



**Order
of the Court of First Instance of the Unified Patent Court delivered
on 20/02/2025**

**ORDER NO. ORD_4166/2025
in ACTION NUMBER: ACT_549550/2023**

HEADNOTES

1. Public access under Rule 262.1.(b) RoP is not permitted with respect to information that the applicant can obtain *aliunde*, e.g. by consulting publications on the CMS of decisions and orders of the Court, or that is available with the final decision closing the proceedings, expected shortly and in any event in time to satisfy the interest underlying the request for access.

2. The integrity of the proceedings, as a declination of the general interest of justice, capable of limiting the right access under Rule 262.1.(b) RoP. can also be seen in the need to safeguard the free procedural choices of the parties who, for example, have entered into negotiations for the amicable settlement of the dispute, when the *applicant* not attached a general interest in the control and study of the Court's judicial activity and decision-making process - as the first purpose protected by Rule 262.1 RoP - but the need to exercise his rights of defence in another forum, in respect of which the court ad quem has already expressed a negative opinion for other reasons.

KEYWORDS rule 262.1.(b) ROP, Art. 45 UPCA

Applicant

Bhagat Textile Engineers with attorney Peter FitzPatrick

Respondents (Parties to the main proceedings)

Oerlikon Textile GmbH & CO KG, represented by Stefania Bergia and Giulio E. Sironi

Himson Engineering Private Limited, represented by Fabrizio Jacobacci, lawyer

PATENT AT ISSUE

<i>Patent no.</i>	<i>Owner/s</i>
EP2145848	Oerlikon Textile GmbH & CO KG

Deciding Judge

Judge rapporteur

Composition Of Panel - Full Panel

Presiding judge Pierluigi Perrotti
Judge-rapporteur Alima Zana Legally
qualified judge Carine Gillet
Technically qualified Judge Michel Abello

Language Of Proceedings:

Italian

ORDER

Procedural events

1. On 21 January 2025, Bhagat, as a member of the public, filed a petition pursuant to Rule No. 262.1. (b) ROP for access to the file of the *coun- terclaim for revocation* (No. 596263/2023) brought by Himson, the context of the *infringement action* brought by Oerlikon to protect the EP '848 patent (Case No. 54550/2023, CFI 240/2023).
In particular, *the applicant* requested access to certain documents and written pleadings, stressing that it had a legitimate interest in access to the documents for the following reasons:
 - that it was unsuccessful in a parallel action at first instance - No. 549485/2023, CFI 241/2023 - brought against it by Oerlikon for infringement of the same patent EP '848 and that it was ordered, in particular, to pay a provisional compensation for damages plus court costs in the amount of 80% (Order No. 598484/2023);
 - to have appealed the first instance judgment on 6 January 2025 (proc. no. APL-366/2025);
 - that on 8.1.2025 it filed a motion for stay with the Court of Appeal pursuant to Rule 223 ROP, pending a decision on the patent revocation application filed here by Himson (Apt. 1182/2025);
 - that the suspensive effect was rejected by the Court of Appeal on 16 January 2025, Bhagat having raised general doubts as to the validity of the patent on account of

- of the *counterclaim for revocation* introduced here, without explaining the reasons for this uncertainty (ORD_2674/2025);
- that is therefore in his interest - in the light of the specific reasoning expressed by the court of second instance - to have access to the documents and evidence in the present case in order to be able to substantiate, by 4 March 2025, his request for a stay of proceedings;
-as to the balancing of conflicting interests, he recalled UPC precedents admitting that a member of the public may have a legitimate and specific interest in the validity of a patent.
2. The judge rapporteur established the cross-examination and granted Oerlikon and Himson time to file commentary notes.
 3. In a memorandum filed on 10.2.2025, Himson requested:
 - mainly*: to reject Bhagat's request for access to the Himson documents and records for all the reasons set out above;
 - *in the alternative*:
 - to limit access only to those portions of the acts and documents strictly relevant to the validity of EP' '848;
 - to grant a time limit to Himson for the filing of a version of the deeds and documents requested by Bhagat obscured of the portions not strictly relevant to the validity of EP' 848;
 - to authorise Bhagat to use the documents which it has access and the information contained therein exclusively within the framework of the Oerlikon/Bhagat appeal proceedings (UPC_CoA_12/2025);
 - to fix a penalty in case of violation.
 4. Oerlikon requested the rejection of Baghat's application.
 5. In particular, Himson and Oerlikon pointed out that:
 - The applicant in the parallel trial did not contest the validity of the EP '848 patent nor the infringement, nor did it intervene here in support of Himson's invalidity claims, as emphasised by both this Court and the Court of Appeal to deny the suspensive effect invoked by Baghat: any access to the documents of this trial would therefore not be of any benefit to it for these purposes, already denied at both instances;
 - Himson's nullity attack here relates only to claim 1: even if that grievance were upheld, the patent would retain its validity for the remainder. Therefore, the final decision on the *counterclaim for revocation*, even if favourable, would not serve Baghat's purpose in suspending Decision No. 598484/2023, as Baghat has not clarified which resale of its products are accused of invalidity;
 - the integrity of the proceedings, as a principle crystallised by the jurisprudence of the UPC, does not allow the *application* to be granted, all the more so because in the present case Baghat could take advantage of Himson's choices from both a technical and a legal point of view to independently initiate a *revocation action* before the UPC, without incurring the costs involved.

