



Milan - Central Division - First Instance -

UPC_CFI_941/2025

**Final Order pursuant to Rule 262.1 b) RoP
of the Court of First Instance of the Unified Patent Court
delivered on 16/10/2025**

APPLICANT

Herbert Smith Freehills Kramer LLP - Breite Str. 29, 40213 Düsseldorf, Germany

Represented by registered representative before the UPC Ms Julia Nguyen Rechtsanwältin

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RESPONDENTS

INSULET co 100 Nagog Park - MA 01720 - Acton – US Massachusetts

Represented by Marc Grunwald and Frank Peterreins

EOFLOW Co. Ltd 302Ho, HUMAX VILLAGE, 216 - 13595 - Hwangsaeul-ro, Bundang-gu, Seongnam-si, Gyeonggi-do - KR

Represented by Mirko Weinert and Christopher Pierce

This final order is issued by the judge rapporteur Andrea Postiglione (Rule 262.1 b)

The language of the proceedings is English

These proceedings relate to access to documents filed in the main proceedings UPC_CFI 380/24 opposing INSULET and EOFLOW, which was followed by a revocation action and counterclaim for infringement under UPC_CFI 597/2024.

PATENT AT ISSUE: EP4201327 owned by Insulet Corporation

Summary of facts and legal reasoning

Herbert Smith Freehills Kramer LLP - Breite Str. 29, 40213 Düsseldorf - represented by counsellor Ngoc Anh Nguyen Julia asked this Court pursuant to Rule 262.1 letter b) RoP to have access to the redacted versions of the documents listed from a) to m) relating to the case Insulet vs. Eoflow under UPC_CFI 380/24 ACT_39640/2024:

- a. Insulet Corporation's Application – submitted 03/07/24
- b. EOFLOW Co., Ltd.'s Objection – submitted 16/09/24
- c. EOFLOW Co., Ltd.'s Exhibit HRM05 – submitted 16/09/24
- d. EOFLOW Co., Ltd.'s Exhibit HRM18 – submitted 16/09/24
- e. EOFLOW Co., Ltd.'s Exhibit HRM19 – submitted 16/09/24
- f. EOFLOW Co., Ltd.'s Exhibit HRM20 – submitted 16/09/24
- g. EOFLOW Co., Ltd.'s Exhibit HRM21 – submitted 16/09/24
- h. EOFLOW Co., Ltd.'s Exhibit HRM22 – submitted 16/09/24
- i. EOFLOW Co., Ltd.'s Exhibit HRM23 – submitted 16/09/24
- j. EOFLOW Co., Ltd.'s Exhibit HRM24 – submitted 16/09/24
- k. EOFLOW Co., Ltd.'s Exhibit HRM25 – submitted 16/09/24
- l. EOFLOW Co., Ltd.'s Exhibit HRM26 – submitted 16/09/24
- m. EOFLOW Co., Ltd.'s Exhibit HRM27 – submitted 16/09/24

The purpose of the request is, wordily, to *'gain a better understanding of the decision rendered in view of the arguments brought forward by the parties and the evidence relied on. Such understanding will enhance the Applicant's ability to provide professional and expert advice to its clients before the UPC, thereby also serving the interests of the Court and its users.*

The applicant invokes the principles set out by the Court of Appeal in its decision of 10 April 2024 in Ocado vs Autostore (UPC_CoA_404/2023) and in Abbott Diabetes Care Inc vs Sibio Technology Ltd and another (UPC_CoA_480/2024, UPC_CoA_481/2024), highlighting that once the proceedings are closed, the integrity of the proceedings enjoys less protection also regards the documents of the proceedings.

The Judge rapporteur issued an order on 29/09/2025 allowing the concerned parties to lodge written submissions. In particular, the parties involved were asked to specifically indicate which redacted documents could be made available to the applicant and which could not, stating their reasons.

