



**Local Division Munich**  
UPC\_CFI\_487/2023

**Order**  
**of the Court of First Instance of the Unified Patent Court**  
**issued on 2 October 2024**

HEADNOTES

1. In principle, a patent pool administrator has a legal interest in the outcome of proceedings within the meaning of Rule 313 RoP.
2. Admission of the intervention is not precluded by the fact that it does not prevent an violation of Article 101 TFEU, since the applicant and a party have the possibility to exchange sensitive information under competition law in their written submissions. Allowing an intervention as such does not constitute a violation of Art. 101 TFEU.
3. By admitting the intervention, the applicant becomes a party to the proceedings and is to be treated as a party in accordance with Rule 315 (4) RoP. Since it must accept the proceedings at this stage, it must be allowed access to the file in order to be able to conduct the proceedings properly.
4. If the court has already classified certain information as confidential and granted only limited access to the party on whose side the intervener is joining pursuant to Rule 262a RoP, the intervener cannot be granted unlimited access to this information.

CLAIMANT

**NEC Corporation**, 7-1 Shiba 5-chome Minato-ku, Tokyo 108-8001, Japan, represented by its President and Chief Executive Officer Mr. Takayuki Morita, *ibid*,

represented by: Dr. Müller, Dr. Henke, BARDEHLE PAGENBERG Partnership mbB  
Patent attorneys, attorneys at law, Bohnenstraße 4, 20457 Hamburg.

DEFENDANTS

1. **TCL Deutschland GmbH & Co. KG**, Am Seestern 4, 40547 Düsseldorf, represented by the general partner TCL Deutschland Verwaltungs GmbH, which in turn is represented by its managing directors, *ibid*,

2. **TCL Industrial Holdings Co., Ltd.**, 22/F, TCL Technology Building, 17 Huifeng 3rd Road, Huizhou, 516000 Guangdong, China, represented by its directors, *ibid*,
3. **TCT Mobile Germany GmbH**, Am Seestern 4, 40547 Düsseldorf, Germany, represented by its managing directors, *ibid*,
4. **TCT Mobile Europe SAS**, 55 Avenue des Champs Pierreux, 92000 Nanterre, France, represented by its directors, *ibid*,
5. **TCL Commuincation Technology Holdings Ltd.**, 5/F, Building 22E, Science Park East Avenue, Hong Kong Science Park, Shatin, Hong Kong, represented by its directors, *ibid*,
6. **TCL Operations Polska Sp., Z.o.o.**, ul. A. Mickiewicza 31/41 96-300 Zyrardow, Poland, represented by its managing directors, *ibid*,
7. **TCL Overseas Marketing Ltd.**, 13/F TCL Tower Tai Chung Road Tsuen Wan, New Territories, Hong Kong, represented by its directors, *ibid*.

Defendants 1) - 6) represented by: Dr. Nack, Dr. Gajeck, Noerr Partnerschaftsgesellschaft mbB, Brienner Str. 28, 80333 Munich, Germany.

#### APPLICANT

**Access Advance LLC**, 100 Cambridge Street, Suite 21400, Boston, MA 02114, USA,

represented by: Dr. Henke, Bardehle Pagenberg Partnership mbB, Bohnenstraße 4, 20457 Hamburg.

#### PATENT AT ISSUE

European patent no° EP 2 645 714 B1

#### PANEL/DIVISION

Panel 2 of the Local Division Munich

#### DECIDING JUDGE

This Order has been issued by the Presiding Judge Ulrike Voß as judge-rapporteur.

#### LANGUAGE OF THE PROCEEDINGS

English

#### SUBJECT-MATTER OF THE PROCEEDINGS

Application pursuant to Rule 313 RoP

## SUMMARY OF FACTS

The Claimant is suing the Defendants for patent infringement based on European patent EP 2 645 714 B1 (patent in suit). The Defendants have filed a counterclaim for revocation of the patent in suit. Defendant 1) has also filed a counterclaim for a FRAND-License Offer (Counterclaim II).

