



UPC_CFI_309/2023
ACT_571669/2023
Application n°: 8899/2025

Order
of the Court of First Instance of the Unified Patent Court
Central Division (Paris Seat)
issued on 9 June 2025

APPLICANT

Meissner Bolte Patentanwälte Rechtsanwälte Partnerschaft mbB
Widenmayerstr. 47, 80538 München, Germany
represented by **Moritz-Melchior Bloser**

PARTIES:

NJOY Netherlands B.V. (Claimant)
Westerdoksdiik 423, 1013BX Amsterdam, Netherlands
represented by **Henrik Holzapfel**

Juul Labs International, Inc. (Defendant)
560 20th Street, Building 104, California 94107, San Francisco, US
represented by **Bernhard Thum**

PATENT AT ISSUE: EP 3 498 115 (hereinafter: 'the Patent')

DECIDING JUDGE:

This order has been issued by the legally qualified judge **Maximilian Haedicke**

LANGUAGE OF PROCEEDINGS: English

SUBJECT-MATTER OF THE PROCEEDINGS

Request based on Rule 262.1(b) of the Rules of Procedure (RoP).

SUMMARY OF FACTS AND REQUESTS

1 Procedural background

- 1.1 NJOY brought an action for revocation of the Patent against Juul Labs International before the Central Division Paris (ACT_571669/2023).
- 1.2 With decision of 5 November 2024 Panel 1 of the Central Division revoked the Patent with effect for the territories of Austria, Belgium, Denmark, Finland, France, Germany, Italy, Latvia, Luxembourg, Netherlands, Portugal and Sweden.
- 1.3 Juul Labs has appealed with the appeal pending (UPC_CoA_5/2025).
- 1.4 On 21 February 2025, the Applicant lodged an application, pursuant to R. 262.1(b) RoP, seeking access to written pleadings and evidence submitted by the parties in the revocation action against the Patent.

2 Requests

2.1 Applicant requests:

- Inspection of the written pleadings and evidence in the case No. ACT_571669/2023 between NJOY Netherlands B.V. and Juul Labs International, Inc.

2.2 Applicant argues:

- The Applicant represents various clients in revocation proceedings at the UPC in which comparable subject matter is relevant, as has been dealt with and decided in the present proceedings with the case number ACT_571669/2023.
- This concerns in particular the auxiliary requests introduced by the Defendant in the revocation action and the extent to which the defendant in the revocation action has explained and justified the admissibility and validity of these auxiliary requests.
- It is necessary to obtain access to the case file in order to obtain a comprehensive picture of the line of argument that led to the Court's subsequent decision.

2.3 Defendant requests:

- To reject the request pursuant to Rule 262.1(b) filed by the Applicant.

Conditionally, in the event that the Court does not grant the former request,

- To grant access to the files only under the condition that the Applicant is restricted from filing the written pleadings or parts of them with other courts or judicial instances.

2.4 **Defendant argues:**

- The alleged representation of clients in the technical filed of the patent in suit without indicating any details does not represent a reasoned request and does not justify any direct legitimate interest in the subject matter of the present proceedings.
- It is to be expected or - at least - there remains a substantial likelihood that the Applicant copy-pastes passages from the written pleadings and evidence lodged in the revocation proceedings before the Paris Central Division and reproduces these passages in EPO opposition proceedings or in other Court proceedings as quotations.
- Any third party, without having lodged a reasoned request with the UPC, via the online register of the EPO, would gain access to information from the UPC proceedings which are not supposed to be publicly available. This clearly contravenes the interests of the Defendant and Claimant in the present UPC proceedings and undermines the principle of the UPCA to keep the pleadings and evidence of the parties confidential.

2.5 **Claimant's position:**

In an email dated 23 May 2025, Claimant stated that it was not convinced that the applicant has stated the required specific interest in accessing a pending case, but would not respond in detail.

GROUND FOR THE ORDER

3 Access to written pleadings and evidence

- 3.1 262.1(b) RoP provides that, without prejudice to several articles and rules that provide for the protection of confidential information mentioned in R. 262.1 RoP, the redaction of personal data pursuant to Regulation (EU) 2016/679 and redaction of confidential information according to R. 262.2 RoP, written pleadings and evidence, lodged at the Court and recorded in 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.
- 3.2 According to the decision of the Court of Appeal in *Ocado v Autostore* (10 April 2024, UPC_CoA_404/2023, APL_584498/2023, para 43), in the decision on a request under R. 262.1(b) RoP, the interests of a member of the public of obtaining the requested access must be weighed against the interests mentioned in Art. 45 UPCA. To allow the judge-rapporteur to balance all these interests, the applicant of the R. 262.1(b) RoP request must set out the reasons why it has an interest to obtain the requested access. It follows that 'reasoned request' in R. 262.1 (b) RoP means a request that not only states which written pleadings and evidence the applicant wishes to obtain, but also specifies the purpose of the request and explains why the access to the specified documents is necessary for that purpose, thus providing all the information necessary

