



Order
of the Court of First Instance of the Unified Patent Court
issued on 30 April 2025
concerning EP 3 476 616
concerning App_17782/2025
(Exchange of members of the confidentiality club)

CLAIMANT:

FUJIFILM Corporation, 26-30, Nishiazabu 2-chome, Minato-ku, Tokyo 106-8620, Japan,

represented by: Tobias Hahn, HOYNG ROKH MONEGIER, Steinstraße 20,
40212 Düsseldorf, Germany

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DEFENDANTS:

1. Kodak GmbH, Kesselstraße 19, 70327 Stuttgart,

represented by: Elena Hennecke, Freshfields Bruckhaus Deringer
Rechtsanwälte Steuerberater PartG mbB, Feldmühleplatz 1,
40545 Düsseldorf, Germany

electronic address for service: elena.hennecke@freshfields.com

2. Kodak Graphic Communications GmbH, Kesselstraße 19, 70327 Stuttgart,

represented by: Elena Hennecke, Freshfields Bruckhaus Deringer
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13, 80333 Munich, Germany

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3. Kodak Holding GmbH, Kesselstraße 19, 70327 Stuttgart,

represented by: Elena Hennecke, Freshfields Bruckhaus Deringer
Rechtsanwälte Steuerberater PartG mbB, Maximiliansplatz
13, 80333 Munich, Germany

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PATENT AT ISSUE:

European patent 3 476 616

PANEL/DIVISION:

Panel of the Local Division in Mannheim

DECIDING JUDGES:

This order was issued by the legally qualified judge and judge-rapporteur Böttcher after consultation with the presiding judge.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT OF THE PROCEEDINGS: Exchange of members of the confidentiality club

BRIEF SUMMARY OF THE FACTS:

Claimant seeks to replace three of nine members of the confidentiality club pursuant to R. 262A RoP by three other of its employees. Claimant argues that the employees to be replaced have been assigned other tasks.

Defendants oppose the request, arguing that the circle of persons with access to the confidential information should not be expanded.

Claimant requests,

that the aforementioned changes be made with regard to the members of the EP616 Confidentiality Club to the procedural order of 15 April 2024 as well as all subsequent R. 262A RoP orders issued in the EP616 proceedings.

Defendants request,

to dismiss the Claimant's request of 11 April 2025 to change the members of the EP 616 Confidentiality Club according to the procedural order of 15 April 2024 as well as subsequent R. 262A RoP UPC orders issued in the EP 616 proceedings.

REASONS FOR THE ORDER:

1. The court is competent to decide on Claimant's request to exchange its members of the confidentiality club pursuant to R. 262A RoP. The separated part of the proceedings is still pending before the panel. Apart from that, the same is true for the part which formed the subject-matter of the panel's decision of 2 April 2025, which is not appealed yet.
2. When deciding on a request asking to exchange members of a confidentiality club pursuant to R. 262A RoP, the court has to take into account all circumstances of the case at hand and balance the interests of the parties.

3. Applying these principles, Claimant's request is allowed in part only.

First, Claimant itself decided to relocate the concerned three members internally without ensuring that they could continue to work on the case, at least on a secondary basis. Claimant did not explain why such an arrangement was not possible. An exchange of the three members would result in further persons gaining access to the confidential information. However, two of the persons designated as replacement have already access to confidential information stemming from the parallel proceedings UPC_CFI_365/2023. Against this backdrop, the replacement of Mr. [...] (IP div.) by Mr. [...] (IP div.) and the replacement of Mr. [...] (GC Dev. Center) by Mr. [...] (GC Dev. Center) does not unduly affect Defendants' interests. In contrast, Mr. [...] (GC Bzi. Div.) designated as replacement for Mr. [...] (GC Biz. Div.) is not member of the confidentiality club established in the parallel proceedings UPC_CFI_365/2023. In addition, according to Claimant's submission of 8 May 2024, Mr. [...]’s department “GC Business” is responsible for the management of the business side of the litigation. Claimant then justified the involvement of this department by stating, that, without its involvement, it would not be possible to review the business figures presented by the defendants and to also check and reply to the business-related pleadings of the Defendants in the context of prior use, such as alleged market entry, its scope and general business credibility. From that department, Claimant then designated Mr. [...] as Senior Manager and Mr. [...] as manager to assist him. In the present stage of the proceedings, the essential work justifying the involvement of the department “GC Business” should have been done. Thus, it is not apparent why Mr. [...] needs further assistant and why such further assistance could not be provided by Mr. [...] on a secondary basis.

ORDER:

1. The access authorization on behalf of Claimant pursuant to the previous confidentiality orders pursuant to R. 262A RoP is expanded to the following employees of Claimant:
 - Mr. [...] (IP div.)
 - Mr. [...] (GC Dev. Center)

The access authorization of the foregoing persons are subject to the same conditions and obligations as those set out in the aforementioned orders issued to date. These orders must be brought to the attention of the foregoing persons by Claimant's UPC representatives.

In particular, the foregoing persons are obliged to treat the information concerned as confidential. 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 Defendants or their affiliates, provided that such source is not bound by a confidentiality agreement with or other obligation of secrecy with the Defendants or their affiliates.

This obligation shall also apply to the Claimant.

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 documents concerned.

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

2. Further requests are rejected.
3. Mr. [...]’s and Mr. [...]’s access authorization pursuant to the previous confidentiality orders pursuant to R. 262A RoP is terminated. They must destroy the information already received or hand it over to their substitute referred to in paragraph 1 or other remaining persons authorized to access it on behalf of the Claimant or to the Claimant's UPC representatives for safekeeping and, if necessary, use under the applicable confidentiality regime. The termination of access authorization does not affect Mr. [...]’s and Mr. [...]’s obligation to comply with the obligations imposed in the previous orders pursuant to R. 262A RoP.

ORDER DETAILS

Order no. ORD_17842/2025 in ACTION NUMBER: ACT_578818/2023

UPC number: UPC_CFI_359/2023

Action type: Infringement Action

Related proceeding no. Application No.: 17782/2025

Application Type: Generic procedural Application

Issued in Mannheim on 30 April 2025

NAME AND SIGNATURE

Böttcher

Judge-rapporteur