

UPC_ CFI_11/2023

ORDER
of the Court of First Instance of the Unified Patent Court
delivered on 17 October 2023

HEADNOTES:

Article 45 UPCA means that also the written procedure of the Court shall, in principle, be open to the public unless the Court decides to make it confidential, to the extent necessary, in the interest of one of the parties or other affected persons, or in the general interest of justice or public order. If a person has made an application under Rule 262.1(b) for access to pleadings or evidence and provided a credible explanation for why he/she wants access, the application shall be approved unless it is necessary to keep the information confidential.

KEYWORDS:

Rule 262.1(b) RoP request (partially approved).

REFERENCE CODE ECLI: Not provided

APPLICANT:

[REDACTED]

RELEVANT PROCEEDING PARTIES

- | | | |
|-----------|--|--|
| 1) | Ocado Innovation Limited , Buildings One & Two
Trident Place, Mosquito Way, AL10 9UL Hatfield,
United Kingdom | Represented by
Anna Bladh Redzic
Simon Ayrton
Thomas Oliver
Joel Coles |
| 2) | Autostore AS , Stokkastrandvegen 85, 5578 Nedre
Vats, Norway | Represented by
Laura Ramsay
Annabel Beacham |

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|---|---|
| 3) Autostore Sp. z o.o. , ul. Ignacego Łukasiewicza 4,
75-202 Koszalin, Poland | Represented by
Laura Ramsay
Annabel Beacham |
| 4) Autostore System AB , c/o Hannes Snellman
Advokatbyrå AB, Box 7801, 103 96 Stockholm,
Sweden | Represented by
Laura Ramsay
Annabel Beacham |
| 5) Autostore S.A.S. , 55 Ter Avenue René Cassin,
69009 Lyon, France | Represented by
Laura Ramsay
Annabel Beacham |
| 6) Autostore System GmbH , IM Striep 10, 41069
Monchengladbach, Germany | Represented by
Laura Ramsay
Annabel Beacham |
| 7) Autostore System AT GmbH , St. Peter Gürtel 4,
8042 Graz, Austria | Represented by
Laura Ramsay
Annabel Beacham |
| 8) Autostore System Srl , Via Agnello, 8, 20121
Milano, Italy | Represented by
Laura Ramsay
Annabel Beacham |
| 9) Autostore System S.L , Edificio Coronales, Bahía
de Pollensa 12, 2nd floor, 28042 Madrid, Spain | Represented by
Laura Ramsay
Annabel Beacham |

PATENT AT ISSUE

European patent n° EP3653540

DIVISION

Nordic-Baltic Regional Division

LANGUAGE

English

DECIDING JUDGE

This is an Order by the judge-rapporteur / presiding judge Stefan Johansson

SUBJECT-MATTER OF THE PROCEEDINGS

262.1(b) request

SUMMARY OF THE FACTS

In June 2023, the claimant brought an infringement action against the defendants at the Nordic-Baltic Regional Division of the Unified Patent Court (ACT_459791/2023), requesting the Court to declare that European Patent No. EP 3 653 540 had been infringed in certain European States, and to issue orders (including permanent injunctions) based on those alleged infringements. Even before all defendants formally had been served the statement of claim, the claimant informed the Court that the parties and their affiliates had concluded a settlement and made a request to withdraw the infringement action. The defendants confirmed the settlement and had no objection to the closure of the proceedings. The proceedings were declared closed on 8 September 2023.

Parallel proceedings between the same parties, based on other patents, had been initiated and were withdrawn at the local divisions of the Court in Düsseldorf and Milan.

In relation to the case at the Nordic-Baltic Regional Division, the Registry has received a request pursuant to Rule 262.1(b) of the Rules of Procedure of the Unified Patent Court ('RoP') from the applicant, requesting access to the statement of claim, along with any orders made in this case and, if possible, any orders made in the parallel cases between the same parties at the local divisions in Düsseldorf and Milan. In support of the request, the applicant states, inter alia, that he is interested to see how the claim filed in the Nordic-Baltic division was framed, particularly since it was filed in parallel with cases in other divisions, and that he believes there is broader public interest in this information being made available for public scrutiny and discussion as the new court system launches and develops.

