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Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Düsseldorf local division
App_44641/2024
UPC_CFI_7/2023

Procedural order
of the Court of First Instance of the Unified Patent Court
issued on 23 July 2026
concerning EP 3 375 337 B1

Claimant:

Franz Kaldewei GmbH & Co. KG, legally represented by its general partner, Kaldewei Verwaltungsgesellschaft mit beschränkter Haftung, which is represented by its managing directors Franz Kaldewei, Christian Helmut, Siegfried Graap, Roberto Martinez and Patrick Nußmann, Beckumer Str. 33–35, 59229 Ahlen, Germany,

represented by: Cordula Schumacher, Attorney-at-law, and Benjamin Schnäbelin, Attorney-at-law, ARNOLD RUESS Rechtsanwälte Part-mbB, Königsallee 59a, 40215 Düsseldorf, Germany,

electronic service address: schumacher@arnoldruess.com

DEFENDANT:

Bette GmbH & Co. KG, legally represented by its general partner, Bette Verwaltungs- und Beteiligungsgesellschaft mit beschränkter Haftung, itself represented by its managing director Thilo Constantin Pahl, Heinrich-Bette-Str. 1, 33129 Delbrück, Germany

represented by: Jens Künzel, LL.M., Attorney-at-law, KRIEGER MES & GRAF v. der GROEBEN PartG mbB., Bennigsen-Platz 1, 40474 Düsseldorf, Germany,

electronic service address: jens.kuenzel@krieger-mes.de

APPLICANT IN RESPECT OF APPLICATION R. 262.1(b) RoP:

Patent and Law Firm Gulde & Partner, Wallstraße 58/59, 10179 Berlin, Germany

represented by: Falk Lehmann, Attorney-at-law, Gulde & Partner Patent and Legal Practice, Wallstraße 58/59, 10179 Berlin, Germany,

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PATENT AT ISSUE:

European Patent No. 3 375 337 B1

TRIAL PANEL/CHAMBER:

Panel 2 of the Düsseldorf local division

JUDGES SEATING ON THE CASE:

This order was issued by the presiding judge, Dr Thom, acting as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT-MATTER: Rule 262(1)(b) of the RoP – Application for access to the file

BRIEF SUMMARY OF THE FACTS:

1. The applicant, as a member of the public, submitted an application pursuant to Rule 262.1(b) of the RoP for access to the pleadings and evidence in the main proceedings ACT_459767/2023 (= UPC_CFI_7/2023, 'original proceedings').

2. The original proceedings were concluded by a decision of the Düsseldorf local division dated 3 July 2024. No appeal has been lodged against this decision.

3. The parties to the main proceedings have been given the opportunity to comment on the application for access to pleadings and evidence. Initially, each of them also objected, on the merits, to the granting of the access sought.

APPLICATIONS:

4. The applicant requests access to the pleadings and evidence submitted by the parties in the main proceedings pursuant to Rule 262.1(b) of the RoP, in particular to the following documents:

   - the statement of claim filed on 1 June 2023 and the amended version dated 4 June 2023, together with all annexes filed subsequently (AR1 to AR29?),

   - the statement of defence and counterclaim for annulment filed on 12 September 2023, with annexes KMG 0 to KMG 10,

   - the Claimant's Reply, filed on 13 November 2023, with Annexes AR30 to AR35,

   - the defendant's rejoinder, filed on 15 January 2024, with Annex KMG11,

   - the summons issued by the court on 2 May 2024, and

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- the minutes of the oral hearing of 17 May 2024.

5. The claimant and the defendant in the main proceedings have applied

for the application for access to the files to be dismissed;

whereby the defendant, in the alternative and most recently, has requested, in essence,

in accordance with Rule 262.2, first sentence, of the RoP, that the information contained in the Claimant's submission of
23 August 2024, together with evidence regarding the implementation of measures to remove the product from distribution channels, as set out in Annexes KM-A 1 and KM-A 2 (the documents and annexes in full) (see the defendant's document of 27 August 2024, para. 9), be treated as confidential and that access to the files not be extended to cover them in this respect.

