

Decision
of the Court of Appeal of the Unified Patent Court
issued on 22 December 2025
request for access to written pleadings and evidence (R. 262.1 (b) RoP)

APPLICANT

Herbert Smith Freehills Kramer LLP, Düsseldorf, Germany

represented by: attorney-at-law Julia Nguyen, Herbert Smith Freehills Kramer LLP, Düsseldorf, Germany

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

Insulet Corporation, Acton, United States of America
(hereinafter Insulet)

represented by: Dr. Marc Grunwald and Dr. Frank Peterreins, attorneys-at-law, Peterreins Schley, Munich, Germany

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

EOFlow Co., Ltd., Hwangsaeul-ro, Bundang-gu, Seongnam-si, Gyeonggi-do, Republic of Korea
(hereinafter EOFLOW)

represented by Dr. Mirko Weinert, attorney-at-law, Hoyng Rokh Monegier, Düsseldorf, Germany

LANGUAGE OF THE PROCEEDINGS

English

PATENT AT ISSUE

EP 4 201 327

PANEL AND DECIDING JUDGE

This decision has been adopted by
Patricia Rombach, legally qualified judge and judge-rapporteur

RELEVANT PROCEEDINGS

UPC_CoA_768/2024

SUMMARY OF THE FACTS

1. By order issued on 30 April 2025 (UPC_CoA_768/2024, *Insulet v EOFlow*) the Court of Appeal decided on Insulet's appeal against the impugned order of the Milan Central Division.

REQUESTS OF THE PARTIES

2. Herbert Smith Freehills Kramer LLP requests access to the written pleadings and evidence in these proceedings identified below.
 - Insulet's Statement of Appeal – submitted 04/12/24
 - EOFlow's Statement of Response – submitted 30/12/24
3. As far as redacted versions of the written pleadings and evidence are available, Herbert Smith Freehills Kramer LLP limits the application for access to these versions.
4. Insulet requests that the Court of Appeal dismiss the request and that Herbert Smith Freehills Kramer LLP bears the costs that may arise.
5. EOFlow requests that the Court of Appeal reject the request, in the alternative grant access only to a redacted version of EOFlow's Statement of response and ensure that all information identified as confidential by EOFlow is redacted.

PARTIES' SUBMISSIONS

6. Herbert Smith Freehills Kramer LLP in summary submits the following.
 - As a large firm comprising numerous UPC representatives, it has a legitimate and general interest in obtaining access to the identified written pleadings and evidence.
 - Such access would allow a better understanding of the decision rendered by the Court on 30 April 2025 in view of the arguments brought forward by the parties and the evidence relied on.
 - Therefore, accessing these documents would enhance the firm's ability to provide professional and expert advice to its clients before the UPC, and serve the interests of the Court and its users.
7. Insulet submits in summary the following.
 - Herbert Smith Freehills Kramer LLP is not a third party within the meaning of R. 262.1(b) RoP and is therefore not entitled to file an application. There is no bona fide third party standing behind the application. Access cannot be allowed where the applicant fails to demonstrate a concrete and legally cognizable purpose.
 - The purpose of assisting in the representation of clients may not properly be construed as legitimate interest within the meaning of R. 262.1(b) RoP.
 - Insulet's interest in safeguarding the confidentiality and integrity of their submissions is tied to procedural fairness and the proper administration of justice and outweighs the one of Herbert Smith Freehills Kramer LLP.
8. EOFlow in summary submits the following.
 - Herbert Smith Freehills Kramer LLP's request shows no legitimate interest as being purely commercial. It is utterly unrelated to the case at hand.

