



Local division Munich
UPC_CFI_342/2024

**Procedural order
of the Court of First Instance of the Unified Patent Court
issued on 20 December 2024**

Guiding principle:

The opponent of pending opposition proceedings relating to the patent in suit has a legal interest in file inspection pursuant to Rule 262.1 (b) RoP during the ongoing proceedings.

PLAINTIFF

PHOENIX CONTACT GmbH & Co KG, Flachsmarktstraße 8-28, 32825 Blomberg, Germany,

represented by: Lawyer Hannes Jacobsen, CBH Rechtsanwälte, Ismaninger Straße 65a,
81675 Munich.

DEFENDANT

1) **Industria Lombarda Materiale Elettrico I.L.M.E. S.p.A.**, Via Marco Antonio Colonna 9 -
20149, Milan, Italy,

2) **ILME GmbH Elektrotechnische Handelsgesellschaft**, Max-Planck-Straße 12, 51674
Wiehl, Germany.

represented by: Attorney Dr Henrik Timmann, rospatt Rechtsanwälte PartGmbH,
40547 Düsseldorf, Germany.

APPLICANT

HARTING Electric Stiftung & Co KG, Wilhelm-Harting-Straße 1, 32339 Espelkamp, Germany,

represented by: Attorney Sönke Scheltz, Eisenführ Speiser, Johannes-Brahms-Platz 1, 20355 Hamburg, Germany.

PATENT IN SUIT

European patent EP 3 602 692

PANEL/CHAMBER

PANEL/Panel 2 of the Munich local division

PARTICIPATING JUDGE

The Order was issued by the presiding judge Ulrike Voß as rapporteur.

LANGUAGE OF THE PROCEEDINGS

German

SUBJECT MATTER OF THE DISPUTE

Application for inspection of files, R 262.1 (b) RoP

FACTS OF THE CASE

1. The plaintiff is suing the defendants for infringement of the European patent EP 3 602 692 (hereinafter the patent in suit). In its view, the connector modules with conductor connection terminal manufactured and/or marketed by the defendants under the generic term AXYR (hereinafter the accused embodiment) make use of the technical teaching of the patent in suit; the use of the patent in suit by the defendants is unlawful. The defendants counter the allegation of infringement. They have also filed a counterclaim for revocation.
2. The applicant is also the owner of the German utility models DE 20 2018 006 800 U1 and DE 20 2018 006 888 U1, which are branched off from the patent in dispute. The plaintiff is suing the applicant for infringement of these utility models in two proceedings before the Regional Court of Munich I. The products of the applicant are at issue in these proceedings. The applicant is a competitor of the defendant and also of the plaintiff.
3. On 11 July 2024, the applicant filed an opposition against the patent in suit before the European Patent Office. The defendant (2) joined these opposition proceedings.

APPLICATIONS

4. In an application dated 17 October 2024, the applicant requested the following:

The documents and evidence submitted to the Court by the applicant and the defendants in proceedings ACT_37621/2024 and recorded by the Registry will be made available to the applicant.

KEY POINTS OF CONTENTION

5. The applicant that it needs access to the documents and evidence in the present proceedings in order to properly represent its interests and conduct its defence. In the utility model infringement proceedings, it is particularly important how the plaintiff interprets the parent patent (patent in suit), on which the plaintiff bases the alleged infringement of the parent patent and how the attacked embodiment, which the plaintiff is attacking with the present action, is designed. Accordingly, this information is also relevant in the current opposition proceedings. If the applicant were not given access to this information, this could result in disadvantages for its own proceedings.
6. According to the applicant, access to the documents and evidence is already necessary and justified during the ongoing proceedings and before a decision is made. The applicant has a legitimate interest in considering the parties' respective submissions on the interpretation and infringement of the patent in dispute in due time in the forthcoming statements in its ongoing utility model infringement proceedings and the opposition proceedings. If access were only granted after the decision, this purpose could be thwarted.
7. The applicant is of the opinion that the application for access to the file should be rejected. The national infringement proceedings are each based on a different subject matter of the dispute. The Regional Court must itself interpret the property rights asserted in the proceedings there and is neither legally nor factually bound by the plaintiff's interpretation and certainly not by the interpretation of the local division in proceedings concerning a different property right. In the absence of the Regional Court being bound by the decision of the local division, it was not apparent what the applicant's legitimate interest in the applicant's submission in the present proceedings should be. Nothing else applies to the opposition proceedings.
8. The challenged embodiment of the defendant at issue in the present proceedings could be procured by the applicant herself. This does not require access to the proceedings, the documents and the evidence. Since these also not embodiments of the applicant, the findings sought by the applicant are irrelevant for the national proceedings.
9. The applicant criticises the fact that the applicant has also not explained or claimed what disadvantages it could face. On the contrary, it is apparent that the applicant

may have attempted to introduce the subject matter of the present proceedings, primarily the applicant's submissions, into the national proceedings and the opposition proceedings in order to influence the legal assessments to be made by the Regional Court and the EPO, in particular the interpretation. The integrity of the proceedings is therefore also of particular importance in this case. The balance must in favour of the interests of justice and public order as well as the parties to the proceedings here. The local division's interest in preserving the integrity of the proceedings is weighty. The parties had a legitimate interest in being able to present their arguments and evidence uninfluenced and "without interference from external parties".