Reasons for the decision: general considerations

6. This order is adopted in observance:

- ✓ Rule 262.1 ROP and Art. 45 UPCA;
- ✓ the case law developed in application at the Courts of First Instance and at the Court of Appeal and in particular taking into account the following arrests:
 - Rule 262 a ROP is part of my broad legal framework regulating access to the acts of the European institutions, in order to implement the principle of transparency (Art. 1 TEU) aimed, in the final analysis, at guaranteeing control over the work of public authorities. This public control power has a particular declination
 - in view of the specific function and interests involved- as opposed to legislative and administrative bodies (*Milan Local Division 27.9.2023, order No. 569313 ACT- 549550/2023*);
 - in particular, the request for access by the public only concerns written pleadings and evidence deposited in the file (rule 262, 1. R.o.P.), as decisions and orders are automatically public (rule 262.1.a R.o.P.). (*see, Munich Central Division, 20.09.2023 Order no. 550152, ACT_459505/2023 UPC number: UPC_CFI_1/2023*);
 - In order to have access to the written pleadings and evidence filed in the registry, the interested party must make a reasoned request supported by a concrete, current, verifiable and legally relevant interest (*Munich Central Division, 20.09.2023 Order no. 550152, ACT_459505/2023 UPC number: UPC_CFI_1/2023, Milan Local Division 27.9.2023, UPC CFI 240/2023; Nordic-Baltic Regional Division, UPC_CFI_11/2023*);
 - the Court -in its position of third party and neutrality of role- must also assess other potentially conflicting interests that could lead to access. These interests include a. the protection of confidential information and personal data; b. the general interest of justice c. public order (*Court of Appeal UPC_CoA_404/2023 APL_584498/2023, 10 April 2024*);
 - the general interest of justice includes the protection of the integrity of the proceedings (*Court Of Appeal, ord. 19369/2024, 10 April 2024, UPC_CoA_404/2023 APL_584498/2023; Paris Central Division, ORD_36092/2024 in ACT_22275/2024 UPC number: UPC_CFI_189/2024*). And in particular:
 - protection of the integrity of the proceedings regularly plays a role only until the conclusion of the proceedings, either by a decision of the UPC or by another conclusion, e.g. withdrawal of the action (*Munich Central Division, ORD_591107/2023, ACT_464985/2023, UPC_CFI_75/2023, 22 August 2024*);
 - if the protection of the integrity of the proceedings no longer plays a role, access to procedural documents, subject to possible redactions, must be granted as a rule (*Court of Appeal UPC_CoA_404/2023 APL_584498/2023, 10 April 2024*);
 - regardless of the situation at the end of the procedure, a claimant may also have an interest

specific access, in particular if he has a direct interest in the subject matter of the dispute, such as the legal status of a patent that also concerns him as a competitor or licensee, or if the applicant uses or intends to use a similar or identical product (allegedly) infringing patent law (*Court of Appeal UPC_CoA_404/2023 APL_584498/2023, 10 April 2024*). In such a case, the *applicant* must prove this as a competitor or licensee, otherwise access is denied (see *Paris Central Division, ORD_36092/2024, ACT_22275/2024, CFI_189/2024*);

-a party that is an opponent in parallel appeal proceedings before the EPO but is not a party to the proceedings before the UPC has a specific interest that takes precedence over that in integrity of the proceedings (*Paris, Central Division ORD_587436/2023 IFC 316/2023, 24 April 2024*).

