



Procedural Order
of the Court of First Instance of the Unified Patent Court
issued on 23 December 2024
concerning EP 3 065 184 B1

Claimant:

Maxeon Solar Pte. Ltd., represented by its CEO, 8 Marina Boulevard #05-02, Marina Bay Financial Centre, 018981 Singapur,

Represented by: Attorney-at-law Christian Harmsen, Attorney-at-law Dr Bastian Selck, Bird & Bird LLP, Carl-Theodor-Straße 6, 40213 Düsseldorf,

Electronic address for service: [...]

Contributing: Patent Attorney Dr Felix Harbsmeier, Patent Attorney Cameron Walker, Bird & Bird LLP, Am Sandtorkai 50, 20457 Hamburg,
Tjibbe Douma und Carlos van Staveren, Bird & Bird (Netherlands) LLP, Gustav Mahlerlaan 42, 1082 MC Amsterdam, Niederlande,

Defendants:

1. **Aiko Energy Germany GmbH**, represented by ist CEOs Dr Christian Frank Peter und Haojie Lu, Niederkasseler Lohweg 18, 40547 Düsseldorf, Germany,
2. **Solarlab Aiko Europe GmbH**, Dr Christian Frank Peter, Berliner Allee 29, 79110 Freiburg im Breisgau, Germany,
3. **Memodo GmbH**, represented by its CEOs Enrico Brandmeier, Daniel Schmitt und Tobias Wenleder, Eichenstraße 11 a-d, 85445 Oberding, Germany,
4. **Aiko Energy Netherlands B.V.**, represented by its CEO, Schiphol Boulevard 201 – 1118 BG - Schipol, the Netherlands,
5. **Libra Energy B.V.**, represented by ist CEO Bram van Duijn, Eendrachtsstraat 199, 1951 AX Velsen-Noord, the Netherlands,
6. **VDH Solar Groothandel B.V.**, represented by its CEO, Finlandlaan 1, 2391 PV, Hazerswoudedorp, the Netherlands,
7. **PowerDeal SRL**, represented by its CEO, Rue du Fond des Fourches 41, 4041 Herstal, Belgium,

8. Coenergia Srl a Socio Unico, represented by its CEO, Foro Buonaparte 55, 20121 Milan, Italy,

Defendants 1., 2. and 4. represented by:

Attorney-at-law Gertjan Kuipers, Attorney-at-law Hendrik Jan Ridderinkhof and other Representatives before the UPC of Hogan Lovells International LLP, Strawinskylaan 4129, 1077 ZX Amsterdam, the Netherlands,

Electronic address for service:

[...]

Contributing:

Attorney-at-law Dr Henrik Lehment, Attorney-at-law Vanessa Zipperich and other Representatives before the UPC of Hogan Lovells LLP, Dreischeibenhaus 1, 40211 Düsseldorf, Germany,

Patent Attorney Dr Andreas Schmid, Patent Attorney Cedrik Rohr and other Representatives before the UPC of Hogan Lovells International LLP, Karl-Scharnagl-Ring 5, 80539 Munich, Germany,

Defendants 3. and 5. to 8. Represented by:

Attorney-at-law Dr Constantin Kurtz, Attorney-at-law Dr Stefan Eck, Attorney-at-law Maximilian Reif, Klaka Rechtsanwälte Partnerschaft mbB, Delpstraße 4, 81679 Munich, Germany,

Electronic address for service:

[...]

Contributing:

Patent Attorney Dr Markus Herzog, Patent Attorney Manuel Millahn, Weickmann & Weickmann Patent- und Rechtsanwälte PartmbB, Richard-Strauss-Straße 80, 81679 Munich, Germany,

PATENT IN SUIT:

EUROPEAN PATENT NO. 3 065 184 B1

PANEL/DIVISION:

Panel of the Düsseldorf Local Division

DECIDING JUDGES:

This Order was issued by Presiding Judge Thomas acting as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT: R. 262, 262A RoP – Protection of confidential information

GROUNDS FOR THE ORDER:

1.