- Some of the requested information is already subject to a confidentiality order of the Central Division Milan under R. 262A RoP (order of 27 September ORD_52908/2024). This order covers technical and business information in EOFlow's objection in the first instance proceedings. The order also applies to the same confidential information in the requested appeal pleadings.
- Confidentiality requests pursuant to RoP 262.2 RoP are pending before the Court of Appeal and the Court of First Instance. Before considering any third-party access request under RoP 262.1(b) RoP the Court must first decide on the confidentiality requests.
- As the pleadings contain personal data, the data protection rights as per art. 6 GDPR must prevail and prevent disclosure.
- Written pleadings can be subject to copyright protection within the meaning of Art. 2 of Directive 2001/29/EC. EOFlow's submissions contain substantial intellectual creation and original expression. Herbert Smith Freehills Kramer LLP would therefore need to carefully assess which parts are protected by copyright.
- Any use of copyrighted materials beyond the strict purpose of judicial access – particularly any copying, reproduction, or use of the pleadings in other proceedings or for client advice – would infringe the copyright of the respective author or rights holder.
- Even if the Court were to allow limited access under RoP 262.1 (b) RoP, such access would not entitle Herbert Smith Freehills Kramer LLP to reproduce, quote extensively, or rely upon copyrighted materials for its own submissions or commercial purposes. Any further use would require the explicit consent of the copyright holder.
- Herbert Smith Freehills Kramer LLP's stated intention – to use the materials for "better advising clients before the UPC" – falls squarely within a prohibited commercial re-use and underscores the need for a restrictive approach to access.

GROUND

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, Ocado):
 - 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.
- 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 *Ocado*, at para 54).

Request made by a member of the public

9. Insulet argues without success that Herbert Smith Freehills Kramer LLP is not entitled to file an application, because it would not be a third party within the meaning of R. 262.1(b) RoP and there would not be a bona fide third party standing behind the application.
10. A law firm may also be a member of the public within the meaning of R. 262.1 (b) RoP (see order 9 January 2024, UPC_CoA_480, UPC_CoA_481/2024, *Abbott v Powel Gilbert*). There is no need for a bona fide third party standing behind its application. Scrutinizing the handling of the dispute by the Court enhances the law firm's ability to provide professional and expert advice to its clients before the UPC, and serves the interests of the Court and its users.

Reasoned request of Herbert Smith Freehills Kramer LLP

11. The interest put forward by Herbert Smith Freehills Kramer LLP to have a better understanding of the decision rendered on 30 April 2025 in view of the arguments brought forward by the parties and the evidence relied on, corresponds to the general interest named in the *Ocado v Autostore* order, which interest arises after a decision was rendered.
12. Contrary to EOFlow's line of arguments the request is related to the case at hand.
13. The fact that Herbert Smith Freehills Kramer LLP also pursues commercial interests with the application does not preclude an interest in accessing the documents. Herbert Smith Freehills Kramer LLP does not intend to commercialise the access to the requested documents by making them available against payment, they only intend to obtain a better understanding by studying the documents which allows them to provide better service in general, which serves the general interest of justice.
14. Contrary to what EOFlow is 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 (Court of Appeal, order 19 December 2025, UPC_CoA_523/2024, *Docket Navigator v Sumi Agro, Syngenta*, para. 17).

Limited access

15. The documents shall be redacted of personal data prior to making them available to Herbert Smith Freehills Kramer LLP.
16. Although the Milan Central Division in its order of 27 September 2024 classified specific technical drawings and data and business data, contained also in the Statement of response, as confidential information and EOFlow lodged a confidentiality request pursuant to Art. 58 UPCA, R. 262.2 RoP regarding the aforementioned information, EOFlow's confidentiality interests do not prevent access to the redacted version of the Statement of response from being granted.
17. Herbert Smith Freehills Kramer LLP has limited the application for access to redacted versions. EOFlow's confidentiality interests will not be affected if Herbert Smith Freehills Kramer LLP only receives access to the redacted version of the Statement of response.

Costs

18. 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. 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). This is not the case here. As Herbert Smith Freehills Kramer LLP is the successful party, reimbursement of costs cannot be ordered for this reason alone.
19. To conclude Insulet's request that Herbert Smith Freehills Kramer LLP bears the costs that may arise shall be rejected.

DECISION

- I. Access to the following documents, redacted in accordance with EU Regulation 2016/679 is granted to Herbert Smith Freehills Kramer LLP:
 - Insulet's Statement of Appeal – submitted 04/12/24
 - *Redacted version* of EOFlow's Statement of Response – submitted 30/12/24
- II. Insulet's request that Herbert Smith Freehills Kramer LLP bears the costs that may arise is rejected.

Issued on 22 December 2025

Patricia Rombach, legally qualified judge and judge-rapporteur