The Claimant has contributed the patent in suit to a pool for HEVC standard essential patents. The Applicant is the administrator of this patent pool. Only patents that are valid and infringed by an implementation of the HEVC standard shall be included in the patent pool administered by the Applicant.

As pool administrator, the Applicant is authorized to grant licenses under the patents in the pool to third parties. It contacts implementers and enters into license negotiations with them for a pool license. In this role, the Applicant is obliged to take over and to fulfil the licensor's FRAND obligations. If an implementer signs a pool license agreement, the Applicant monitors compliance with the license agreement, in particular collects the royalty payments and distributes such royalties to the licensors.

In the present case, too, the Applicant has tried for several years to negotiate a pool license with the Defendants on behalf of the Licensors, including the Claimant, without any success.

As part of these negotiations, the Applicant and the Defendants entered into a non-disclosure agreement (NDA). According to this, the Applicant may only disclose the content of the license negotiations with the Defendants to the Munich Regional Court I, but not to the Claimant.

## SUBMISSIONS OF THE PARTIES

The Applicant wishes to join the present proceedings between the Claimant and the Defendants as an intervener in support of the Claimant.

It is of the opinion that the Defendants are incorrectly arguing that the applicant has allegedly not yet offered a license under FRAND conditions and are accusing the applicant of violating Art. 102 TFEU based on the Applicant's alleged conduct. Therefore, the Applicant has a genuine legal interest in supporting the plaintiff and in the Court rejecting the Defendants' assertions.

Furthermore, it has a genuine legal interest that the Court determines the patent in suit to be valid and infringed.

In order for the Applicant as an intervening party to be able to understand the current state of the proceedings and the arguments of the parties, it must also be granted access to the case file. This could be done through the Claimant's representatives, who are also the Applicant's representatives and could disclose all documents to the Applicant.

Should the intervention be admitted and the Court issue a confidentiality order with regard to confidential information, the Applicant requests access to such information for the following persons:

- [...] ]

The Claimant has no objection against the admissibility of the application to intervene.

The Defendants are of the opinion that the Applicant has not established a legal interest in the outcome of the present proceedings required to intervene under the Rules of Procedure. Instead, the Applicant merely refers to economic advantages and disadvantages that may (or may not) arise from its involvement in the present proceedings. It is not sufficient that the Defendants' FRAND defense and related assertion of Applicant's breach of Article 102 TFEU also relies on Applicant's conduct, which supposedly directly implicates Applicant's role and interest. This interest is only indirectly affected and is merely economic in nature because it is limited to the collection and allocation of license fees or the negotiation of FRAND terms.

Also, the inclusion of the patent in suit to the patent pool is an internal administrative matter that does not directly affect the legal rights or obligations of the Applicant. The revocation of the patent would probably only result in a minor redistribution of license fee revenue without any direct effect on the Applicant. In terms of legal interests, the ruling on the patent in suit's validity and infringement impacts solely affects Claimant's rights, not the Applicants.

Furthermore, the attempt by the Applicant to intervene in the proceedings constitutes an abuse of process. The Applicant is not pursuing a legitimate legal interest, but rather seeking to circumvent the NDA between the Applicant and the Defendants and legal restrictions under European antitrust law. The intervention would allow the Applicant to share with the Claimant the information from the license agreement negotiations with the Defendants, although it is protected by the NDA.

In addition, the Applicant's counsel has noted that the Applicant has instructed him not to forward to the Applicant any information relating to the bilateral discussions between the Claimant and the Defendants. This note appears to be the result of legal concerns regarding European antitrust law, as such information is commercially sensitive and its disclosure to the Applicant would violate Article 101 TFEU. To allow the intervention would mean to allow the sharing of confidential information and not to prevent a violation of Article 101 TFEU.

If, contrary to expectations, the Court were to allow the intervention, the proceedings should in any case be stayed and the ECJ should be asked questions regarding a violation of Art. 101 TFEU. The intervention would allow access to sensitive commercial information and lead to coordinated behaviour by patent holders and pool administrators in license negotiations.

