

Decision
of the Court of Appeal of the Unified Patent Court
issued on 19 December 2025
concerning public access to the register (R. 262.1(b) RoP)

HEADNOTES:

- Copyright is not a general interest that must be observed pursuant to Art. 45 UPCA when a member of the public requests access to the register pursuant to R. 262.1(b) RoP.
- The interests of copyright holders are duly protected by the procedures for copyright infringements available in national courts.
- The objectives of balancing the interests pursuant to Art. 45 UPCA, and the requirement of representation ensure the proper conduct of proceedings, and would be compromised if access to written pleadings and evidence was granted pursuant to R. 262.1(b) RoP to a company that intends to make these documents publicly available to its subscribers on its patent litigation intelligence platform. This is not an interest that is protected under Art. 45 UPCA.

KEYWORDS:

Access to the register, copyright

APPLICANT PURSUANT TO R. 262.1(B) ROP

DOCKET NAVIGATOR, Abilene, Texas, USA

represented by: attorney at law Thomas Oliver, Powell Gilbert, London, UK

APPELLANT IN THE PROCEEDINGS (AND RESPONDENT BEFORE THE COURT OF FIRST INSTANCE)

- 1. Sumi Agro Limited**
- 2. Sumi Agro Europe Limited**

both UK registered companies with registered branch offices in Allershausen, Germany
(hereinafter jointly 'Sumi Agro')

both represented by: European patent attorney Gareth Williams, Marks & Clerk LLP, London, UK

RESPONDENT IN THE PROCEEDINGS (AND APPLICANT BEFORE THE COURT OF FIRST INSTANCE)

Syngenta Limited, Bracknell, Berkshire, UK
(hereinafter 'Syngenta')

represented by: attorney at law Dr. Jörn Peters, Casalonga, Düsseldorf, Germany

LANGUAGE OF THE PROCEEDINGS

English

PATENT AT ISSUE

EP 2 152 073

DECIDING JUDGE

This order has been adopted by
Ingeborg Simonsson, legally qualified judge and judge-rapporteur

REQUESTS AND PARTY SUBMISSIONS

1. Docket Navigator is requesting access to the written pleadings and evidence listed below in UPC_CoA_523/2024 with reference to R. 262.1(b) RoP.

| Stage | Document Title | Date |
|-----------------------|------------------------------------|------------|
| Statement of appeal | Statement of appeal | 18/09/2024 |
| | Response to request for correction | 18/09/2024 |
| | Exhibit SA16 | 18/09/2024 |
| | Exhibit SA17 | 18/09/2024 |
| Statement of response | Response to Statement of appeal | 11/10/2024 |
| | Exhibit FF24 | 11/10/2024 |
| | Exhibit FF25 | 11/10/2024 |
| | Exhibit FF26 | 11/10/2024 |
| | Exhibit FF27 | 11/10/2024 |
| | Exhibit FF28 | 11/10/2024 |
| | Exhibit FF29 | 11/10/2024 |

2. According to Docket Navigator the request is a test case to evaluate the UPC's willingness to allow it access to written pleadings and evidence for appropriate (i.e. concluded) cases and then make these documents publicly available to its subscribers on its patent litigation intelligence platform, used by more than 15,000 judges, lawyers and legal professionals. A key feature of this service is allowing users to review selected written pleadings and evidence for individual cases.
3. Docket Navigator argues that since proceedings between Syngenta and Sumi Agro have come to an end by final decision of the Court of Appeal, protecting the integrity of the proceedings no longer plays a role in the balancing of interests. Docket Navigator and members of the public who subscribe to its service have a legitimate interest in the requested documents in order to better understand the decision rendered by the Court of Appeal.