- for the judge-rapporteur to make the required balance of interest (Ocado v Autostore para 44).
- 3.3 As the Court of Appeal held (Ocado v Autostore para 50), once the proceedings have come to an end, the integrity of proceedings is no longer at stake and the balance of interests will normally be in favour of granting access. Once a first instance decision has been made, 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.
- 3.4 As the Court of Appeal further noted (Ocado v Autostore para 50), the interest of a member of the public usually arises after a decision rendered by the Court of First Instance is issued irrespective of whether an appeal is or may be lodged.
- 3.5 Withholding access to these documents then no longer serves the purpose of protection of integrity of the CFI proceedings (Ocado v Autostore para 48).
- 3.6 Applying the relevant provisions and general principles set out by the Court of Appeal 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, the Court holds that the Applicant has a general interest in obtaining access to the written pleadings and evidence. The access is to be granted as the revocation proceeding are terminated at the Court of First Instance. The currently pending proceedings in the appeal before the CoA are no reason to deny access to pleadings and evidence submitted in the first instance proceedings (Abbott Diabetes Care v Powell Gilbert LLP 9 January 2024 UPC_CoA_480/2024 APL_46747/2024, UPC_CoA_481/2024 APL_46749/2024, para 14).
- 3.7 Applicant has made a reasoned request by stating that he represents various clients in revocation proceedings at the UPC in which comparable subject matter is relevant, as has been dealt with and decided in the proceedings with the case number ACT_571669/2023. Applying the general principles set by the CoA to identify a reasonable request, it appears reasonable that Applicant considers it is to be necessary to obtain access to the case file in order to obtain a comprehensive picture of the line of arguments that led to the Court's decision.
- 3.8 Juul Labs has not put forward any arguments which shift the balance of interests in the present case towards withholding access. The argument that the Applicant does not have any direct legitimate interest in obtaining the requested access due to the lack of details concerning the representation of clients, does not alter the assessment, since the interest of a general nature invoked by the Applicant suffices now that the first instance proceedings have come to an end. As mentioned above, this general interest is no longer counterbalanced by the integrity of the proceedings.
- 3.9 It has not been argued that the request was abusive and the Court has no reason to believe that it is. 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.

4 No limitation of access

- 4.1 In certain cases the Court of Appeal has, for the purpose of appropriate protection of the integrity of pending proceedings, imposed conditions on granting access. In its Decision issued on 25 April 2025 regarding a R. 262.1 (b) RoP request (Nicoventures Trading Limited vs Juul Labs International, Inc., UPC_CoA_5/2025 APL_289/2025 App_13365/2025 para 15) the Court of Appeal has ruled that the granting of immediate access to written pleadings or evidence was to be accompanied by the condition that the member of the public is not allowed to file the written pleadings in question with other courts or judicial instances such as the EPO Boards of Appeal, or distribute them elsewhere, until the appeal has been adjudicated or otherwise closed; see also Paris Central Division, SWAT Medical v Meril Italy 14 October 2024 UPC_CFI_255/2023 Nos. App_33486/2024, 33487/2024 and 33489/2024 para 30).
- 4.2 Similarly, in Ocado vs Autostore (para 54) the Court of Appeal considered the imposition of the condition to keep the written pleadings and evidence an applicant was given access to confidential “as long as the proceedings have not come to an end”.
- 4.3 In the present case, this restriction does not apply. The Court of Appeal has merely imposed this restriction on access to documents and evidence submitted in the pending appeal proceedings and has not extended this restriction to proceedings which already have been terminated. The integrity of any appeal proceedings – as currently pending – cannot be considered to be a reason to impose conditions on access to pleadings and evidence submitted in the first instance proceedings.
- 4.4 Juul Labs has also argued that any third party, without having lodged a reasoned request with the UPC, via the online register of the EPO, would gain access to information from the UPC proceedings which are not supposed to be publicly available. However, according to Art. 10 and Art. 45 UPCA, 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. As said, the integrity of the proceedings is no longer a reason to limit access after the proceedings are terminated. Juul Labs has not put forward any other interest that outbalances the general interest of access.
- 4.5 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.

5 Leave to appeal and suspension of the effect of the order

- 5.1 This judge-rapporteur considers it appropriate to grant the leave to appeal of this order, having regard to the need to establish a consistent jurisprudence with reference to access to register.
- 5.2 For the same reasons and considering the practical irreversibility of the effects of an order granting (unrestricted) access to court records, it is deemed appropriate to suspend the effects of the present order until the expiration of the deadline for filing an appeal or, if an appeal is filed, until the end of such proceedings.

ORDER

The judge-rapporteur,
having regard to Rule 262 (1) (b) RoP,

- grants Applicant access to the written pleadings and evidence in the case No. ACT_571669/2023 between NJOY Netherlands B.V. and Juul Labs International, Inc. after redaction of personal data within the meaning of Regulation (EU) 2016/679;
- grants Juul Labs International, Inc. leave to appeal;
- suspends the effects of the present order until the expiration of the deadline for filing an appeal or, if an appeal is filed, until the end of such proceedings.

Legally qualified judge Maximilian Haedicke

Order details

Order no. ORD_27305/2025 in ACTION NUMBER: ACT_571669/2023
UPC number: UPC_CFI_309/2023
Action type: Revocation Action
Related proceeding no. Application No.: 8899/2025
Application Type: APPLICATION_ROP262_1_b