

UPC_CFI_472/2024
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 24/01/2025
Order no. ORD_68844/2024

DAINESE S.p.A.

- Plaintiff -

against

ALPINESTARS S.p.A.

- Defendant 1 -

and against

ALPINESTARS RESEARCH S.p.A.

- Defendant 2 -

and against

OMNIA RETAIL S.R.L.

- Defendant 3 -

and against

HORIZON MOTO 95 - MAXXESS CERGY

- Defendant 4 -

and against

ZUND.STOFF AUGSBURG

- Defendant 5 -

and against

MOTOCARD BIKE, S.L.

- Defendant 6 -

PATENT AT ISSUE

Patent no.

Proprietor/s

EP4072364

Dainese S.p.A.

EP3498117

Dainese S.p.A.

No SPC details provided

Patent no.

SPC details

SPC ID

National Designations

No

DECIDING JUDGE

Judge-rapporteur

Alima Zana

COMPOSITION OF PANEL – FULL PANEL

Presiding judge

Pierluigi Perrotti

Judge-rapporteur

Alima Zana

Legally qualified judge

Anna-Lena Klein

Technically qualified judge

Graham Ashley

LANGUAGE OF PROCEEDINGS: English

ORDER

1 SUMMARY OF FACTS

On 2 December 2024, Dainese spa (claimant in the main proceeding) has put forward information in its partial withdraw (App. 63772/2024), alleging its confidential nature.

With regard to said information Dainese submitted an application for protection of confidential information under R. 262A RoP using the dedicated workflow in the CMS(63878/2024) and uploading a redacted versions of their written submissions.

[REDACTED]

By orders filed on 4 December 2024 and 10 January 2025 the judge rapporteur invited the other parties to comment the application.

On 17 January 2025 the defendant n.1 requested that:

- that the Claimant's application under Rule 262A is rejected.
- in alternative:

[REDACTED]

[REDACTED]

2.2. The Court observes that:

[REDACTED]

This document is confidential:

[REDACTED]

- (i) is not generally known and is not available to third parties;
- (ii) has undoubtedly of an economic value, i [REDACTED]
- (iii) is protected by appropriate confidentiality measures [REDACTED]

(see Milan Local Division, 1 October 2024, Order no. ORD_54120/2024 UPC number: UPC_CFI_400/2024, Related proceeding no. Application No.: 40442/2024)

[REDACTED]

[REDACTED]

3. THE CONFIDENTIAL CLUB

3.1. Dainese's request for confidentiality is modulated by a request for complete refusal of access. Defendant n. 1 and 6 request that access to the unredacted version [REDACTED] be granted at least to the following persons:

[REDACTED]

3.2. The Court recalls the case law of the UPC on this respect and in particular:

- *Where an application for protection is successful, access to the confidential information must be limited. At least one natural person must have access for each party to the proceedings. If there is more than one defendant and therefore more than one party, each of them is entitled to nominate a natural person ("one natural person from each party"), see Munich Local Division, 14 January 2025, UPC_CFI_145/2024 UPC_CFI_146/2024 UPC_CFI_147/2024 UPC_CFI_148/2024);*
- *according to the wording of the law, access must be granted to all lawyers or other representatives of these parties to the proceedings. There is no numerical limit. ("), see Munich Local Division, 14 January 2025, UPC_CFI_145/2024 UPC_CFI_146/2024 UPC_CFI_147/2024 UPC_CFI_148/2024);*
- *"), see Munich Local Division, 14 January 2025, UPC_CFI_145/2024 UPC_CFI_146/2024 UPC_CFI_147/2024 UPC_CFI_148/2024);*
- *"When deciding the application of the defendants to grant protection for the allegedly confidential information, the court has to weigh the right of a party to have unlimited access to the documents contained in the file, which guarantees its fundamental right to be heard, against the interest of the opposing party to have its confidential information protected. Both fundamental principles have to be balanced against each other on the instant facts of the particular case" (Düsseldorf Local Division App_6761/2024 related to the main proceeding ACT_578607/20239) ;*
- *"R. 262A.6 RoP establishes with all desirable clarity as a ground rule of paramount importance that at least one natural person from each party and the respective lawyers or other representatives are to be granted access in order to ensure a fair trial. The provision therefore reflects the spirit of the trade secret directive, which also demands for access of at least:*

-one natural person from each of the parties

(The protection of classified information is ensured by the fact that authorised parties are also subject to a confidentiality order with penalties for non-compliance (UPC_CFI_355/2023 (LD Düsseldorf), Order of 27 March 2024, ORD_7096/2024, Fuji-film v. Kodak, Dusseldorf 23 December 2024, App. 57498/2024, ACT 36426/2024)

-their respective representatives

in order to guarantee the fundamental right to a fair trial (see recital 25 and Art. 9 (2) of the trade secrets directive). This has been an express decision by the Member States of the European Union which is to be respected by the UPC (Art. 20, 24(1)(a) UPCA)" (Düsseldorf Local Division App_6761/2024 related to the main proceeding ACT_578607/20239);

The Court notes that the last rule, which is designed to protect the principle of the adversarial process, may be derogated:

A) with parties' consent;;

B) in the event of interference of the patent system with the antitrust system: the Community system expressly allows that access is not granted to natural persons but only to their advisers (see EUROPEAN COMMISSION COMMUNICATION 'Communication on the protection of confidential information by national courts in proceedings concerning the private enforcement of EU competition law' (2020/C 242/01, para. 61 (see Milan Local Division 6 may

suspensive effect unless the Court of Appeal decides otherwise. However, these provisions do not prevent the Court of First Instance from deciding that an action should be enforced at a future date. This gives Dainese sufficient time to appeal and request suspensive effect, pursuant to Article 223 of the RoP.

ORDER

I Dainese is invited to lodge a redacted and an unredacted version of exhibit n. 70 in English language until the 29th of January 2025;

II. Dainese Confidential Documents), i.e.

[REDACTED]

are classified as confidential;

III access to the unredacted version of

[REDACTED]

shall be restricted from Defendant's 1 side and from Defendant's 6 side exclusively to the following persons:

[REDACTED]

III. the other defendants (n. 2,3 and 5 are excluded from the access of the unredacted version of

[REDACTED]

IV. information classified as confidential 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 defendant or its affiliates, provided that such source is not bound by a confidentiality Agreement with or other obligation of secrecy with the defendant or its affiliates.

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

The obligation of confidentiality shall continue to apply after the termination of these proceedings;

VI. in the event of a breach of this order the Court may impose a penalty pursuant to Rule No. 354(3) R.o.P. against the defendant n. 1 and the defendant n., 6.

VII. leave to appeal is granted;

VIII. the costs relating this proceeding will be settled together with the costs of the main proceedings.

Issued in Milan on 24 January 2025

NAMES AND SIGNATURES

Alima Zana

Alima
ZANA

Firmato
digitalmente da
Alima ZANA
Data: [REDACTED]
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Order no. ORD_68844/2024 in ACTION NUMBER: ACT_45469/2024
UPC number: UPC_CFI_472/2024
Action type: Infringement Action
Related proceeding no. Application No.: 63878/2024
Application Type: APPLICATION_ROP262A