INSULET lodged written statements on 08/10/2025, asking this Court:

I. The application for file inspection pursuant to R. 262.1(b) RoP is dismissed.

II. Auxiliary: The application for file inspection pursuant to R. 262.1(b) RoP is dismissed to the extent the following documents are concerned: - EOFLOW Co., Ltd.'s Exhibit HRM19 – submitted 16/09/24 - EOFLOW Co., Ltd.'s Exhibit HRM20 – submitted 16/09/24 - EOFLOW Co., Ltd.'s Exhibit HRM21 – submitted 16/09/24 - EOFLOW Co., Ltd.'s Exhibit HRM22 – submitted 16/09/24 - EOFLOW Co., Ltd.'s Exhibit HRM23 – submitted 16/09/24 - EOFLOW Co., Ltd.'s Exhibit HRM24 – submitted 16/09/24 - EOFLOW Co., Ltd.'s Exhibit HRM25 – submitted 16/09/24 - EOFLOW Co., Ltd.'s Exhibit HRM26 – submitted 16/09/24 - EOFLOW Co., Ltd.'s Exhibit HRM27 – submitted 16/09/24

III. Herbert Smith Freehills Kramer LLP shall bear any costs that may arise.

INSULET maintained that the identity of the applicant was unknown, so that it could not be considered as a third party within the meaning of Rule 262.1 RoP.

INSULET further stipulated that it was not apparent *‘why HSF purports to require access to the court file, and the proffered justification, namely, that they wish to “educate themselves”, falls far short of establishing any legitimate interest’*, holding that *‘the mere desire to obtain clarification or a more nuanced understanding of the reasoning underlying a decision, even if purportedly for the purpose of assisting in the representation of clients, cannot properly be construed as a “reasoned”, i.e., legitimate interest, within the meaning of R. 262.1(b) RoP’*.

Subordinately, if the Central Division found that HSF’s application for file inspection could not be rejected in its entirety, INSULET requested that access to Exhibits HRM 19–27 be denied. These documents refer to statements, evaluations and opinions concerning the use and availability of the EOPatch (and, in some cases, the Omnipod) and include the perspectives of healthcare professionals, distributors and patients on the clinical and logistical effects of discontinuing treatment with the EOPatch.

EOFLOW submitted written comments on 10/09/2025.

EOFLOW noted that HSF did not provide any case-specific or public interest-related reason for requesting access. Instead, HSF asserted a 'general interest' in understanding the court's reasoning, demonstrating a commercial motive to equip its own practice to advise clients and strengthen its market position.

In EOFLOW’s view, the transparency principle of the UPC is designed to ensure public scrutiny of judicial reasoning, thereby maintaining trust in the court. This purpose is already fully served by publishing the Court’s reasoned decision, as this provides full visibility of the relevant legal and factual reasoning behind the ruling.

Therefore, there is no legitimate need for any additional disclosure of pleadings or exhibits beyond the judgment itself, especially where such disclosure risks exposing confidential party information.

EOFLOW also noted that some of the requested information was already subject to a court confidentiality order under Rule of Procedure 262A (Order of 27 September, ORD_52908/2024). This order covered certain technical and business information in EOFLOW's objection, as well as exhibits HRM 5 and HRM 18. Furthermore, some pleadings contain personal data, particularly in relation to a party expert commissioned by EOFLOW (reference is probably made to Prof. Pott).

The disclosure of such data would only be permitted if one of the conditions under Art. 6 GDPR were met. EOFLOW concludes that the confidentiality and GDPR data should also be preserved in these proceedings.

No party made a request pursuant to Rule 262.2 RoP.

The application is admissible.

Rule 262.1(b) reads as follows: *'Written pleadings and evidence lodged at the court and recorded by the registry shall be available to the public upon a reasoned request to the registry. The decision is taken by the judge rapporteur after consulting the parties'*.

As a preliminary consideration, the second paragraph of Rule 262.1 significantly differentiates between orders and decisions, which are generally made publicly available, and written pleadings and evidence, the content of which is only made available upon a reasoned request by the applicant.

Rule 262.1, letter b), also aims to allow the public to access written pleadings and documents lodged at the court, according to the general principle of trial publicity laid down in Article 45 UPCA. However, consideration must be given to the sensitive content of these documents, particularly concerning trade secrets, company-related information, and, in general, data relevant under Article 58 UPCA and GDPR.

By accessing the whole case file, the public, including legal practitioners, is made aware of the mechanisms governing the litigation before the UPC.

Knowledge of the structure of the UPC trial is envisageable, it fosters the certainty of law enforcement, the trust in the effectiveness of the Courts, and enables the legal practitioners to better interface with the recently established Unified Patent Court.

On the other hand, with regard to written pleadings and documents, and in the light of Rule 262.1. B) the JR must verify the specific interest of the party in going into such detail about the structure of the proceedings.