10. The defendants have not made use of the opportunity granted to them to .

REASONS FOR THE ORDER

11. The admissible application is successful on the merits.

I.

12. According to the provisions of the UPCA, the procedural files held by the court are generally accessible to the public. This is from both Art. 10 para. 1 UPCA and Art. 45 UPCA. The former stipulates that the register kept by the Registry is public. According to Art. 45 UPCA, court hearings are public the court decides, where necessary, to hold them in camera in the interests of one of the parties or other interested parties or in the general interest of justice or public policy. Access to the public is therefore only denied if a balancing of interests, which includes the interests mentioned in Art. 45 UPCA, leads to the conclusion that a restriction of access is necessary in the specific case.

13. Therefore, if a member of the public makes a reasoned application pursuant to Rule 262.1 (b) RoP, access to the documents and evidence in the proceedings must in principle be granted, regardless of the status or nature of the proceedings (Court of Appeal, UPC_CoA_404/2023, Order of 10 April 2024).

14. According to the case law of the Court of Appeal, the merits within the meaning of Rule 262.1 (b) RoP are (only) a formal requirement. It is fulfilled if the application states the documents and evidence in respect of which access is requested, if the purpose of the inspection of the file is also stated and if it is also explained why access to the documents and evidence is necessary for the stated purpose (Court of Appeal, UPC_CoA_404/2023, Order of 10 April 2024).

15. If an application pursuant to Rule 262.1 (b) RoP is justified in this sense, the interests of the member of the public to have access to the documents and evidence must be weighed against the interests mentioned in Art. 45 UPCA (Court of Appeal,

UPC_CoA_404/2023, Order of 10 April 2024; CC Paris, UPC_CFI_255/2023, Order of 14 October 2023; CD Paris, UPC_CFI_316/2023, Order of 24 April 2024; CC Munich, UPC_CFI_75/2023, Order of 4 November 2024.2024; CC Munich, UPC_CFI_75/2023, Order of 4 November 2024; CC Vienna UPC_CFI_33/2024, Order of 12 August 2024; CC Hamburg, UPC_CFI_151/2024, Order of 17 September 2024).

16. In particular, the protection of confidential information and personal data as well as the general interests of justice and public order, including the protection of the integrity of the proceedings, must be taken into account in this consideration. Public order is affected, for example, in the case of abusive applications or if security interests are at stake (Court of Appeal, UPC_CoA_404/2023, Order of 10 April 2024).
17. If the proceedings to whose documents and evidence an applicant wishes to have access have not yet been concluded, the public's general interest in information is not sufficient for access to be granted. Rather, a specific legal interest access to the file must be demonstrated by the applicant (LK Vienna, UPC_CFI_33/2024, Order 12/08/2024). Such an interest can be assumed, for example, if an applicant has a direct interest in the subject matter of the dispute, such as the legal status of the patent, which also affects them as a competitor, or if a product they have placed on the market is identical or similar to the product that is the subject of the proceedings (Court of Appeal, UPC_CoA_404/2023, Order of 10 April 2024).

II.

18. Based on these principles, the applicant must be granted access in accordance with the request. The application of 17 October 2024 is well-founded within the meaning of Rule 262.1 (b) RoP. The balancing of interests to be carried out is in your favour. She already has a legal interest in access to the files during the ongoing proceedings.

1.

19. However, the legal interest does not result from the proceedings before the Regional Court Munich I for alleged infringement of German utility models. As the plaintiff rightly points out, the subject matter of these national proceedings differs from the subject matter of the present proceedings. Both the property rights asserted there and the attacked products are not those of the present proceedings. In the present action, the plaintiff is challenging an embodiment of the defendant; in the German proceedings, products of the applicant are at issue. It cannot be inferred from the applicant's submission that these are similar to the attacked embodiment. Furthermore, the property rights asserted in each case are independent property rights which have a different scope of protection or subject matter. The fact that the German utility models are branched off from the patent in dispute does not change this. Each property right is to be interpreted on its own merits according to the known principles. Even if, for example, the same terms are used in different property rights. Consequently, the interpretation of the patent in suit by the applicant in the present proceedings is not relevant in the proceedings before the Regional Court Munich I for legal reasons alone. Apart from this, the applicant has not made any submission as to which features of which claims may possibly be in conflict with each other.

which overlaps could arise that could be of significance for their legal defence in the national proceedings. The simple submission of the German utility models as attachments is not sufficient in this respect.