The present case

7. The request for access - *prima facie* responding to a concrete, current and verifiable interest - cannot be granted on closer examination for the reasons that follow shortly, in the light of the overall framework of the aforementioned arrests and the underlying *rationale*.
8. *In limine*, the Court of First Instance observes that application must be examined solely in the light of the specific interest which Baghat has attached: here the *applicant* has attached only the procedural requirement to support before the Court of Appeal his application for a stay of proceedings in the case against the judgment against him for alleged infringement of the patent EP '848. This was because Court Appeal had already denied the suspensive effect of the economic provisions in the absence of specific allegations as to the timing of the determination of this case and the specific reasons for the doubts as to the validity of the patent raised here.
9. That being so, and taking into account this specific interest attached, the judgment is negative to the access of written pleadings and evidence in the present proceedings - still ongoing- because:

(I) certain information which the *applicant* claims to have an interest in obtaining, is in fact already available to it without access to the pleadings and evidence in the present proceedings. Baghat could and may have knowledge of considerable elements of the present proceedings, of which the Court Appeal complained of the lack of annexation, deduced from the orders of this Court and published on the CMS website. And in particular:

-the status of the proceedings (and in particular the date of the *Oral Hearing* set for 11 June 2025 (see ORD_598537/2023 adopted on 17.12.2024);

-some relevant procedural circumstances such as:

✓ Oerlikon's deposit of 7 auxiliary requests
(*Milan Local Division, 17.9.2024, Order no.*

- ORD_40903/2024 ACT_549550/2023 UPC, UPC_CFI_240/2023*);
- ✓ -the rejection by this Court in collegiate composition of Oerlikon's request to introduce auxiliary request no. 8 made pursuant to rule no. 30.2. ROP (*Milan Local Division, 17.9.2024, Order no. ORD_40903/2024 ACT_549550/2023 UPC, UPC_CFI_240/2023*);
 - ✓ at the Court's urging, Oerlikon's waiver of auxiliary requests No. 1-3, confirming the others (see *ORD_598537/2023* adopted on 17.12.2024);
 - ✓ two opposite antecedents by Himson for destructive purposes, the US US '795 and the German DE'042 (see *ORD_40903/2024* cited above).

This relevant information, however, does not appear to have been submitted to the Court Appeal at the time of the application for a stay, which reasoned on this point by rejecting the stay, complaining, inter alia, of Baghat's failure to attach the status of the proceedings;

(II) The need to protect the integrity of these proceedings before they are finalised, as a specification of the higher interest of justice, is here also expressed in the free choice of the parties to prepare their respective procedural strategies, e.g. by cooperating to reach trans-active agreements (urged by the judge rapporteur during the interim conference and to which the parties declared their readiness, cf. *ORD_598537/2023*). And this without having prior knowledge, even if indirectly, of the specific appraisals - underlying the *application* - of the appellate court on the validity of the patent (and even before those of the court of first instance), appraisals that could condition the parties' procedural choices by directing them.

If, on the other hand - as seems more likely - the appellate court's review, requested by Baghat for suspensive purposes, relates to, so to speak, extrinsic and formal profiles on the technical adversarial process addressed here, the relevant information, as already indicated in (I) above, is already available to Baghat;

(III) the foreseeable settlement with the final decision of the present case - the Oral Hearing, as mentioned, is set for 11 June 2025 - before the Court of Appeal concludes the second instance one. If the application for revocation of EP '848 -concerning claim No. 1- is granted, Baghat can be promptly joined in the appeal where it is involved. And this, on the one hand, without the risk of conflicts between different decisions concerning the same EO '848 patent and, on the other hand, without the need for access to the documents and evidence in the present case, as the opposing interests of Himson and Oerlikon are at stake;

(IV) the Court of Appeal has already rejected Baghat's request for a stay of the final decision - Ord. No. 598484/2023 - according to rule 223 ROP for several reasons, confirming on this point the findings of this Court

Court (which had rejected Baghat's application for a stay of proceedings under Rule 295 letter m, RoP at the Oral Hearing): the lower court pointed out not only the lack of specific allegation of the status of these proceedings - on the basis of which Baghat now access - but also her previous procedural choices set out below. Access to the file could therefore not benefit her.

