

UPC_CFI_181/2024
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 30 June 2025
concerning public access to the register (R. 262.2(b) RoP)

HEADNOTE:

Public access to the register. No confidentiality after access.

KEYWORDS: public access to the register; leave to appeal

APPLICANT

- 1) **Bardehle Pagenberg Partnerschaft mbB**
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Represented by Prof. Dr. Tilman Müller-Stoy, Bardehle Pagenberg Partnerschaft mbB

RESPONDENTS

- 1) **HP Printing and Computing Solutions, S.L.U.**
(Main proceedings party - Claimant)

Calle José Echegaray 18 - 28232 - Las Rozas - ES

Represented by: Christoph Schröder, Maikowski & Ninnemann Patentanwälte
Partnerschaft mbB

- 2) **Nokia Technologies Oy**
(Main proceedings party - Defendant)

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Represented by: Dr. Christoph Walke, Patent Attorney, Cohausz & Florack Patent- und

PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor</i>
EP2661892	Nokia Technologies Oy

DECIDING JUDGE

This order is issued by presiding judge and judge-rapporteur Marjolein Visser

COMPOSITION OF PANEL – FULL PANEL

Presiding judge and judge-rapporteur	Marjolein Visser
Legally qualified judge	Maximilian Haedicke
Technically qualified judge	Eric Augarde

LANGUAGE OF PROCEEDINGS: English

POINTS AT ISSUE

Public access to written pleadings and evidence (R.262.1(b) Rules of Procedure (RoP))

SUMMARY OF FACTS AND REQUESTS

1. On 3 June 2025, applicant filed an application pursuant to R.262.1 (b) RoP. Applicant requests access to the written pleadings and evidence submitted before the Court and recorded by Registry in the proceedings UPC_CFI_181/2024, App_40293/2024, with personal data redacted beforehand, and in particular access to (using the designations as provided in the CMS):

“Application” and all exhibits,
“Defence to Application to amend”,
“Reply to the Defence”.

2. Applicant - in summary - further states that:
 - The applicant has an interest in better understanding how the parties and the court conducted the proceedings and ultimately reached the decision to declare the case closed. This is important for the applicant, a firm of UPC representatives, to provide professional and expert advice to its clients, which benefits both the court and its users.
 - By decision of March 27, 2025, the withdrawal of the action was accepted, and the proceedings were declared closed. According to the case law of the Court of Appeal, members of the public are generally entitled to access written pleadings and evidence after the conclusion of proceedings. This principle also applies when proceedings are concluded without a decision on the merits. Even without a final decision, the case file provides insights into how the court handled the dispute and serves legitimate interests, such as enabling professional and expert advice by UPC representatives or supporting scientific or educational purposes.
3. Applicant has made a similar request for access in the related proceedings ACT_21101/2024 UPC_CFI_181/2024 (revocation action).
4. The parties in the main proceedings have been invited to submit comments on the request.
5. Claimant in the main proceedings did not submit any comments.
6. Defendant in the main proceedings requests to reject the application for access to the register in its entirety.
7. Defendant argues - in summary - as follows.
 - The Applicant does not claim a specific (personal) interest concerning the requested file inspection.
 - The Applicant has also not sufficiently brought forward a general interest in the file inspection. In view of the requirement to submit a "reasoned request", the Applicant, inter alia, has to specifically explain why the file inspection is necessary for the purpose pursued by it. Otherwise, in case a file inspection request following a termination of proceedings were to be granted based on any generic reasoning, the procedure laid down in R. 262.1 (b) RoP would become obsolete. If that had been the intention, the register would have been construed as an openly accessible source for all files of closed proceedings.
 - The Applicant has merely stated to want to understand "how the parties and the court conducted the proceedings and ultimately reached the decision to declare the case closed." It is not clear why this should require access to the file. The proceedings have been concluded following an agreement by the parties. This is public information, that can be found in a press release regarding the Nokia/HP deal.
 - The Applicant is a law firm which has already conducted numerous UPC proceedings and, due to this, has gained sufficient experience in this field. It is

therefore not apparent what the Applicant expects to learn from the requested file inspection. In particular, the present proceeding was terminated still before the start of the interim proceeding. The requested file inspection could therefore only provide insight into the standardized course of the written proceeding. This cannot constitute any added value for the Applicant.

- It cannot be excluded that the Applicant could in fact be acting for a third party who does not wish to appear as an applicant themselves. This would have to be disclosed. Otherwise, the court cannot consider the true interests affected and secure a transparent and fair file inspection procedure for all parties. The Applicant is asked to confirm that the file inspection request is indeed made solely in the interest of and on behalf of the Applicant.
- The Applicant is not allowed to provide the inspected file content to any third party. The justification requirement pursuant to R. 262.1 (b) RoP would be undermined if the Applicant were allowed to randomly distribute the documents addressed by the inspection request at hand. R. 262.1 (b) RoP does only allow file inspection by applicants who themselves provide a "reasoned request". Also, for such a distribution, the Applicant did not provide any reasons pursuant to R. 262.1 (b) RoP. The "better understanding" of the conduct of the proceedings by the UPC, does not require providing the inspected file content to third parties.

GROUND FOR THE ORDER

Legal framework

8. R.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.
9. The Court of Appeal has ruled in *Ocado v Autostore* (CoA, 10 April 2024, UPC_CoA_404/2023, APL_584498/2023, para 42-54) that, insofar as relevant here, the following principles apply.
 - As is clear from 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, which means that in such case access to the public is to be denied.
 - The interests of a 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. The general interest of justice includes the protection of the

integrity of proceedings. Public order is at stake e.g. when a request is abusive or security interests are at stake.