In any case, however, the Applicant – and also the Confidentiality Club named by it – should not be allowed access to the confidential information in the Statement of defence.

## REQUESTS

The Applicant requests:

1. Applicant is admitted as an intervener on the side of the Claimant in the proceedings between the Claimant and the Defendants.
2. Intervener is ordered to lodge a statement of intervention with the deadline for Claimant's reply to the statement of Defence and defence to the counterclaim for revocation.
3. Intervener is allowed to inspect the files, i.e. all submissions, orders and documents of the present proceedings filed by either Party or issued by the Court through the legal representatives of Claimant.

The Defendants 1) - 6) request:

1. The Application to intervene is refused as inadmissible.
2. In the alternative, the following question is submitted to the Court of Justice of the European Union and the proceedings are stayed pending the outcome of this submission:

Does Article 101 TFEU preclude the intervention of a patent pool as an intervener in a patent infringement action concerning Standard Essential Patents (SEPs), where such intervention may

- a) lead the administrator of the patent pool to receive detailed information on ongoing, bilateral licensing negotiations between the SEP holders and SEP users concerning SEPs that are also licensed through the patent pool, and/or
- b) result in a coordination of the licensing negotiation strategy applied by the SEP holders within the patent pool and the administrator of the patent pool,

thus restricting competition between the SEP holders and the patent pool in the licensing of the SEPs in question?

3. In the further alternative, Applicant is denied access to the redacted margin numbers in Defendants' Statement of Defence (FRAND) briefs, as well as the redacted annexes thereto, as specifically identified below.

The Claimant and the Applicant request:

1. The Defendants' requests are rejected.
2. The Application to Intervene is admissible.
3. The employees of Applicant for whom access to confidential information has been requested in the application to intervene dated August 09, 2024, are granted access to the information classified as confidential with the Court's order of August 14, 2024 (ORD\_41186/2024, rectified by ORD\_ 47400/2024).

in the alternative to 3:

4. The employees of Applicant for whom access to confidential information has been requested in the application to intervene dated August 09, 2024, are granted access to the information classified as confidential with the Court's order of August 14, 2024 (ORD\_41186/2024, rectified by ORD\_47400/2024), provided that any confidential information that only relate to the bilateral licensing discussions between the Defendants and the Plaintiff are disclosed to Applicant on an "outside counsel only" basis.

#### GROUND FOR THE ORDER

I.

The request no. 1 is successful.

The application to intervene is admissible because it meets the formal and substantive requirements for admission as an intervener under Rule 313 RoP.

1.

The application to intervene fulfils the formal requirements of Rule 313 (2), (3) and (4) RoP. This is not disputed by the Defendants either.

2.

The Applicant has also established a legal interest in the result of the current proceedings in accordance with Rule 313 (1) RoP.

a)

A legal interest in the result of the action within the meaning of Rule 313 (1) RoP means a direct and present interest in the grant by the Court of the order or decision as sought by the party, whom the prospective intervener wishes to support and not an interest in relation to the pleas in law put forward. It is necessary to distinguish between prospective interveners establishing a direct interest in the ruling on the specific request sought by the supported party, and those who can establish only an indirect interest in the result of the case by reason of similarities between their situation and that of one of the parties. A similarity between two cases is not sufficient (CoA, Order issued on 10 January 2024, CoA\_404/2023 = APP\_584498/2023 (mn. 12); LD Düsseldorf, Order issued on 22. April 2024, CFI\_363/2023 = ACT\_579244/2023; Order issued on 26 June 2024, CFI\_457/2023 = ACT\_590145/2023; LD Vienna, Order issued 30 July 2024, CFI\_33/2024 = ACT\_4261/2024).

b)

The Applicant has established such a legal interest in the outcome of the proceedings.

aa)

As pool administrator, Applicant is entitled to conduct license negotiations with implementers of the HEVC standard, to enter into license agreements for the patents included in the pool, to collect royalties, and to distribute the royalty income to the pool members. This right also exists with respect to the patent in suit that Claimant has included in the patent pool. Applicant derives this legal position with respect to the patent in suit from Claimant. Consequently, the Applicant is directly affected by the outcome of the present proceedings with respect to this legal status. This establishes its direct and present legal interest in the outcome of the proceedings.

