



Action n°: UPC 14/2023
CC_586764/2023
Counterclaim for revocation

Order
of the Court of First Instance of the Unified Patent Court
Central Division (Section Munich)
issued on 22 October 2024

APPLICANT

Dehns, St Bride's House, 10 Salisbury Square - EC47 8JD - London – GB,

represented by: John Somerton, St Bride's House, 10 Salisbury Square - EC4Y 8JD - London – GB.

CLAIMANT IN THE MAIN PROCEEDINGS

Regeneron Pharmaceuticals Inc., 81 Columbia Turnpike 12144 Rensselaer US

represented by: Daniel Wise, One Southampton Row - WC1B 5HA - London – GB.

DEFENDANT IN THE MAIN PROCEEDINGS

Amgen, Inc., One Amgen Center Drive - CA 91320-1799 - Thousand Oaks – US,

represented by: Koen Bijvank, Grote Bickersstraat 74-78 - 1013 KS - Amsterdam – NL.

PATENT AT ISSUE

European patent n° EP 3 666 797

PANEL/DIVISION

Panel 1 of the Central Division (Section Munich).

DECIDING JUDGE

This is an Order of the Judge-rapporteur: András Kupecz.

LANGUAGE OF PROCEEDINGS:

English.

SUBJECT-MATTER OF THE PROCEEDINGS

Rule 262.1(b) RoP request.

BACKGROUND AND REQUESTS

Dehns (the 'Applicant') on 14 August 2024 lodged a request under Rule 262.1(b) of the Rules of Procedure ('RoP') of the Unified Patent Court ('UPC') with the Central Division (Section Munich) in UPC Revocation action: ACT_459505/2023 UPC_CFI_1/2023, UPC Counterclaim for revocation CC_586764/2023 UPC_14/2023 and UPC Application to amend APP_590836/2023 UPC_CFI_1/2023 (collectively referred to as 'the Cases').

The Applicant submitted that it has a general interest in better understanding how the Court conducted the actions and arrived at the decision delivered on 16 July 2024. This is important for the ability of the Applicant, a large firm of UPC representatives, to provide a professional and expert service to its clients as representatives before the UPC, benefitting the Court as well as the users thereof.

For this reason, the Applicant requests that the Court makes available to the Applicant all written pleadings and evidence, lodged by the parties during the abovementioned combined revocation and counterclaim for revocation actions and associated application to amend ('the Application'). As part of the Application, the Applicant provided a list of the documents to which access is requested.

By way of Preliminary Order dated 15 August 2024, the Court gave the parties to the main proceedings¹ the opportunity to comment on the Applicant's request pursuant to Rule 262.1(b), last sentence RoP.

The Defendant in the main proceedings did not provide any comments and defers to the Court's judgement. The Claimants in the main proceedings did not object to the Application but commented that the list of documents provided with the Application includes certain documents that do not fall into the categories of "written pleadings" or "evidence" required by Rule 262.1(b) RoP. They consider that these documents fall outside the scope of the Application, but defer to the Court's discretion on this matter.

By way of Preliminary Order dated 10 September 2024, the Court invited the Applicant to respond to the comments made by the Claimants in the main proceedings. The Applicant did not make use of this opportunity.

¹ The claimants in revocation action: ACT_459505/2023 UPC_CFI_1/2023 and the counterclaimant in the counterclaim for revocation CC_586764/2023 UPC_14/2023 made joint submissions in relation to the Application and are collectively referred to as "Claimants in the main proceedings" for the purposes of this order.

GROUNDS

Applicant's request to make available the written pleadings and evidence lodged in the above references Cases is admissible and allowable to the extent that it is concerned with written pleadings and evidence.

Written pleadings and evidence

The Applicant lodged a reasoned request within the meaning of Rule 262.1(b) RoP. "Reasoned request" in Rule 262.1(b) RoP means a request that states which written pleadings and evidence the applicant wishes to obtain, specifies the purpose of the request and explains why access to the specified documents is necessary for that purpose (Court of Appeal ('CoA') order of 10 April 2024, APL_584498 *Ocado/Autostore*, par. 44). The Application meets these requirements and is therefore admissible to the extent it is concerned with written pleadings and evidence.