According to Rule 262.1 (b) RoP, the judge-rapporteur is to decide on the request after consulting the parties.

The parties have been invited to submit their comments and/or observations, including any request pursuant to Rule 262.2 RoP.

The claimant objects to the application, primarily based on the following arguments. Rule 262.1(b) relates to "written pleadings and evidence". It does not relate to the provision of orders. Since there is no legal basis to request provision of such documents, the requests that the orders made in these proceedings be provided to him pursuant to R.262.1(b) must be rejected. The applicant should have to wait for the orders to be published on the website, just as everyone else. When it comes to written pleadings and evidence, Rule 262.1(b) RoP requires a "reasoned request", which means that there has to be a concrete, verifiable and legitimate reason for making the documents available to a member of the public (cf. e.g. Order no. 550152 by Munich Central Division of the Unified Patent Court, dated 20 September 2023, ACT_459505/2023). A third party should not be permitted to use the carefully constructed pleadings (prepared at a not insignificant cost) with a

view to advancing its own commercial interests, and the claimant has no way of verifying how the knowledge gained from reviewing its statement of claim will be applied in practice.

In the event that the application is granted, the claimant request that the provision of the documents to the applicant is stayed pending the outcome of any appeal, or at least that the document is not provided to the applicant until a date 21 days from the date of any order, to ensure that the claimant has sufficient time to apply to the Court of Appeal for suspensive effect in accordance with Rule 223 RoP.

The defendants' representatives have not been able to get access to the case in the CMS, but they have confirmed service outside the CMS on behalf of the defendants and informed the Court by e-mail that the defendants have decided not to submit any reply.

None of the parties have submitted a request for confidentiality pursuant to Rule 262.2 RoP.

FORMS OF ORDER SOUGHT

The applicant requests access to the statement of claim, along with any orders made in this case and, if possible, any orders made in the parallel cases between the same parties in the local divisions in Düsseldorf and Milan, in accordance with Rule 262.1(b) RoP.

GROUNDINGS FOR THE ORDER

The legal framework

According to Article 10 of the Agreement on a Unified Patent Court (UPCA), the register kept by the Registry shall be public, subject to conditions set out in this Agreement and the Rules of Procedure (RoP). It is not clear from this provision if the main rule on a public register also apply to the content of the register, including pleadings. However, Article 45 UPCA clarifies that the proceedings of the Court shall be open to the public unless the Court decides to make them confidential, to the extent necessary, in the interest of one of the parties or other affected persons, or in the general interest of justice or public order. This general provision is not limited to decisions, orders or oral hearings, but refer to the proceedings as such. According to Article 52 UPCA, the proceedings before the Court consist of a written, an interim and an oral procedure.

In this Courts view, this means that also the written procedure shall, in principle, be open to the public, unless the Court decides to make it confidential, to the extent necessary, in the interest of one of the parties or other affected persons, or in the general interest of justice or public order. This has to be kept in mind when interpreting the more detailed provisions on access to documents in the register, i.e. Rule 262 RoP (cf. Article 24 of the Statute).

Rule 262 RoP, which has the title "Public access to the register" (cf. Article 10 UPCA), contain provisions on the publics access to decisions and orders made by the Court, and to written pleadings and evidence. It specifies that decisions and orders made by the Court shall be published, while written pleadings and evidence, lodged at the Court and recorded by the Registry shall be available to the public upon reasoned request to the Registry.

The expression "reasoned request" also appears in several other provisions in the Rules of Procedure, e.g. Rule 9, which, inter alia, gives the Court the possibility to extend or shorten a time period on the basis of a reasoned request. When it comes to access to documents, this expression

should be understood to mean that the applicant needs to provide a credible explanation for why he/she wants access to the pleadings or evidence. This information can be relevant when determining whether there is a need to keep information confidential.