In the Statement of claim, the Claimant asserts claims for patent infringement. In the Counterclaim for revocation, the Defendants challenge the validity of the patent in suit. If the Court finds that the patent has been infringed and is valid, the Applicant can assert this against the Defendants, demand a license agreement and collect royalties. Without intervention, there would be a risk that a Court would rule differently in the relationship between the Applicant and the Defendants and find that the patent in suit is not infringed or invalid.

If the result of the present proceedings is that the patent in suit is not infringed or is invalid, the Applicant's legal position is weakened. The other pool members will not want to allow a patent that is not valid or infringed (by implementing the HEVC standard for example) to be part of the patent pool and for the Claimant to receive a share of the royalty revenue for it. According to the Applicant's submission dated 9 September 2024, the Applicant would be legally compelled to remove the patent or at least the invalidated counterparts from the pool. However, without intervention, the Claimant could claim against the Applicant that the Court erred in its decision and that the patent in suit was infringed, valid and therefore part of the patent pool, contrary to the Court's decision.

All of this establishes a legal interest in the outcome of both the infringement action and the revocation counterclaim. It is therefore irrelevant whether the Court has already decided to hear both actions together.

It goes without saying that such a direct and present legal interest regularly goes hand in hand with an economic interest - in this case in the royalties. However, this does not exclude a legal interest within the meaning of Rule 313 (1) RoP.

bb)

Whether the Defendant's allegation that the Applicant breached its FRAND obligations in the pre-litigation license negotiations also establishes the Applicant's legal interest in the outcome of the proceedings can be left open for the reasons stated above.

cc)

There is no apparent abuse of process by the Applicant's request to admit its intervention. The Rules of Procedure provide for the procedural possibility to intervene. Allowing intervention does not mean that the confidential information contained in the NDA between the Applicant and the Defendants will be made available to the Claimant. Rather, it is up to the Applicant and the Defendants, respectively, to decide whether and in what form they wish to introduce

confidential information protected by the NDA into the proceedings. The Defendants therefore rightly see only a possibility of a breach of the NDA ('Applicant could share with Plaintiff information', see Defendants' brief of 27 August 2024, p. 8). The intervention as such does not constitute an abuse of process. Nor does anything to the contrary follow from the action before the Trial Court of the Commonwealth of Massachusetts, which concerns an alleged circumvention of an NDA. This has no bearing on the present proceedings.

dd)

For these reasons, the admission of the intervention is not precluded by the fact that it does not prevent a violation of Article 101 TFEU because the Applicant and the Claimant have the possibility to exchange sensitive information under competition law in their written submissions.

Art. 101 (1) TFEU prohibits as incompatible with the internal market all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market.

However, the admission of the intervention as such does not constitute a violation of Art. 101 TFEU. It does not qualify as an agreement, decision or practice within the meaning of Art. 101 TFEU. Nor is the grant of leave to intervene likely to affect trade between the member states. The fact that the admission to intervene gives the Claimant and the Applicant the opportunity to exchange sensitive information does not in itself prevent the permission. The parties have the same opportunities to exchange information outside the proceedings and the intervention anyway.

It should be noted that the Defendants themselves – rightly – do not claim that the grant of leave to intervene as such constitutes a violation of Article 101 TFEU. They merely refer to the risk of a violation of Art. 101 TFEU. However, allowing intervention does not increase the risk of anti-competitive conduct. It is still up to the Applicant and the Claimant to decide what information to be submitted in the proceedings and whether it establishes anti-competitive conduct. In this context, it should be noted that this conduct is now even more transparent and any suspected anti-competitive conduct is immediately recognizable.