(V) Baghat, which was sued by Oerlikon in Suit No. 549485/2023, did not attack the patent, but rather acknowledged its validity and did not contest infringement; moreover, it did not intervene in the present proceedings in support of the revocation request introduced by Himson, choices that now prevent it from attacking the patent on appeal. Thus, Baghat:

- a. it is not a competitor that is attacking the patent in a parallel court, before a national court or the UPC, or before the EPO;
 - b. is not an economic operator that needs to have information on EP 848 in order to guide its choices in the marketplace by producing or marketing products in possible conflict with patent teachings,
- situations, those under (a) and (b) considered worthy of protection.

10. In conclusion, the interest in access to the file of proceedings still in progress is not supported by an interest of a general public nature the control and study of the Court's judicial activity and decision-making process, as the primary purpose protected by Rule 262.1(b) ROP, but by the need to exercise in another forum his right of defence, in respect of which the judge *ad quem* has already expressed a negative judgement also for other reasons (the Court of Appeal, which has already rejected the application for a stay under Rule 223 ROP also for other reasons): the needs expressed by both parties to the present proceedings for the integrity of the same, keeping their respective procedural strategies reserved, are therefore prevalent.

In addition, access under Rule 262.1(b) RoP is not permitted with respect to information that the applicant can obtain *aliunde*, e.g. by e.g. by consulting the CMS publications of the Court's decisions and orders, or which is available with the final decision closing the proceedings, expected shortly and in any event in time to satisfy the interest underlying the request for access In the balancing of interests, therefore, the one set out by Oerlikon and Himson prevails over the one attached by Baghat.

As for costs

11. Oerlikon sought an order that Baghat pay the costs of these proceedings.
12. The application must be rejected, as the reasons expressed in a recent arrest of the Central Division in Paris are fully justified, for the reasons briefly summarised below. In fact, this is not a contentious proceeding on the merits in the technical sense or on damages, since it is directed to the protection of a general interest and not aimed at settling, at least in a direct way, a conflict between the parties relating to a subjective right with *res judicata* effects (*Paris, Central Division*, Order no. ORD_59519/2024 , ACT_22275/2024,

UPC_CFI_189/2024: " it can be inferred that, as a general rule, a decision on costs presupposes that there has been a decision on the merits the dispute or for the determination of damages. For these purposes, a "decision on the merits" must be understood as a decision that concludes litigation proceedings, that is proceedings where the ascertainment of a right is sought by one party against another and is capable of producing the effects of res judicata on conflicting subjective positions and from which a situation of the defeat of one party with respect to another may arise, justifying the award of costs. The proceedings initiated by the request by a member of the public to have access to the register cannot be considered as litigation in a technical sense even if the application introduces an adversarial phase in which a real conflict between the applicant and one or more parties may arise. Indeed, the measure sought in these proceedings is merely instrumental to the purpose of enhancing transparency in the judicial activity and, consequently, its legitimacy and accountability to the public (see CD Vienna, order issued on 12 August 2024, UPC_CFI_33/2024). Hence, the proceeding in debate aims to the protection of the general and collective interest of the public and not to the protection of the particular interests of the applicant or of the parties in the main dispute. Even in case of conflict between them, the Court's intervention is primarily administrative in nature, lacking the characteristics of a judgment with res judicata effects on conflicting subjective positions. (see, in general CoA, order issued on 10 April 2024, UPC_CoA_404/2023)".

Permission to appeal

13. The importance of the correct interpretation for the system of Article 262.1. (b) of the P.o.R., in the light of the underlying *rationale* of the Institute, highlighted above, suggests that the appeal should be admitted, also in the light of the need for a consistent interpretation, within the system, as expressly indicated by Preamble No. 8 of the P.o.R.

An appeal against this decision is therefore allowed.

ORDER

For these reasons, having consulted the constituted parties, the judge rapporteur

1. Dismisses Bhagat Textile Engineers' application for access pursuant to Rule No. 262.1. b RoP;
2. dismisses the application of Oerlikon Textile GmbH & CO KG for an order that Bhagat Textile Engineers pay the costs of the proceedings;

Appeal against this decision is admitted.

Milan 20 February 2025
The Judge rapporteur
Alima Zana

Alima
ZANA

Signed
digitally by Alima
ZANA Date:
2025.02.20
16:01:10 +01'00'

ORDER DETAILS

Order no. ORD_4166/2025 in ACTION NUMBER: ACT_549550/
Action type: Infringement Action
Related proceeding no. Application No.: 3348/2025
Application Type: APPLICATION_ROP262_1_b