



Action n°: UPC 252/2023

Revocation action

Order

of the Court of First Instance of the Unified Patent Court

Central Division (Section Munich)

issued on 3 January 2025

APPLICANT:

Berggren Oy, Eteläinen Rautatiekatu 10 A - 00100 - Helsinki - FI

represented by Michael Nielsen of Berggren Oy.

PARTIES TO THE MAIN PROCEEDINGS

CLAIMANT:

NanoString Technologies Europe Limited, Suite 2, First Floor, 10 Temple Back - BS1 6FL - Bristol - GB

represented by Daniela Kinkeldey of Bird & Bird.

DEFENDANT:

President and Fellows of Harvard College, 17 Quincy Street - 02138 - Cambridge, MA - US

represented by Axel Berger of Bardehle Pagenberg.

PATENT AT ISSUE

Patent no.

Proprietor

EP2794928

President and Fellows of Harvard College

PANEL/DIVISION

Panel 1 of the Central Division (Section Munich) ('CD Munich').

DECIDING JUDGE

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

LANGUAGE OF THE PROCEEDINGS:

English.

SUBJECT-MATTER OF THE PROCEEDINGS

Revocation action. Rule 262.1(b) RoP request.

BACKGROUND AND REQUESTS

Berggren Oy (the 'Applicant') on 18 November 2024 lodged a request under Rule 262.1(b) of the Rules of Procedure ('RoP') of the Unified Patent Court ('UPC') with the CD Munich in UPC Revocation action 252/2023 (ACT_551180/2023) ('the Revocation action').

On 17 October 2024, the CD Munich delivered a final decision in the Revocation action.

The Applicant submitted that it has a general interest in better understanding how the Court conducted the action and arrived at the decision delivered on 17 October 2024. This is important for the ability of the Applicant, a firm of UPC representatives, to provide a professional and expert service to its clients, 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 Revocation action.

By way of Preliminary Order dated 22 November 2024, the Court gave the parties to the main proceedings the opportunity to comment on the Applicant's request pursuant to Rule 262.1(b), last sentence RoP. The parties to the main proceedings did not provide any comments or make any other submissions.

GROUND

Applicant's request to make available the written pleadings and evidence lodged in the above referenced Revocation action is admissible and allowable.

1. Admissibility of the request.

The Applicant, as a member of the public, 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.

2. Allowability of the request.

The general principle laid down in the Agreement on a Unified Patent Court ('UPCA') is that the register is public (Art. 10 UPCA) and that the proceedings are open to the public (Article 45 UPCA). According to Art. 45 UPCA, the proceedings 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. Accordingly, access to pleadings and evidence lodged at the Court and recorded by the Registry is to be granted to a member of 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 or restricted. When a reasoned request to make written pleadings and evidence available to a member of the public is made pursuant to Rule 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.

Once a final decision has been rendered by the Court, 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.

In the present case, the Applicant thus has a (general) interest in obtaining access to the written pleadings and evidence in the Revocation action which has ended by way of a decision by the Court. As the CoA held in *Ocado/Autostore*, where 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 or restricting access in the present case. The interests of other affected persons are adequately taken into account by redacting personal data within the meaning of Regulation (EU) 2016/679 as required by Rule 262.1(a) RoP. Furthermore, there are no indications before the Court that the general interests of justice or public order are at stake.

Consequently, the Applicant is to be granted access to the written pleadings and evidence lodged by the parties and recorded by the Registry in the Revocation action, subject to the redaction of personal data within the meaning of Regulation (EU) 2016/679.

ORDER

- The Applicant shall be granted access to the written pleadings and evidence lodged and recorded in the register in the Revocation action, after redaction of personal data within the meaning of Regulation (EU) 2016/679.

András
Ferenc
Kupecz

Digital
unterscriben von
András Ferenc Kupecz
Datum: 2025.01.03
09:41:12 +01'00'

Issued on 03 January 2025

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 Revocation action to the Applicant.

INFORMATION ABOUT APPEAL

The present Order may be appealed before the Court of Appeal by any party which has been unsuccessful, in whole or in part, in its submissions within 15 days of service of this Order (Art. 73(2)(b) UPCA, Rule 220.2, 224.1(b) RoP).

ORDER DETAILS

Order no. ORD_62447/2024 in ACTION NUMBER: ACT_551180/2023

UPC number: UPC_CFI_252/2023

Action type: Revocation Action

Related proceeding no. Application No.: 61570/2024

Application Type: APPLICATION_ROP262_1_b