain individuals. Rather, they wish to restrict how the information can be used. According to the Defendants' request, the designated persons must generally not disclose the information outside of the proceedings. By way of exception, they may use it for the purpose of calculating or substantiating the Claimant's claim for damages, or for enforcing the patent in suit against other alleged infringers, provided that any disclosure to third parties for this purpose is limited to what is strictly necessary and, to the extent reasonably possible, subject to a corresponding confidentiality undertaking by such third parties.
22. The Court of Appeal has stated that 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 (UPC_CoA_699/2025, Order of 14 October 2025, para. 45 – Kodak v. Fujifilm). Therefore, imposing the limitation requested by the Defendants would restrict the Claimant's right to information. This is a matter of substantive law that must be examined in the proceedings on the merits. During these proceedings, it can be determined whether there are grounds to include such a restriction on the use of the information in the operative part of the decision (see, for example, UPC_CFI_559/2024 (LD Düsseldorf), Decision of 28 April 2026, para. 268 – Quantificare v. Canfield). It is, however, not possible to restrict the substantive content of the operative part of the decision in the enforcement proceedings.

ORDER:

The Defendants' application dated 18 February 2026 is dismissed.

Issued in Düsseldorf on 30 April 2026

NAMES AND SIGNATURES

Judge Dr Schumacher

Jule Kathrin
Schumacher

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