Art. 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, upon request, be restricted in whole or in part to a limited number of persons. The protection of confidential information is provided for in Art. 58 UPCA and implemented in R. 262A RoP (see UPC_CFI_54/2023 (LD Hamburg), Order of 3 November 2023, ORD_577703/2023 - Avago Technologies International v. Tesla Germany; UPC_CFI_463/2023 (LD Düsseldorf), Order of 11 March 2024, ORD_8550/2024 – 10x Genomics v. Curio Bioscience; UPC_CFI_347/2024 (LD Düsseldorf), Order of 21 August 2024, ORD_46902/2024 – Valeo Electrification v. Magna).

2.

Since the confidentiality request have not been made at the same time as lodging a document containing the information or evidence, the formal requirements of R. 262A.3 RoP are not met. However, taking into account that Defendants 3., 5. to 8. do not request a limitation of Claimant's access to the file. Rather, they seek that certain information of written pleadings or evidence be kept confidential in the meaning of R. 262.2 RoP. As this provision does not require that the request needs to be filed at the same time with the statement containing the relevant information, Defendant's 3., 5. to 8. request is admissible.

3.

The information contained in the passages marked in green in the Statement of Defence and the Counterclaim for Revocation and Exhibits Aff3 and Aff4 in their version submitted together with the confidentiality constitutes trade secrets.

According to Defendant's 3. and 5. to 8., this information relates to the revenue, profit and sales figures of the Defendants 7) and 8) or may allow conclusions to be drawn in this respect. It relates to the revenue, profit and sales figures and allows conclusions to be drawn as to the profitability of the attacked products and the market position of Defendants 7. and 8 in the Member States covered by the infringement action. This information is therefore valuable and sensitive information. In addition, Defendants 3., 5. to 8. have explained in detail why this information is neither generally known nor readily accessible to persons who normally deal with this type of information and is therefore still valuable because of its confidential nature.

4.

The Court has refrained from setting an upper limit on the potential penalties to be imposed. This gives the Court the necessary flexibility to take account of the circumstances of each individual breach of the confidentiality order and to determine the penalty payments on that basis (UPC_CFI_347/2024 (LD Düsseldorf), Order of 9 September 2024, ORD_49462/2024 – Valeo v. Magna).

5.

To the extent that Defendants' 3. and 5. to 8. also request confidentiality pursuant to R. 262.1 (b) RoP (request no. III), with respect to the oral hearing (request no. IV.) and the reasoning of the judgement (request no. V.), a decision on these requests will be taken at the appropriate time, if necessary. At this point of time, there is no need for action in this regard.

ORDER:

- I. The following information is classified as confidential within the meaning of Art. 58 UPCA, R. 262.2 RoP:
 1. The green-shaded statements/numbers included in the Statement of Defence and Counterclaim for Revocation as submitted by Defendants 3., 5. to 8. together with their confidentiality request dated 6 November 2024 relating to revenue, profit and sales figures of Defendants 7. and 8. including the green-shaded details on the calculation methods for the enforcement securities;
 2. Exhibit Aff3 and Aff4 which concern details related to the revenue, profit and sales figures of Defendants 7. and 8.
- II. The information classified as confidential under item I. shall be kept strictly confidential by anyone who becomes aware of it by reason of his or her participation in these proceedings (as a party, representative, witness, expert, court employee, or otherwise). The aforementioned persons must not use or disclose the information classified as confidential outside of these court proceedings, except to the extent that there is proof that they have legitimately obtained knowledge of the confidential information outside of the present court proceedings and, if applicable, the restrictions associated with this other acquisition of knowledge, in particular restrictions arising from contractual confidentiality agreements, are adhered to.
- III. In the event of a culpable breach of this Order, the Court may impose a penalty payment for each breach, to be determined having regard to the circumstances of each case.

DETAILS OF THE ORDER:

App_59980/2024, App_60000/2024, App_60010/2024 and App_60016/2024 under main file references ACT_36426/2024 and CC_57310/2024

UPC numbers: UPC_CFI_336/2024 and UPC_CFI_605/2024

Type of procedure: Infringement action and Counterclaim for revocation

Issued in Düsseldorf on 23 December 2024

NAME UND SIGNATURE

Presiding Judge Thomas