



UPC\_CFI\_583/2024  
Procedural Order  
of the Court of First Instance,  
delivered on 19/02/2025

APPLICANT

POSCO  
(Goedong-dong) 6261,  
Donghaean-ro, Nam-gu Pohang-si, Gyeongsangbuk-do  
- 37859 - Seoul - KR

Represented by Jasper Werhahn

PARTIES IN PROCEEDINGS

CLAIMANT

ArcelorMittal  
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Represented by Camille Pecnard, Cabinet Lavoix

DEFENDANTS

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Represented by David Mulder, Taylor Wessing N.V.

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Represented by Christian Dekoninck, Taylor Wessing N.V.

PATENT AT ISSUE:

| <i>Patent Number</i> | <i>Proprietor(s)</i> |
|----------------------|----------------------|
| EP3290200            | ArcelorMittal        |

DECIDING JUDGE

Presiding judge and Judge-rapporteur Camille Lignieres

LANGUAGE OF PROCEEDINGS: English

ORDER

An infringement action based on the patent EP 3 290 200 (“EP’200”) was initiated by ArcelorMittal (“the Claimant”) against several companies that are part of the XPENG group (“the Defendants”).

On 23 January 2025, POSCO (“the Applicant”), a member of the public, filed an application via CMS pursuant to Rule262-1 b) RoP for inspection of the written pleadings and evidence lodged at the Court in the main proceedings (“the Application”).

Following a Preliminary Order issued by the Judge-Rapporteur on 28 January 2025 the parties provided their comments to the Court on 4 February 2025.

In support of its request, the Applicant states that:

- the Claimant and the Applicant are both active in the field of steel manufacturing, with a particular focus on steel manufacturing for the automotive industry and both parties are currently engaged in several opposition proceedings before the European Patent Office (EPO).
- the Applicant has filed an opposition against the claimant's European Patent EP 3 290 200, which is the patent at issue in the infringement proceedings ACT\_54607/2024.
- the opposition proceedings regarding EP 3 290 200 are now accelerated ex officio at the appeal stage because of the parallel infringement proceedings before the UPC and that the validity discussion of the patent at issue in the pending opposition appeal proceedings before the EPO is dependent on the interpretation of multiple claim features.

The Applicant requires access to written pleadings and evidence of the infringement case to analyse the Claimant's claim interpretation in the pending infringement proceedings before the UPC, which is mandatory pursuant to Rule 13.1n RoP, and which is immediately relevant for the validity discussion in the parallel opposition appeal case before the EP'200.

In their comments in reply to the present Application, the Defendants (XPENG's companies) leave the decision on whether to allow or not POSCO's access request for the Court's discretion.

ARCELORMITTAL requests that POSCO's application to access the register be refused. The Claimant contests the Application for the following reasons:

1) a lack of direct interest in the subject matter of the proceedings, arguing that:

- the main action at the UPC level is an infringement action,
- for now, there is no discussion on the validity of EP'200,
- contrary to POSCO's allegations, there is thus no discussion about the interpretation of the features of EP'200,
- the written pleadings and the evidence solely relate to a product considered by ARCELORMITTAL as infringing EP'200, not to the validity of the patent.

2) a lack of a "reasoned request", arguing that, in the case at hand, the procedure has not ended, and that POSCO has no direct interest in the subject matter of the proceedings.

In the Claimant's view, the Court should weigh in favour of refusing access to the register, taking into account the following:

- The interest of the parties, i.e. the protection of the confidentiality of the statement of claims and the documents cited in support that contain laboratory analysis, technical documents, bailiff reports etc.; all related to the demonstration of the infringement).
- The interest of Justice, i.e. the efficiency of the proceedings that will be slowed down if the request is granted, and terminating the proceedings will take more time.
- The interest of the public, i.e. access to documents in an infringement action is not in the public's interest.
- The interest of public order, i.e. the integrity of the proceedings and disputing abusive claims that serve no legitimate purpose but only delay proceedings.