2.

20. However, with regard to the opposition proceedings before the EPO, the applicant can be said to have a legal interest in inspecting the files. The opposition proceedings concern the patent in suit. Arguments and evidence put forward by the applicant and the defendant in the context of the infringement action and/or the revocation counterclaim relating to the patent in suit may obviously be relevant to the opposition proceedings (see also CC Paris, UPC_CFI_316/2023, Order of 24 April 2024). In particular, the interpretation of the patent in suit by the parties and/or the cited prior art may be significant. Above all, the applicant has a legitimate interest in determining whether the submission of the parties in the present proceedings deviates from the submission in the opposition proceedings and/or whether prior art has been submitted that has not been found. This may have an impact on their legal position in the opposition proceedings.
21. This legal interest also exists during the ongoing proceedings, as the objection proceedings are running in parallel and no decision has yet been made there either. The applicant's legal interest in access to the documents and evidence would not be (sufficiently) safeguarded if she were referred to the conclusion of the proceedings here (at first instance). The point is precisely that she can submit facts and/or evidence from the proceedings here in good time in the opposition proceedings so that they can also be taken into account there if necessary.
22. The fact that defendant 2) has joined the opposition proceedings does not change the existence of a legal interest on the part of the applicant. It may be that the defendant 2) submits facts and/or legal opinions in the opposition proceedings which it also submits in the present proceedings, so that extracts from documents and/or evidence submitted in the present proceedings are introduced into the opposition proceedings in this way. Whether the defendant (2) so, and if so, to what extent, is a matter for the defendant alone to decide. The applicant, which is not affiliated with the defendant 2), but rather one of its competitors, has no influence on this. It is already unable to recognise whether the defendant 2) submits facts and/or legal views in the opposition proceedings which it also submits in the present proceedings.
23. It should also be borne in mind that the applicant is also a competitor of the plaintiff and has its own product on the market. It therefore has a legitimate interest in the clarification of the legal status of the patent in dispute.
24. Insofar as the applicant submits that the applicant (also) wishes to "influence" the EPO in its legal assessment, namely in the interpretation of the patent in suit, this gives rise to clarification. If the submissions of the parties in the present proceedings on the interpretation and/or the legal status of the patent in suit differ from what is submitted by the parties in the opposition proceedings, it is the

legitimate interest of the applicant to bring this to the attention of the EPO and to base its own legal defence on any differences that may exist.

25. The integrity of the proceedings, which in the context of the request for access to the files refers only to the present proceedings (and not the opposition proceedings), is not jeopardised by granting access to the documents and evidence. It has neither been demonstrated nor is it otherwise apparent that the parties would not be able to present their arguments and evidence uninfluenced by access to the files. In view of this, there is no reason to fear interference from external parties.

3.

26. None of the parties have raised confidentiality interests with regard to their documents and/or the evidence they have submitted. Consequently, only personal data within the meaning of Regulation (EU) 2016/678 shall be redacted in the documents and evidence to which access is granted.

ORDER

1. The applicant shall have access to the documents and evidence submitted to the Court by the applicant and the defendants in proceedings ACT_37621/2024 and recorded by the Registry.
2. Personal data contained in the documents and evidence within the meaning of Regulation (EU) 2016/678 must be redacted.

INFORMATION ON THE APPOINTMENT

Any party who has been partially or totally unsuccessful may appeal against the Order to the Court of Appeal within 15 days of service of the Order by the Court, Art. 73 para. 2 (b) UPCA, R. 220.2, 224.1 (b) RoP.

INSTRUCTION TO THE (AUXILIARY) LAW FIRM

The applicant must be granted access to the documents and evidence of the applicant and the defendant in proceedings ACT_37621/2024. Personal data contained in the documents and evidence within the meaning of Regulation (EU) 2016/678 shall be redacted.

ORDER DETAILS

Order No. ORD_ 57040/2024 in proceedings:	ACT_37621/2024
UPC number:	UPC_CFI_342/2024
Nature of the action:	Action for infringement
Application number:	56734/2024
Type of application:	Application pursuant to R 262.1 (b) RoP

20 December 2024

Ulrike Voß Digitally signed by
Ulrike Voß Date:
2024.12.20
17:39:17 +01'00'

Ulrike Voß Presiding
judge