



## Brussels - Local Division

UPC\_CFI\_2192/2026

Decision (R.262.1(b) RoP)  
of the Court of First Instance of the Unified Patent Court  
Issued on 23 July 2026  
Concerning EP 3 689 383

### KEYWORDS

Public Access to the Register (R. 262.1(b) RoP)

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CLAIMANTS UPC\_CFI\_1934/2026 AND UPC\_CFI\_1940/2026

- (1) JOHNSON & JOHNSON (\*\*)
- (2) JANSSEN BIOTECH, INC. (\*)
- (3) JANSSEN PHARMACEUTICALS INC. (\*\*)
- (4) JANSSEN-CILAG INTERNATIONAL NV (\*\*)
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- (6) JANSSEN-CILAG NV (\*)
- (7) JANSSEN BIOLOGICS B.V. (\*\*)

UPC\_CFI\_2192/2026  
(UPC\_CFI\_029/2026 – UPC\_CFI\_1934/2026\_ UPC\_CFI\_1940/2026)

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**(10) JANSSEN-CILAG SAS (\*)**

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Hereafter referred to as:

- Cumulatively as “*Defendants*”;
- Separate as “*Defendant*” followed by “*1 through 18*” (whichever is applicable); or
- Grouped as “*Defendants 1-14*” and “*Defendants 15-18*”

### 3. INTERVENER UPC CFI 029/2026, UPC CFI 1934/2026 AND UPC CFI 1940/2026

**THE UNITED STATES OF AMERICA, INCLUDING  
THE DEPARTMENT OF HEALTH AND HUMAN  
SERVICES, OFFICE OF TECHNOLOGY TRANSFER**

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Intervener

### PATENT AT ISSUE

| Number       | Proprietor(s)                                                                                          |
|--------------|--------------------------------------------------------------------------------------------------------|
| EP 3 689 383 | The United States of America, as represented by the Secretary, Department of Health and Human Services |

### LANGUAGE OF THE PROCEEDINGS:

English

**SUBJECT MATTER:**

R. 262.1(b) RoP

**PANEL - LOCAL DIVISION**

LD Brussels

|                                     |                 |
|-------------------------------------|-----------------|
| Presiding Judge / Judge-Rapporteur: | Samuel Granata  |
| Legally Qualified Judge:            | Marije Knijff   |
| Legally Qualified Judge:            | Anna Lena Klein |
| Technically Qualified Judge:        | Renaud Fulconis |

**DECIDING JUDGES:**

Order issued by the Judge-Rapporteur

## **I. REQUEST AND PROCEDURAL BACKGROUND**

1. On 18 June 2026, the Applicant submitted a “Request for Access to Files” (hereafter referred to as the “Request”) requesting as follows:
  - I. *The Applicant, as a member of the public, requests access to the written pleadings and evidence identified below, which were submitted in the proceedings UPC\_CFI\_29/2026, UPC\_CFI\_1934/2026 and UPC\_CFI\_1940/2026:*
    1. *The Claimant’s Statement of Claim relating to claim construction (UPC\_CFI\_29/2026)*
    2. *The Defendants’ Counterclaims for revocation against EP 3 689 383 B1 (UPC\_CFI\_1934/2026 and UPC\_CFI\_1940/2026)*
  - II. *Should the Defendants have filed their Counterclaim for revocation in the same document as their Statement of Defence, the Applicant respectfully requests access only to those pages concerned with the Counterclaim for revocation.*
  - III. *To the extent that redacted versions of the written pleadings and evidence are available, the Applicant requests access only to such redacted versions.*
2. The Judge-Rapporteur set out a procedural agenda, giving the respondents the opportunity to submit their comments.
3. All respondents requested the dismissal of the request in their respective comments.
4. The Request relates to UPC-actions UPC\_CFI\_29/2026, UPC\_CFI\_1934/2026 and UPC\_CFI\_1940/2026. The proceedings in these actions are on-going. Claimants’ Reply Statement and Defence to Counterclaim is due on 5 August 2026 to be followed with further submissions.

## **II. PARTIES’ POSITION AND ARGUMENTS**

5. After setting the legal background, the Applicant argues as follows:
  - The Applicant has, besides its interest as a “member of the public”, a “specific interest” in accessing the pleadings as identified which it explains as follows:

*“The Applicant, a law firm, is advising pharmaceutical companies in many areas of technology. The arguments brought forward by the Claimant in relation to claim interpretation of the patent in suit as well as the arguments brought forward by the Defendants in relation to invalidity of the patent in suit are highly relevant for the Applicant’s business.*

*(...) The Applicant will only be put in a position to comprehensively advise its clients on recommended steps, such as filing of an opposition and/or a revocation action, in advance of a potential launch of products, if access to the file is granted. This applies in particular in view of the fact that the grant of the patent in suit was only recently published, namely on 31 December 2025.*

*The claim construction as brought forward by the Claimant as well as the arguments presented in the Counterclaim for revocation are of relevance for the Applicant’s business as this information will be pivotal in deciding which legal actions, if any, need to be taken by the Applicant’s clients.*

- Secondly, the Applicant holds that awaiting the first instance decision is not feasible which it reasons as follows:  
*“(...) This is because the deadline for filing an opposition with the European Patent Office expires on 30 September 2026. In order to be able to assess and prepare a potential opposition, the Applicant cannot wait for the first instance decision in these proceedings (which would be expected in January-February 2027 at the earliest)”*
- Thirdly, the Applicant argues that the interest of the integrity of the proceedings cannot be given greater weight in this case as only access is requested to certain sections of the submissions, which are neither related to the allegedly infringing product of the Defendants nor any information in relation to either of the parties.
- Finally, the Applicant points at the proposed conditions stating that the Applicant confirms that there is no intention to file the written pleadings (or parts thereof), with other courts or the EPO.