As the parties have recalled, the confidentiality of the proceedings diminishes until a decision on the merits is made. However, even after the decision is made, sensitive information (i.e. trade secrets, GDPR, business information, accounting data) remains sensitive. And even if such data are partially disclosed in the decision, Rule 262.1(b) limits their further disclosure.

The JR interprets Rule 262.1(b) as being broadly aimed at the general disclosure of case documents and submissions, provided that the public interest is substantiated and the parties to the proceedings are not put at risk by such disclosure.

The JR must, therefore, assess whether the public requesting access to the documents has a justified interest in accessing them, which can also be based on research activity (provided the party demonstrates that they belong to the research domain and explains why they have decided to start research precisely with the proceedings at hand).

Furthermore, the instrument referred to in Rule 262.1 b) of the Rules of Procedure (RoP) must not be used for purposes that exceed the reasons on which the request is based, e.g. to scope the connections among the main competitors or to indirectly acquire documents relevant to third parties' interests (the so-called 'abuse of evidence' referred to in Art. 58 UPCA).

Essentially, reference must be made to the specific goal substantiated in the access request, and the court must grant access to file documents only to the extent that this is instrumental and essential to fulfil the specific purpose on which the request is based.

So, if a party wishes to understand how proceedings before the UPC are generally dealt with, the Court can only grant access to certain documents suitable for the purpose. If the applicant requires access to a specific segment of the proceedings, including the documents filed therein, they must provide the Court with specific justification as to why this is essential.

The CD Munich (UPC_CFI 1/2023, Order No. 550152, 20 September 2023, ACT_459505/2023) has already expressed the opinion that the reasons provided in a request for access to written pleadings and evidence under Rule 261.1(b) must relate to the reason(s) for accessing the requested information itself. The reasoned request forms the basis for the judge-rapporteur's decision after consulting the parties. This approach is shared.

In light of the foregoing,

the request is partially well-founded.

In the case at hand, HSF has justified the request on the basis of 'gaining a better understanding of the decision, in view of the arguments brought forward by the parties and the evidence relied on. Such understanding will enhance the applicant's ability to provide professional and expert advice to their clients before the UPC, thereby also serving the interests of the court and its users'.

As previously stated, the applicant's asserted interest in receiving access must be weighed against the legitimate interests of the parties to the proceedings, bearing in mind the stated purpose of gaining a better understanding of the decision, as clarified by the Court of Appeal in the Ocado v Autostore case (decision of 10 April 2024, UPC_CoA_404/2023, para. 43).

The CoA noted that *"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, for example, when a request is abusive or when security interests are at stake”.

Given HSF's stated purpose, this JR considers that a comprehensive understanding of the decision can be achieved simply by reading the redacted defence briefs (documents A and B of the request).

The JR does not see how disclosing the exhibits attached to the defence briefs could help the applicant to ‘provide professional and expert advice to its clients before the UPC’. To this regard the risk of scoping activity is deemed to outweigh HSF's expressed specific interest.

In fact, given that the Court has already assessed all the relevant documents submitted by the parties during the proceedings in its final decision of 22 July 2025, the meaningfulness and relevance of the documents can be interpreted thoroughly in the decision itself.

If the Court did not mention certain documents in its final decision, they are also not useful to HSF for a better understanding of the proceedings and access to them would be disproportionate and unreasonable.

The parties shall then provide the applicant with a redacted copy of said relevant document (in case they are protected under Rule 262A) within five days.

Finally, there is no need to adjudicate on costs in document access proceedings (see the Nordic Baltic Regional Division's ORD_42124/2024, issued on 21 January 2024). The procedures for accessing documents are not contentious, but are designed to strike a balance between the general interest in document disclosure and the interests of the parties involved. The necessary cooperation of all interested parties, as well as the JR's verification of the appropriateness of disclosure on a case-by-case basis, appears to contradict the principle that the losing party should pay the costs of the proceedings.

For these reasons, the Court orders as follows:

Insulet and Eoflow will provide the applicant with a redacted copy of Insulet Corporation's application, submitted on 03/07/24, and of Eoflow Co., Ltd.'s objection, submitted on 16/09/24, within five days.

The copy must be transmitted to the following email address: Julia.Nguyen@hsfkramer.com.

Milan 16 October 2025

Judge rapporteur

Andrea Postiglione