In the above-referenced order in *Ocado/Autostore*, the CoA interpreted the relevant provisions from the Agreement on a Unified Patent Court ('UPCA') and RoP and has provided general principles that govern public access to written pleadings and evidence. The CoA held, in summary, that the general principle laid down in the UPCA is that the register is public and the proceedings are open to the public, unless the balance of interests involved is such that they are to be kept confidential, which means that in such case access to the public is to be denied. When a request to make written pleadings and evidence available to a member of the public is made pursuant to R.262.1(b) RoP, the interests of the member of the public of getting access to the written pleadings and evidence must be weighed against the interests mentioned in Art. 45 UPCA. These interests include the protection of confidential information and personal data ('the interest of one of the parties or other affected persons') but are not limited thereto. The general interest of justice and public order also have to be taken into account.

After a decision has been rendered, a member of the public generally has an interest in written pleadings and evidence being made available. This allows for a better understanding of the decision rendered, in view of the arguments brought forward by the parties and the evidence relied on. It also allows scrutiny of the Court, which is important for trust in the Court by the public at large.

Applying the relevant provisions and general principles set out by the CoA to the present case, weighing the interests of the Applicant of getting access to the written pleadings and evidence against the interests mentioned in Art. 45 UPCA, it is clear that the Applicant has a general interest in obtaining access to the written pleadings and evidence in the Cases which have ended by way of a decision by the Court. As the Court of Appeal held in *Ocado/Autostore*, once the proceedings have come to an end, the balance of interests will in such a case normally be in favour of granting access.

The parties have not put forward any facts or arguments which would shift the balance of interests in favour of withholding access in the present case. Furthermore, there are no indications before the Court that the general interest of justice, the interests of other affected parties or public order are at stake. Consequently, the Applicant is to be granted access to all written pleadings and evidence as listed by the Applicant in the list of documents.

Other documents

The Applicant has also listed a number of other documents that – undisputed by the Applicant – cannot be considered as "written pleadings or evidence" within the meaning of Rule 262.1(b) RoP. In particular the following "Other documents" listed by the Applicant cannot be considered as written pleadings or evidence:

- "2023.06.01 – Letter to the UPC – Lodging of Revocation Action", with CMS submission date 01/06/23; 1
- "Letter to Registry – Sanofi v Amgen – Uploading Issues on CMS – signed", with CMS submission date 01/06/23;
- "Reply to preliminary order setting provisional dates (signed)", with CMS submission date 11/10/23 (filed separately by each Claimant in case UPC_CFI_1/2023);
- "Correction of Formalities", with CMS submission date 24/11/23;
- "EPO-Request-for-case-pending", with CMS submission date 24/11/23;
- "Formal-checks_Notification-of-positive-outcome", with CMS submission date 24/11/23; and
- "proof of payment", with CMS submission date 24/11/23.

In the Court's opinion, Rule 262.1(b) RoP does not provide a legal basis for making available documents that are not written pleadings or evidence (see CD Munich 21 September 2023, ORD_552745/2023 in ACT_464985/2023, Central Division (Paris Seat) 24 April 2024, ORD_587436/2023 in ACT_571808/2023). This follows from the clear wording of the rule and its systematic purpose, which is to grant access to pleadings that the parties lodged at the Court and documents that are intended to serve as evidence, i.e. documents that relate to the substance of a party's case. In addition, and for the sake of completeness, the Court notes that the Applicant – after having been explicitly invited to do so – has not provided any substantiation to support that and why it has an interest, even generally, in obtaining access to the Other documents in order to be able to understand how the Court conducted the actions and arrived at the decision delivered on 16 July 2024. It follows that the Applicant has failed to specify why, let alone demonstrate that it has an interest in obtaining access to the Other Documents. For these reasons, the Application is inadmissible and, in any event, unfounded to the extent it concerns the Other documents.

ORDER

- The Applicant shall be granted access to the written pleadings and evidence lodged and recorded in the register, concerning CC_586764/2023, as listed in the Application, after redaction of personal data within the meaning of Regulation (EU) 2016/679.
- Any further requests are rejected.

András Ferenc
Kupecz

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von András Ferenc
Kupecz
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Issued on 22 October 2024
KUPECZ
Judge-rapporteur

INSTRUCTIONS TO THE PARTIES AND TO THE REGISTRY

The Registry is instructed to, subject to the above conditions, make available the written pleadings and evidence lodged and recorded in the register in the Cases to the Applicant.

DETAILS OF THE ORDER

Order no.	ORD_47235/2024 in ACTION NUMBER: CC_586764/2023
UPC number:	UPC_CFI_14/2023
Action type:	Revocation Action
Related proceeding no.	Application No.: 47154/2024
Application Type:	Application RoP 262.1 (b)