The interpretation just described builds on Article 45 UPCA and is in line with Rule 262.6, which clarifies that even if a party make a request under Rule 262.2 that certain information of written pleadings or evidence be kept confidential, the Court shall allow the application for access unless legitimate reasons given by the party concerned for the confidentiality of the information outweigh the interest of the applicant to access such information.

The request in this case

The applicant has asked for access to

- the statement of claim,
- any orders made in this case, and
- if possible, any orders made in the parallel cases between the same parties at the local divisions in Düsseldorf and Milan.

Access to the statement of claim

The applicant has provided a credible explanation for why he wants access to the statement of claim. None of the parties have submitted a request for confidentiality pursuant to Rule 262.2 RoP. It is not necessary to make the document confidential in the interest of other affected persons, or in the general interest of justice or public order. Therefore, the applicant shall be given access to the statement of claim, after redaction of personal data within the meaning of Regulation (EU) 2016/679.

Access to orders made in this case

The only decision/order issued in relation to ACT_459791/2023 is the decision that declares the proceedings closed, which includes, inter alia, an order on the value of the action. This decision/order is already published on the UPC website, in accordance with Rule 262.1(a) RoP. Therefore, the application shall be rejected in this respect.

Access to any decisions/orders made by other divisions in related cases

According to Rule 262.1(b) RoP, the judge-rapporteur is to decide on a request for access to documents. This means that the judge-rapporteur – or the panel – assigned to the case at the Nordic- Baltic Regional Division may decide whether an application for access to documents in this case shall be approved, but not whether an application for access to documents in other cases shall be approved. Consequently, the application for access to orders made by the Court in other cases must be rejected.

In this situation, it is not necessary for the Court to take a position on whether it, in principle, is possible to approve an application for access to an order that has not yet been published on the UPC website. However, the Court notes that decisions and orders made by the Court shall be published, in accordance with Rule 262.1(a) RoP, and that at least some of the other orders requested by the applicant already have been published on the UPC website.

Suspensive effect

According to Rule 354 RoP, decisions and orders of the Court shall be directly enforceable from their date of service, and an appeal shall – according to Article 74 UPCA – not have suspensive effect unless the Court of Appeal decides otherwise. However, these provisions do not prevent the Court of First Instance from deciding that that an action is to be carried out at a specified date in the future.

The question of access to documents in the register is controversial, and there is room for different interpretations. If this Courts' order on access to the statement of claim is given immediate effect, i.e. if the Court sends the document to the applicant at the same time as the order is issued, an appeal could not be effective. Therefore, the Court finds it appropriate to order that the statement of claim shall be sent to the applicant on 7 November 2023. This way, the claimant is given sufficient time to appeal and apply for suspensive effect, in accordance with Rule 223 RoP.

Leave for appeal

The question of access to documents in the register is controversial, and there is room for different interpretations. A clear and consistent interpretation of a “reasoned request” pursuant to Rule 262.1(b) RoP and a consistent application of said Rule is important. Therefore, leave to appeal this order shall be granted.

The e-mail from the defendants' representatives

The e-mail from the defendants' representatives, informing the Court that the defendants have decided not to submit any reply, shall be included in the register.

ORDER

1. The applicant shall be given access to the statement of claim in ACT_459791/2023, after redaction of personal data within the meaning of Regulation (EU) 2016/679, on 7 November 2023.
2. The request for access to orders is rejected.
3. Leave for appeal is granted.
4. The e-mail from the defendants' representatives, informing the Court that the defendants have decided not to submit any reply, shall be included in the register.

Done and delivered in Stockholm on 17 October 2023.

NAMES AND SIGNATURES	
Judge-rapporteur	For the Deputy-Registrar
Stefan Johansson	Clerk: Isabel Pais Iglesias

ORDER DETAILS

Order on application 543819/2023

Application type: Application RoP262.1(b)

Main proceeding: ACT_459791/2023

UPC number: UPC_CFI_11/2023

Action type: Infringement Action

INFORMATION ABOUT APPEAL

Leave to appeal is granted. The present Order may be appealed within 15 days of service of this Order, which shall be regarded as the Court's decision to that effect (Art. 73(2)(b)(ii) UPCA and 220.2, 224.1(b) RoP).