- The applicant must set out the reasons why he has an interest to obtain access to the written pleadings and evidence, specify the purpose of the request and explain why access to the specified documents is necessary for that purpose, thus providing all the information that is necessary for the judge-rapporteur to make the required balance of interests.
- A member of the public generally has an interest that written pleadings and evidence are 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. This general interest of a member of the public usually arises after a decision was rendered. At this point, there is a decision that needs to be understood and the handling of the dispute by the Court can be scrutinised.
- The protection of the integrity of proceedings ensures that the parties are able to bring forward their arguments and evidence and that this is decided upon by the Court in an impartial and independent manner, without influence and interference from external parties in the public domain. The interest of integrity of proceedings usually only plays a role during the course of the proceedings.
- This means that these interests – the general interest referred to above and the protection of integrity of proceedings – are usually properly balanced and duly weighed against each other, if access to written pleadings and evidence is given to a member of the public after the proceedings have come to an end by a decision of the Court.
- Proceedings may also come to an end before a decision is rendered, for instance by a settlement between the parties, or when an action is withdrawn. Given the general principle that the register and proceedings are open to the public, once the integrity of proceedings no longer plays a role and thus no longer counterbalances the general interest of a member of the public by access to the written pleadings and evidence, the balance is usually in favour of allowing access (subject to the protection of personal data and confidential information), even if there is no decision to be understood. The case file may still give an insight in the handling of the dispute by the Court and / or serve another legitimate interest of such member of the public, such as scientific and / or educational interests, which is no longer counterbalanced by the integrity of proceedings once the proceedings have come to an end.
- A member of the public may also have a more specific interest in the written pleadings and evidence of a particular case, than the general interest mentioned above. This is in particular so where he has a direct interest in the subject-matter of the proceedings, such as the validity of a patent that he is also concerned with as a competitor or licensee, or where a party in that case is accused of infringing a patent by a product which is the same or similar to a product (to be) brought on the market by such member of the public. When a member of the public has such a direct legitimate interest in the subject-matter of certain proceedings, this

interest does not only arise after the proceedings have come to an end but may very well be immediately present.

- In weighing such a direct interest against the general interest of integrity of proceedings, the balance will generally be in favour of granting access to the written pleadings and evidence of such proceedings. The Court may, however, for the purpose of appropriate protection of the integrity of proceedings, impose certain conditions on granting access, such as the obligation for that member of the public to keep the written pleadings and evidence he was given access to confidential as long as the proceedings have not come to an end.

10. In *Nicoventures v NJOY* (CoA, 25 April 2025, UPC_CoA_7/2025 APL_322/2025 App_13352/2025, para. 14) the Court of Appeal has ruled that the Court may, for the purpose of appropriate protection of the integrity of proceedings, impose certain conditions on granting access. Since this is a matter of the general interest, it can be done on the Court's own motion.

Acces

11. As ruled by the Court of Appeal, a member of the public generally has an interest that written pleadings and evidence are made available. Given the general principle that the register and proceedings are open to the public, once the integrity of the proceedings no longer plays a role and thus no longer counterbalances the general interest of a member of the public by access to the written pleadings and evidence, the balance is usually in favour of allowing access, even when the case has ended without a decision.

The reasons set forth by the Applicant meet the relatively low bar set by the Court of Appeal in a situation where the proceedings have ended. The interest in access to the pleadings and evidence in the case is not taken away by public information about the agreement between the parties, as acces can still provide insight in the way the proceedings were handled by the parties and the Court. Furthermore, the fact that Applicant has been involved as a representative in other UPC cases, does not mean it can not have an interest access to in the pleadings and evidence in this specific case for the purposes stated. Access will therefore be granted.

12. As the (own) interest of the Applicant meets the requirements to grant access, the judge-rapporteur sees no reason to ask the Applicant to confirm that the request is made solely in the interest of and on behalf of the Applicant.

No limitation to access

13. 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 *Nicoventures v NJOY*, 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.

14. Similarly, in *Ocado v 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”. 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).

15. 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 pending (appeal) proceedings and has not extended this restriction to proceedings which already have been terminated.
16. Defendant has also argued that R. 262.1 (b) RoP only allows file inspection by applicants who themselves provide a "reasoned request" and that the Applicant did not provide any reasons for distributing the documents. 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. Defendant has not put forward any other interest that outbalances the general interest of access. Furthermore, an obligation to keep the content of the file confidential might conflict with some of the legitimate (general) interests of a member of the public with regard to closed cases mentioned by the Court of Appeal, such as scientific or educational interests.

Redaction of personal data and confidential information

17. The documents shall be redacted of personal data in the meaning of EU Regulation 2016/679 prior to making them available to the Applicant. The Registry will see to this. The parties did not put forward that the documents for which access will be granted contain confidential information. No R. 262.2 RoP request has been made by either of the parties.

Appeal and suspensive effect

18. It is considered appropriate to grant leave to appeal of this order, having regard to the need to establish a consistent jurisprudence with reference to access to the register. Although the Court of Appeal has already set forth clear criteria for the application of R. 262.1 (b) RoP, the question whether an Applicant that has been granted access according to this Rule should keep the content of the file confidential, even when the proceedings have ended, has not yet been answered.
19. For the same reasons and considering the practical irreversibility of the effects of an order granting access, 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,

- grants Applicant access to the following documents, redacted in accordance with EU Regulation 2016/679:
 - “Application” and all exhibits;
 - “Defence to Application to amend”;
 - “Reply to the Defence”;
- grants Defendant 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,
- rejects all remaining requests.

Issued on 30 June 2025

Marjolein Visser, presiding judge and judge-rapporteur

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_26783/2025 in ACTION NUMBER: ACT_21101/2024

UPC number: UPC_CFI_181/2024

Action type: Revocation Action

Related proceeding no. Application No.: 26308/2025

Application Type: APPLICATION_ROP262_1_b