These findings apply irrespective of whether the license negotiations between the Applicant and the Defendants or between the Claimant and the Defendants are concerned. Information from the negotiations between the Applicant and the Defendants is known to the Applicant in any case and has already been partially introduced by the Defendants in the present proceedings. However, it is also unobjectionable if the Applicant obtains knowledge of information from the negotiations between the Claimant and the Defendants. As already stated, the mere receipt of information does not constitute a concerted practice, nor does it affect the trade between the Member States. In any event, there are serious doubts as to whether the Applicant and the Claimant are competitors on the market of patent licensing because the Applicant derives its legal status solely from the Claimant. The Claimant is also not obliged under all circumstances to submit a bilateral license offer to the Defendants. Even if this is assumed, this does not preclude the Applicant from becoming aware of this offer.



On the contrary, the ECJ criticizes the lack of transparency on the market for patent licenses. In the absence of a public standard licensing agreement, and where licensing agreements already concluded with other competitors are not made public, the ECJ considers the patent proprietor to be better placed to present an offer for a license on FRAND terms, specifying, in particular, the royalty and the way in which it is to be calculated (ECJ, GRUR 2015, 764, para. 64 - Huawei ZTE). Therefore, the mere communication or disclosure of information from license negotiations or license agreements is not precluded and does not in itself constitute an infringement of Art. 101 TFEU.

Finally, it is also not apparent and a mere presumption on the part of the Defendants that there is a risk that the Applicant will be coordinating the conduct of the Claimant and the other pool members.

## II.

Applicant's request no. 2 is also successful.

Pursuant to Rule 315 (1) (b) RoP the judge-rapporteur shall specify a period within which the intervener may lodge a Statement in intervention if an Application to intervene is admissible. This is the case here (see above) and requires the setting of a time limit, as in no.3 of the order.

## III.

Applicant's request No. 3 and Claimants' and Applicants' request No. 3 are only successful with the restriction that only the persons named in the order under 4 are to be granted access to the confidential information in the files as far as this information does not relate on the negotiations between Claimant and Defendants.

By admitting the intervention, the Applicant is a participant to the proceedings and is to be treated as a party in accordance with Rule 315 (4) RoP. As it must accept the proceedings at this stage, it must be allowed to inspect the files in order to conduct the proceedings appropriately.

However, the Court has already classified certain parts of the FRAND Counterclaim of the Defendant 1) and of the Statement of defences briefs of the Defendant 1) – 6) and exhibits as confidential (Order issued on 14 August 2024, 16 August 2024, 23 September 2024 and on 30 September 2024). The Applicant can therefore not be granted unrestricted access to this information.

Rather, access was to be restricted to individual employees named by the Applicant and to which the Defendants also raised no objections, as was already the case with the order of 14 August 2024 and of 23 September 2024 with regard to employees of the Claimant and with the order of 30 September 2024 with regard to the experts of the Claimant.

The Applicant has, on the other hand, stated that it has instructed its representatives not to forward any information relating to the bilateral discussions between the Claimant and the Defendants. The Defendants also object to the Applicant having access to this information in the grounds of their request under 3). Against this background and in order to promote the

progress of the proceedings, the Court considers it appropriate not to grant the Applicant access to the information relating to the bilateral discussions between the Claimant and the Defendants until further notice. For the granting of restricted access, please also refer to the reasons for the order dated 14 August 2024, 23 September 2024 and 30 September 2024.

IV.

The Defendants' alternative request 2) is not successful.

Pursuant to Art. 21 UPCA the Court shall cooperate with the CJEU to ensure the correct application and uniform interpretation of Union law, as any national court, in accordance with Art. 267 TFEU in particular. Art. 267 TFEU stipulates that a court may request the CJEU to give a ruling on a question concerning the interpretation of the Treaties or the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union, where such a question is raised and the court considers a decision on the question to be necessary to enable the court to give judgment. As a judicial remedy can be lodged against the court's decision, it is at the court's discretion whether to refer the matter to the CJEU.