6. Essentially, the Respondents follow the same line of argument, which will be dealt with in greater detail in the grounds of this decision:

- A distinction should be made when assessing a request for access between requesting access while the proceedings are ongoing and after they have concluded.
- The Applicant has not met the “direct legitimate interest” threshold, as it does not claim to be a competitor or licensee of the claimant in relation to the products covered by the patent in question.
- The Applicant is not a party to concrete legal proceedings concerning the validity of the patent at issue.
- The applicant has not shown that the Request is “necessary” for the stated purpose.
- The reference to the 30 September 2026 deadline does not help the Applicant prove the necessary direct legitimate interest, since it did not identify any client who instructed it to file an opposition.

### III. LEGAL FRAMEWORK AND GUIDELINES CoA UPC

7. Art. 10 and 45 UPCA lay down the general principle that the register is public and proceedings are open to the public, unless the balance of interests involved is such that they are kept confidential which means that such access by the public is to be denied. Therefore, restricting access is the exception and granting access is the general rule.
8. The CoA has provided guidance on the application of Rule 262.1 RoP in the following decisions, which are not exhaustive and are limited to the relevant decisions:
  - 10 April 2024 (UPC\_CoA\_404/2023), "*Ocado v Autostore*".
  - 25 April 2025 (UPC\_CoA\_5/2025), *Nicoventures v. Juul/NJOY*.
  - 22 December 2025 (CoA\_UPC\_886/2025), *HSF v Insulet/EOFlow*,
  - 24 February 2026 (UPC\_CoA\_10/2026) "*Gowling v. Sumi Agro/Syngenta*",  
(hereafter parties name will be used when decision mentioned are referred to)
9. In order to enable the Judge-Rapporteur to weigh up the interests set out in Art. 45 UPCA, the R. 262.1(b) RoP applicant must provide reasons for granting access. This reasoned request provides the Judge-Rapporteur with the relevant information (i.e. the reasons for requesting access and the relevant documents), enabling him to weigh the interest in gaining access to the case file against the interests mentioned in Art. 45 UPCA.
10. When considering the aforementioned interests, the CoA stated clearly that the public (law firms being part of the public *Insulet v EOFlow* §. 10.) has in general an interest in written pleadings and evidence being made available. This allows for a better understanding of the decision, in view of the arguments brought forward by the parties and the evidence relied upon (see headnote *Ocado v Autostore*).

### III. GROUNDS

#### III.A. Assessment of the Request

11. The Request is dismissed on the following grounds.
12. When assessing a request for access to legal proceedings in general (R. 262.1.(b) RoP), a tension arises between transparency and confidentiality, which intensifies when considering the specific nature of the proceedings subject of the request for making available evidence and exhibits, but also the status of the proceedings.
13. Based on the CoA's guidance in *Ocado v Autostore* (§49 and 53), a distinction can be made between balancing-of-interests assessments where proceedings have ended (by Court decision or otherwise) and those where they have not. In the latter case, a "more

*specific interest*" or "*direct legitimate interest*" may be required to override the interest in protecting the integrity of the proceedings.

14. The proceedings in the actions subject of the Request are on-going.
15. The Applicant does not claim to be a competitor or licensee of the Claimant with regard to products within the scope of the patent in question. The Respondents therefore convinced the Court that the Applicant does not meet the CoA's expectations (cf. *Ocado vs. Autostore*, §53). The Applicant has not specified any client, product or allegation of infringement in relation to the patent in question. The threshold for access has therefore not been met. The Applicant's assertion that it advises "*pharmaceutical companies in many areas of technology*" and that the proceedings are "*highly relevant to the Applicant's business*" does not constitute a sufficient reason to grant access to the requested information in ongoing proceedings.
16. The reference that the Applicant makes to *Nicoventures v. Juul/NYOD* is not convincing in relation to this Request, as it was Nicoventures itself that was granted access when it opposed the grant of the patent at the EPO, resulting in revocation by the opposition division. Access was granted in view of EPO appeal proceedings against the same patent, as clearly stipulated in headnote 4 of the aforementioned decision. As a mere advisor to unspecified clients regarding potential legal action at the EPO, the Applicant does not meet the threshold set by the CoA.
17. The Applicant asserts that it cannot wait for the first instance decision regarding the actions mentioned because the deadline for filing an EPO opposition against EP 3 689 383 B1 expires on 30 September 2026. However, this is not held sufficient to show the requisite direct legitimate interest: the Applicant has not identified any client which has in fact instructed it to file an opposition, and as explained above in the context of the Court of Appeal's reasoning in *Nicoventures v. Juul/NJOY*, this falls far short of meeting the "direct legitimate interest" threshold.

### III.B. The Review or Appeal

18. Based on a recent decision by the CoA (decision of 29 June 2026, UPC\_CoA\_053/2026), parties are informed that decisions of the Judge-Rapporteur pursuant to R. 262.1(b) RoP are covered by the system of review by the panel under R. 333 RoP and are subject to the appeal provisions of R. 220.2 and 220.3 RoP

## **IV. ORDER**

The Judge-Rapporteur dismisses the request made by the Applicant as being unfounded.



UPC\_CFI\_2192/2026  
(UPC\_CFI\_029/2026 – UPC\_CFI\_1934/2026\_ UPC\_CFI\_1940/2026)

This order is issued on 23 July 2026 by the Judge-Rapporteur:

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|---------------------------------------------------------------------------------------------------------|--|
| Samuel <b>GRANATA</b><br>Judge-Rapporteur<br>Presiding judge LD Brussels<br><br>Legally Qualified Judge |  |
|---------------------------------------------------------------------------------------------------------|--|