4. Docket Navigator has submitted that if the Court deems it necessary, Docket Navigator will undertake to include on its website and in its database a disclaimer warning all subscribers that the use of the documents is limited to the purpose for which the UPC intends for them to be accessed (i.e. those consistent with principles of open justice and to better understand the decisions of the Court) and that there is no right for Docket Navigator's subscribers to use the pleadings and evidence for any other purpose. Docket Navigator would also be willing to confirm that access to Syngenta and Sumi Agro's pleadings and evidence be granted on condition that such documents will not be used by Docket Navigator to train artificial intelligence systems.
5. Sumi Agro objects to the request on the ground that the appeal proceedings are not yet at an end, due to the pending Application for rehearing under R. 245 RoP, with a resulting need to protect the integrity of the proceedings. Sumi Agro requests that the request be denied or at least stayed until the conclusion of the rehearing. In the alternative Sumi Agro requests that access be granted under the condition that the provided documents and the information they contain must not be published nor otherwise be made available to the public, and under the condition that the provided documents and the information they contain must not be used as training data for any machine learning algorithm. In the event that the Court decides to grant the request, Sumi Agro requests that Exhibit SA-16, a bank payment report submitted as confirmation that Sumi Agro paid the court fees, containing confidential bank details and personal data, be kept confidential.
6. According to Sumi Agro there is furthermore a copyright conflict as lawyers' briefs as well as the exhibits filed with them can enjoy copyright protection. Docket Navigator's machine learning algorithms which generate responses dynamically based on input data (AI) may infringe the rights of the respective copyright holder.
7. Syngenta requests that the application be dismissed and that Docket Navigator shall bear Syngenta's costs, submitting that Docket Navigator wants to build a database that contains not only the decisions and orders of the Court but all material that the parties filed during a case before the UPC and make this available to its subscribers for a fee. This corresponds only to a financial interest. The control of the Court would be circumvented if the files were available in Docket Navigator's database to anyone. Syngenta is also referring to the rehearing and to the pending proceedings on the merits before the Munich Local Division, where both parties are relying on evidence that has already been part of the proceedings for preliminary measures, suggesting that there is a risk that third persons have access to these portions of the file before the dispute concludes.
8. Syngenta, too, raises copyright concerns, stating that written submissions and certain evidence (e.g., reports or drawings) are generally protected by copyright. Any copying and/or publication (even only to a group of paying subscribers) would constitute infringement of the authors' copyright, not covered by any fair use exemption under any copyright law in Europe. It invites the Court to impose conditions that Docket Navigator is not allowed to put any documents on its website, to make them available to third parties, or to use them in connection with any artificial intelligence system.
9. Docket Navigator, when invited to comment on the copyright concerns raised by Sumi Agro and Syngenta, argues that an assessment of copyright infringement in light of national laws is no part of

R. 262.1(b) RoP. If the copyright proprietor believes its rights are being infringed in any given country, it is entitled to take action in national court to enforce those rights. Furthermore, the intended use of the documents would not amount to copyright infringement. National copyright laws must balance copyright proprietors' interests against the public interest in accessing information, including in relation to judicial proceedings. The purposes that Docket Navigator intends to use the documents for benefit from statutory exemptions to copyright infringement prevailing internationally and in Europe. There would be no copyright infringement in the US either, where Docket Navigator has its registered office and where, if access were granted, some of its subscribers would be based. In any event, the intended use should be deemed to be covered by consent or an implied licence. Docket Navigator brings the additional assertion that Syngenta and Sumi Agro lack the requisite standing to raise any copyright-related objection, as any copyright would not belong to them but to the lawyers or authors who drafted them. The law firms have no legitimate interest in preventing access and the balancing of interests is in Docket Navigator's favour.

10. Sumi Agro has replied that the Court can proceed on a presumption in this case that the documents are copyright protected literary works, that copyright belongs to either the party or their respective law firm (whose interests can be aligned for present purposes) and that the direct commercial sale of copies of those documents as proposed by Docket Navigator will infringe that copyright. The intended use would not fall under any applicable copyright exceptions and only the use by Docket Navigator is relevant, not any potential future consumer. Sumi Agro denies the existence of any consent or implied license.
11. Syngenta, on its part, has replied that the interests of copyright owners as other affected persons must be considered pursuant to Art. 45 UPCA and R. 262 RoP. Like Sumi Agro, Syngenta objects against the assertion that any copyright exceptions apply, adding that US copyright law is irrelevant. It denies that there is consent or an implied license. Syngenta emphasizes that certain rights related to copyright in this case have been transferred to it, in particular, a report prepared by Syngenta employees about an attacked embodiment including various tests conducted (Exhibit FF 26). Moreover, the law firms and/or the lawyers may prohibit any activity related to their copyright-protected work (such as copying or publishing the submission).

GROUNDS

The legal framework for public access to the register

12. Subject to conditions set out in the UPCA and the RoP, the register kept by the Registry shall be public (Art. 10(1) second sentence UPCA).
13. Art. 45 UPCA stipulates that 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.
14. 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 (hereinafter referred to as protection of personal data) 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.

15. The following principles apply insofar as is relevant here (see CoA, 10 April 2024, UPC_CoA_404/2023, Ocano):

- When a request for access is made, the interest of the member of the public to obtain access must be balanced against the general interests in Art. 45 UPCA; protection of confidential information and personal data, and of justice, including the protection of the integrity of proceedings, and public order.
- These interests 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.
- 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. 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.

16. The Court may, for the purpose of appropriate protection of the integrity of proceedings, impose certain conditions on granting access, also on the Court's own motion (see Ocano, at para 54).