The Court exercises its discretion not to refer the questions raised by the defendants to the ECJ. The Court does not consider the questions to be relevant to its decision for the reasons stated above. (I. 2. b) dd)).

V.

The Defendant's alternative request 3) was to be rejected insofar as it seeks to completely exclude the Applicant from access to the information already classified as confidential.

As stated under I. 2. b) dd), the Court has no objections under antitrust law to the participation of the Applicant as an intervener. Since the intervener is to be treated as a party, access to confidential information can only be restricted under the conditions of Rule 262a RoP. However, Rule 262a (6) RoP requires that at least one natural person of the party must have access to the information. For the reasons set out above, the Applicant can for the time being only be excluded from the information relating to the bilateral discussions between the Claimant and the Defendants.

In the present case, the Defendants have only objected to the Applicant as such having access to the confidential information. It has not raised any objections to the named persons and their number, insofar as - as here - access is to be granted.

#### ORDER

1. The Applicant – Access Advance LLC – is admitted as an intervener on the side of the Claimant in the proceedings between the Claimant and the Defendants in the dispute UPC\_CFI\_487/2023.

2. The parties to the proceedings are hereby informed of the admissibility of the application to intervene.
3. The Applicant has the opportunity to lodge a Statement in intervention within the deadline for Claimant's reply to the Statement of defence and Defence to the counterclaim for revocation.
4. Intervener is allowed to inspect the files, i.e. all submissions, orders and documents of the present proceedings filed by either Party or issued by the Court through the legal representatives of Claimant, subject to the following restrictions:

a) The information

- i. outlined in the following table and marked in gray in the FRAND Counterclaim and Statement of defence brief submitted on 8 July 2023 in the name and on behalf of Defendant 1) is classified as confidential:

<b>Subject of the information</b>	<b>Margin Numbers/Annexes of the Brief</b>
Information on the negotiations between Defendants and Access Advance	<ul style="list-style-type: none"> <li>• mn. 14, mn. 18, mn. 20-94; mn. 102-107; mn. 180-183; mn. 185; mn. 187-194; mn. 196 f.</li> <li>• Annexes DF 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17</li> </ul>
Information on the Counterclaim II and what is FRAND in the present case	<ul style="list-style-type: none"> <li>• Request 9. a) - f)</li> <li>• mn. 2-6; mn. 108-125; mn. 203-223; mn. 235 f.; mn. 251; mn. 257-261; mn. 264 f.; mn. 274 f.; mn. 294; mn. 296-303; mn. 308; mn. 319; mn. 321</li> <li>• Annexes DF 19, 20, 21, 55</li> </ul>

- ii. outlined in the following table and marked in gray in the FRAND Statement of Defence brief submitted on 8 July 2023 in the name and on behalf of Defendants 3), 4) and 6) is classified as confidential:

<b>Subject of the information</b>	<b>Margin Numbers/Annexes of the Brief</b>
Information on the negotiations between Defendants and Access Advance	<ul style="list-style-type: none"> <li>• mn. 14, mn. 18, mn. 20-94; mn. 102-107; mn. 180-183; mn. 185; mn. 187-194; mn. 196 f.; mn. 244</li> <li>• Annexes DF 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17</li> </ul>
Information on what is FRAND in the present case	<ul style="list-style-type: none"> <li>• mn. 2-5; mn. 108-125; mn. 203-222; mn. 246</li> <li>• Annexes DF 19, 20, 21</li> </ul>

- iii. outlined in the following table and marked in gray in the FRAND Statement of Defence brief submitted on 12 August 2024 in the name and on behalf of Defendant 2) is classified as confidential:

