



Local Division Munich
UPC_CFI_402/2023

Procedural Order
of the Court of First Instance of the Unified Patent Court
Local Division Munich
issued on 9 August 2024

CLAIMANT

Abbott Diabetes Care Inc., 1360 South Loop Road, Alameda, CA 94502, USA, represented by CEO Robert Ford, at the same address,

represented by: Attorneys-at-law Dr. Dietrich Kamlah, Dr. Christian Lederer, Dr. Gisbert Hohagen, Taylor Wessing Partnerschaftsgesellschaft mbB, Isartor 8, 80331 Munich, Germany, Patent Attorney Dr. Esslinger, Betten&Resch Partnerschaftsgesellschaft mbB, Maximilianplatz 14, 80333 Munich, Germany.

DEFENDANTS

1. **Dexcom Inc.**, 6340 Sequence Drive, CA 92121 San Diego, USA, represented by CEO Kevin Sayer, at the same address,
2. **Dexcom Deutschland GmbH**, Haifa-Allee 2, 55128 Mainz, Germany, represented by the managing directors Michael Jon Brown, Alexander Frohlich and Jereme Michael Sylvain, at the same address,
3. **Dexcom International Limited**, 1 Lampousas Street, 1095 Nicosia, Cyprus, represented by director Jereme Michael Sylvain at the same address,

all represented by: Attorneys-at law Dr. Marcus Grosch, Jérôme Kommer, Dr. Andreas Hahne, Armin Giesen, Maximilian Meier, Quinn Emanuel Urquhart & Sullivan, LLP, Hermann-Sack-Straße 3, 80331 Munich, Germany, Patent Attorneys Markus Müller and Eve O Conner, Hoffman Eitle Arabellastraße 30, 81925 München.

PATENT AT ISSUE

European patent n° EP 4 087 195

PANEL/DIVISION

Panel 2 of the Local Division Munich

DECIDING JUDGE

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

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT-MATTER OF THE PROCEEDINGS

Rule 262A RoP – Protection of confidential information

SUMMARY OF FACTS AND REQUEST

By written submission dated 26 June 2024, Defendants filed an application pursuant to R 262.A RoP. They request:

1. The internal information of the Defendants' contained in the Rejoinder of 26 June 2024 (highlighted in gray) is confidential information that must be treated as strictly confidential and may not be used or disclosed outside the present legal proceeding, even after its conclusion. The Claimant may make the designated information accessible only to its representatives in this proceeding and internally only to a maximum of three reliable persons who are to be named to the Local Division and the Defendants and who have a legitimate interest in it and who shall treat the confidential information as strictly confidential within their own company and not disclose it to any third party.
2. In the event the Claimant violates a corresponding order, the Local Division may, at the Defendants' request, impose a recurring penalty payment of up to EUR 250,000.00 for each individual case of non-compliance and enforce it immediately.

By preliminary order issued on 28 June 2024, the judge-rapporteur invited the Claimant to comment on the Defendant's confidentiality request.

In its written submission of 7 August 2024, the Claimant named the following persons to whom access should be granted to the confidential version of the Rejoinder of 26 June 2024:

- [...],

- [...] and
- [...].

Otherwise, the Claimant did not wish to comment on the request pursuant to Rule 262A RoP of the Defendants.

GROUNDINGS OF 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 Article 58 of the UPCA and implemented in Rule 262A of the Rules of Procedure of the Unified Patent Court (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).

2.

The formal requirements of R. 262A.2 and .3 VerfO were complied with. The representatives of the Claimant were also heard before the confidentiality order was issued, as required by R. 262A.4 RoP.

3.

The Claimant has not disputed that the information classified as confidential by the Defendant are trade secrets or at least confidential information. It must therefore be assumed that the information in question is worthy of protection.

4.

With regard to the group of authorised persons that is concerned, the Mannheim Local Division has rightly pointed out that there is normally no reason to limit the access of the representatives of the Claimant to a certain number or even to UPC representatives and their internal assistants, who must also be named (UPC_CFI_471/2023 (LD Mannheim), Order of 3 July 2024, ORD_33986/2024 Aylo Freesites v. DISH).

However, it cannot be ignored that R. 262A.6 RoP requires that the number of persons having access to the confidential information shall not be greater than it is necessary to ensure that the rights of the parties to the proceedings to an effective remedy and to a fair trial are respected. This requirement also applies to the parties' representatives. Therefore, the number of representatives granted access to the confidential information should not be "unlimited" or "indeterminable". Nor should the latter be the case, as effective protection of confidential information also requires clear accountability. It must be clear who is obliged to

maintain confidentiality and who can be held responsible and legally liable in the event of a breach of the confidentiality order (see UPC_CFI_140/2024 (LD Düsseldorf), Order of 8 August 2024, ORD_42284/2024 - 10x Genomics v. Curio Bioscience).

Against this background, the Court has granted access to the representatives named as the Claimant's representatives in the statement of claim. In order not to restrict the Claimant's right to choose its legal representatives, the Court has granted these representatives the right to share the relevant information with their team working on the case. If the Claimant's representatives who have access to the confidential information make use of this possibility to share this information with other members of their team, 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, the representatives who have been granted access to the information would therefore be liable. This also applies to a breach of confidentiality by their team members to whom they have granted access (see UPC_CFI_140/2024 (LD Düsseldorf), Order of 8 August 2024, ORD_42284/2024 - 10x Genomics v. Curio Bioscience).

5.

The Claimant has named three persons who are to be granted access. In doing so, it has complied with the Defendant's request with regard to the number of persons to be named by it.

ORDER

I. Access to the unredacted version of the Defendants Rejoinder of 26 June 2024, which is hereby classified as confidential, shall be restricted, on part of the Claimant to the following persons only:

1. the following representatives of the Claimant:

- Attorneys-at-law and UPC representatives Dr Dietrich Kamlah, Dr Christian Lederer and Dr Gisbert Hohagen;
- European Patent attorney and UPC representative Dr Alexander Esslinger

and their teams, actively involved in these proceedings, including other attorneys-at-law, patent attorneys and support staff.

2. the following employees of the Claimant:

- [...],
- [...] and
- [...].

- II. The information referred to in paragraph 1 shall be treated as confidential by the Claimant's representatives, their assistants and the employees referred to in paragraph I. Such information shall not be used or disclosed outside of these court proceedings.

This obligation shall also apply to the Claimant.

The natural persons named by the Claimant shall treat the confidential information as strictly confidential within their own company and do not disclose it to any third party.

The foregoing persons shall also be under an obligation to the Claimants 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.

- III. In the event of a culpable breach of this order, the Court may, at request of the Defendants, 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.
- IV. If the Claimant's representatives named in paragraph I. 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 Dietrich Kamlah, Dr Christian Lederer and Dr Gisbert Hohagen and Dr Alexander Esslinger 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.

DETAILS OF THE ORDER

App_ 38165/2024 related to the main proceedings ACT_584295/2023

UPC-Number: UPC_CFI_402/2023

Order no. ORD_38807/2024

Ulrike Voß
Presiding Judge