Whether copyright plays a part in the assessment

17. Contrary to what Sumi Agro and Syngenta are implying, copyright is not a general interest that must be observed pursuant to Art. 45 UPCA when a member of the public requests access to the register pursuant to R. 262.1(b) RoP.

18. There is no harmonisation in the EU of access to public documents, only national legislation.

Internationally there is the Council of Europe Convention on Access to Official Documents (CETS No. 205) which entered into force in 2020, to which some EU Member States are parties. But the EU is not a party to the Convention and neither are the majority of EU Member States.

19. Article 15(3) TFEU only governs access to documents of the Union's institutions, bodies, offices and agencies, and so does Article 42 of the Charter of Fundamental Rights of the European Union (the Charter). Moreover, Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regards public access to European Parliament, Council and Commission documents.

20. Protection of intellectual property rights is indeed enshrined in Article 17(2) of the Charter. There is, however, nothing whatsoever in the wording of that provision or in the CJEU's case-law to suggest that that right is inviolable and must for that reason be protected as an absolute right (judgment of 29 July 2019, C-469/17, Funke Medien NRW, EU:C:2019:623, para 72).

21. Directive 2001/29 of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (InfoSoc) is explicitly without prejudice to provisions concerning in particular access to public documents (see Art. 9). Access

to public documents pursuant to national law is not affected by the directive (judgment of 28 October 2020, C-637/19, BY (Preuve photographique), EU:C:2020:863, para 30).

22. The interests of copyright holders are duly protected by the procedures available in national courts for copyright infringements.

Balancing of interests

23. The objectives of balancing the interests pursuant to Art. 45 UPCA, and the requirement of representation ensure the proper conduct of proceedings, and would be compromised if access to written pleadings and evidence was granted pursuant to R. 262.1(b) RoP to a company that intends to make these documents publicly available to its subscribers on its patent litigation intelligence platform.
24. To allow the judge-rapporteur to balance all the interests set forth in Art. 45 UPCA, the applicant of a R. 262.1(b) RoP request must set out the reasons why he has an interest to obtain access to the written pleadings and evidence. 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 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 mentioned in Art. 45 UPCA. This includes but is not limited to an assessment whether the request is abusive or not. Nor are the reasons only relevant when determining whether there is a need to keep information confidential. (Ocado, at para. 44).
25. The procedure according to R. 262.1(b) RoP is based on individual assessments of each request. The nature of the member of the public can play a part, as can the purpose of the request. It has already been established in case-law that a member of the public who has a more specific interest in the written pleadings and evidence of a particular case, than the general interest, may obtain access even before the proceedings have come to an end.
26. The application of R. 262.1(b) RoP is furthermore safeguarded by the requirement of representation. A member of the public who is requesting access to the register pursuant to R.262.1(b) RoP must be represented before the UPC. The rationale behind the duty to be represented by a representative is to protect parties when it comes to the legal consequences of procedural measures. Furthermore, it ensures the proper conduct of proceedings. Members of the public requesting access to the register pursuant to R. 262 RoP are in an adversarial situation where representation is called for (see order of the CoA, 8 February 2024, UPC_CoA_404/2023, Ocado, paras. 5-8). Access to written pleadings and evidence should not be granted to members of the public who are not represented (see CoA, 5 May 2025, UPC_CoA_635/2024, Meril).
27. The control resulting from an assessment by the judge-rapporteur of (i) a reasoned request made by a member of the public, (ii) who is represented, would be lost if the Court would provide access to a company that intends to make these documents publicly available to its subscribers on its patent litigation intelligence platform. Any subscriber could access the documents. This is not an interest that is protected under Art. 45 UPCA.

Application to the case

28. Docket Navigator's request cannot be considered to be made based on an interest that is protected under Art. 45 UPCA. No conditions imposed on Docket Navigator on granting access can remedy this.
29. As a result, Docket Navigator's request for access to written pleadings and evidence must be rejected.

Costs

30. Syngenta has requested that Docket Navigator be ordered to bear Syngenta's costs. Compensation for costs should not be awarded in relation to applications for access to written pleadings and evidence pursuant to R. 262.1 (b) RoP (see Meril). In exceptional cases a party may be ordered to bear any unnecessary costs it has caused the Court or another party (Art. 69(3) UPCA), but this is not the case here. Syngenta is not entitled to compensation for costs from Docket Navigator.

DECISION

- I. Docket Navigator's request for access to written pleadings and evidence in UPC_CoA_523/2024 is rejected.
- II. All other requests are rejected.

Issued on 19 December 2025

Ingeborg Simonsson, legally qualified judge and judge-rapporteur