## Legal Framework

Article 45 UPCA – Public proceedings:

*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.*

Rule 262 – Public access to the register:

*1. Without prejudice to Articles 58 and 60(1) of the Agreement and subject to Rules 190.1, 194.5, 196.1, 197.4, 199.1, 207.7, 209.4, 315.2 and 365.2, and following, where applicable, redaction of personal data within the meaning of Regulation (EU) 2016/679 and confidential information according to paragraph 2*

*(b) 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 decision is taken by the judge-rapporteur after consulting the parties.*

## Grounds

A reasoned request is a concrete, verifiable and legitimate reason. The UPC Munich Central Division has rightly stated: *“To ensure the proper balance of interests, the applicant of a R.262.1(b) request must set out the reasons why he has an interest to access. It follows that ‘reasoned request’ means a request that not only specify the scope but also the purpose and why the information requested is necessary to that aim”.* (UPC\_CFI\_1/2023 – 20/09/23 – CD Munich – Sanofi v Amgen)

In assessing the application based on R 262-1 RoP, the Judge-Rapporteur must balance the applicant's interest as explained in its application against the principle of the integrity of the infringement proceedings brought by the Claimant against its competitor XPENG involving commercial and technical information that may fall within the scope of trade secrets.

In the present application, POSCO's request is clearly explained; it is made to pursue a procedural strategy in the context of the EPO's parallel proceedings, which deal solely with the validity of the patent as granted, which is the same as that on which the infringement action before this Division is based.

The Applicant referred to an order of the UPC Paris Central Division, which had been seized by an action for revocation, according to which the existence of opposition proceedings before the EPO, in which the applicant was involved, made access to the documents legitimate. (CD Paris, ACT\_n°571808/2023-UPC number: UPC\_CFI\_316/2023)

ARCELORMITTAL has correctly noted in its written comments that the current action is not a revocation action but rather an infringement action that is still in its early stages. Only the Statement of Claim (SoC) has been filed, while the Statement of Defence (SoD), along with a potential counterclaim for revocation, has yet to be submitted. Therefore, there is currently no challenge to the validity of the patent, and no discussions on this matter have occurred between the parties. At this stage, no documents have been exchanged that would reveal the content of any debate regarding the validity of the patent—such as a counterclaim and the response to it, possibly including a request for amendments to the patent.

However, the Applicant expresses interest in the explanations provided by the Claimant in its Statement of Claim regarding the interpretation of the claims that underpin the infringement action.

The Court notes that the interpretation of claims proposed by a party in an infringement action should be consistent with the interpretation used in a revocation action. This principle was highlighted by the UPC Court of Appeal when establishing the standard for patent interpretation (UPC\_CoA\_335/2023 and UPC\_CoA\_1/2024). The UPC Court of Appeal stated: "*In applying these principles, the goal is to ensure adequate protection for the patent holder while providing sufficient legal certainty for third parties. These principles for interpreting a patent claim are applicable to both the assessment of infringement and the validity of a European patent.*"

Consequently, the Applicant demonstrates a legitimate interest in having access to the statement of claim and the related exhibits, provided that these exhibits are not covered by a confidentiality order, such as Exhibit 8, which is the subject of a confidentiality order dated 18/02/2025 (Order n° ORD\_8266/2025 in Action N°: ACT\_54607/2024) and which, in any event, has no bearing on the scope of protection defined by the applicant for infringement based on its patent EP'200.

The other written pleadings, which relate to procedural matters (alignment of service dates and change of languages), do not concern the claim construction of the patent in suit.

Considering these elements, the Judge-rapporteur orders that:

- POSCO is granted access to the following written pleadings and evidence submitted by the Claimant as currently contained in the CMS in action UPC\_CFI\_583/2024:

-the statement of claim submitted by ARCELORMITTAL,

-and the exhibits supporting the statement of claim, except for Exhibit 8, which is entirely protected by a confidentiality order (Order n° ORD\_8266/2025 in Action N°: ACT\_54607/2024)

- This order may be reviewed according to R. 333 RoP.

*Issued in Paris, on 19 February 2025.*

C. Lignieres, judge-rapporteur.

#### ORDER DETAILS

Order n° ORD\_8329/2025 in Action N°: ACT\_54607/2024

UPC n° : UPC\_CFI\_583/2024

Action Type: Infringement Action

Related proceeding n°: 3790/2025

Application Type: APPLICATION\_ROP262\_1\_b