<b>Subject of the information</b>	<b>Margin Numbers/Annexes of the Brief</b>
Information on the negotiations between Defendants and Plaintiff	<ul style="list-style-type: none"> <li>• mn. 2-4; 18; 88-98; 186; 200; 206 f.; 211-213; 234 f.; 264</li> <li>• Annexes DF 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17; 17a; 17b; 17c; 17d</li> </ul>
Information on the negotiations between Defendants and Access Advance	<ul style="list-style-type: none"> <li>• mn. 5; 20-76; 78-87; 105-110; 183-185; 190-197; 199; 208-210; 218 f.; 266</li> </ul>
Information on Defendants` other licencese agreements, including the VIA Licence, and the CRA Report	<ul style="list-style-type: none"> <li>• mn. 14; 77; 111-128; 188; 214-217; 220-225</li> <li>• Annexes DF 19, 20, 21</li> </ul>

- b) Access to the information classified as confidential under a) shall be restricted. Only the following persons will be granted access to the following information:
- aa) the following employees of the Applicant:
- [...]

to the information designated in rows 1 and 2 of the tables under a) i and a) ii. and to the information designated in rows 2 and 3 of the table under a) iii.

bb) the following representatives of the Applicant:

- Attorney-at-law Dr Tilmann Müller and Dr Volkmar Henke and
- their team, actively involved in these proceedings, including other attorneys-at-law, patent attorneys and support staff

to the information designated in rows 1, 2 of the tables under a) i and a) ii. and to the information designated in rows 1, 2 and 3 of the table under a) iii.

For the avoidance of doubt, no employee of the Applicant will be granted access to the information designated in row 1 of the table under a) iii.

- c) The information referred to in paragraph a) shall be treated as confidential by the employees of the Applicant and the Applicant's representatives, their teams and the employees referred to in paragraph b). Such information shall not be used or disclosed outside of these court proceedings, unless 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 the Applicant or its affiliates, provided that such source is not bound by a confidentiality agreement with or other obligation of secrecy with the Applicant or its affiliates.

This obligation shall also apply to the Applicant.

The foregoing persons shall also be under an obligation to the Applicant to maintain the confidentiality of the information contained in the unredacted versions of the foregoing documents.

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

- d) The information referred to in paragraph a) shall also be treated as confidential by any person not referred to under b) who obtains knowledge of it as a result of his or her involvement in the present proceedings. Such information shall not be used or disclosed outside of these court 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 the Applicant or its affiliates, provided that such source is not bound by a confidentiality agreement with or other obligation of secrecy with the Applicant or its affiliates.

- e) In the event of a culpable breach of this order, the Court may, at request of the Defendants 1) - 6), impose a penalty payment of up to EUR 250.000,00 for each violation. The specific amount of a penalty is determined by the circumstances of the individual breach.
  - f) If the Applicants' representatives named in b) make use of the possibility of giving other members of their team access to information classified as confidential, it is their responsibility to ensure that their team maintains the confidentiality of the information. In the event of a culpable breach of the confidentiality obligations, Dr Tilmann Müller and Dr Volkmar Henke would therefore be liable. This also applies to any breach of the duty of confidentiality by any member of their team to whom they have granted access.
5. Since the Applicant is represented by the same legal representatives as the Claimant, the following applies in the interests of effective conduct of the proceedings:
- a) The Applicant shall be permitted to file any Statement in intervention pursuant to Section 3 via the Claimant's representatives in the CMS.
  - b) The Claimant's representatives are instructed to forward the parties' previous statements as well as the Court's orders and decisions to the Applicant, taking into account the restrictions of Section 4 a)–b) of this Order. For the time being, the Court assumes that the Claimant's representative will forward these documents and that these documents will not be served again to the Applicant.
  - c) In the absence of any indication to the contrary from the Claimant and/or the Applicant in the further course of the proceedings, the Court assumes until further notice that the pleadings of the parties as well as all orders and decisions of the Court will also be forwarded to the Applicant by the representatives of the Claimant. These are deemed to have been received by the intervener upon receipt by the Claimant's authorized representatives.
  - d) The Applicant is instructed to upload any written pleadings in the CMS via the representatives of the Claimant.

DETAILS OF THE ORDER

ORD\_ 54526/2024 related to the main proceedings ACT\_595922/2023

UPC-Number: UPC\_CFI\_487/2023

Action type: infringement Action

Ulrike Voß

Presiding Judge