KEY POINTS OF DISPUTE:

6. The applicant submits: As professional representatives admitted to the Unified Patent Court ('UPC'), the solicitors and patent attorneys belonging to her firm were preparing to participate in UPC proceedings. As this is a 'new court' and publicly available information on the formal and substantive requirements for documents – for example, regarding the wording of applications, the required level of substantive reasoning with reference to one or more national legal systems, etc. – is as yet limited, the documents in the main proceedings could provide valuable insights into UPC proceedings. In particular, this could help to reduce the risk of formal defects in its own documents submitted to the UPC, which could ultimately alleviate the court's workload. The request for access to the case file thus serves the purpose of internal preparation and training. She further refers to decision UPC _CoA_404/2023 of the UPC Court of Appeal: it follows from this that a general interest in inspecting the written pleadings and evidence following the conclusion of the court proceedings is sufficient.

7. The claimant in the main proceedings originally took the view that even the aforementioned decision of the UPC Court of Appeal could not justify the comprehensive access to the case file sought by the applicant. It argued that the purpose of access to the case file was not to enable other law firms to conduct internal training using documents, etc., from competitors. By contrast, the Claimant had a legitimate interest in not disclosing every detail of its dispute with a competitor.

8. The defendant in the main proceedings originally argued:

9. The documents and annexes affected by the application for access to the files consistently contained the defendant's trade secrets, the protection of which precludes access by uninvolved third parties. The conclusion of the main proceedings does not alter this. There was no evidence to suggest that the applicant's interests in inspecting the files could outweigh the defendant's interests in maintaining the confidentiality of this information and data. This was because the only alleged interest cited was ultimately that the applicant required drafts and templates to fulfil the formal requirements of the UPC in order to prepare its own court documents. Consequently, no sufficient 'interest'

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in inspecting specific documents has been demonstrated, irrespective of whether the defendant has legitimate confidentiality interests in individual items of information. To justify why the information specified in the application pursuant to Rule 262.2, first sentence, of the RoP should be treated as confidential, the defendant refers to its respective submissions in the main proceedings. In accordance with Rule 262.2, third sentence, of the RoP, the defendant has submitted partially redacted copies of the statement of defence dated 12 September 2023 and the rejoinder dated 15 January 2024.

10. By a document dated 30 June 2026, the claimant in the main proceedings stated that it would not (any longer) assert any confidentiality interests. By a document dated 3 July 2026, the defendant in the main proceedings clarified that it was now asserting confidentiality protection exclusively in respect of the information set out in detail in its application (see above).

REASONS FOR THE ORDER:

I.

11. The Second Panel of the Düsseldorf local division took over the application for access to the files on 1 March 2026. The applicant's application pursuant to Rule 262.1(b) of the RoP is admissible and partially well-founded.

12. Pursuant to Rule 262.1(b) of the RoP (without prejudice to several articles of the Convention and subject to further rules of the RoP providing for the protection and redaction of confidential information, as well as the redaction of personal data within the meaning of Regulation (EU) 2016/679) are to be made available to the public upon a reasoned application addressed to the Registry.

1.

13. The applicant, as a member of the public, has submitted a reasoned application within the meaning of Rule 262.1(b) of the RoP. A reasoned application in this sense is one which not only specifies the pleadings and evidence to which access is sought, but also states the purpose of the application and explains why access to the specified documents is necessary for that purpose, and which thus provides all the information the judge-rapporteur needs to carry out the necessary balancing of interests (UPC_CoA_404/2023, decision of 10 April 2024, para. 44 – Ocado v Auto-store; UPC_CoA_480/2024, decision of 9 January 2025, para. 10 – Abbott v Powell Gilbert; see UPC_CoA_886/2025, decision of 22 December 2025, para. 9 et seq.). The applicant's application meets these requirements and is therefore admissible. In particular, the application sets out why, in the applicant's view, access to the case file is necessary and for what purpose it is sought.

2.

14. The application is also successful on the merits, in so far as the documents sought constitute pleadings and evidence within the meaning of Rule 262.1(b) of the RoP, although the right of access to the files applies only in part (to the extent set out in more detail below) to redacted versions of the pleadings and/or annexes.

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a)

15. When deciding on an application under Rule 262.1(b) of the RoP, the interests of a member of the public in gaining access to the documents requested must be balanced against the interests set out in Article 45 of the UPC Agreement. These interests include the protection of confidential information and personal data ('the interests of a party or other affected persons'), but are not limited to these. The general interests of the administration of justice and public order must also be taken into account. The general interest of the administration of justice encompasses the protection of the integrity of proceedings. Public order is, for example, jeopardised where an application is abusive or where security interests are at stake (UPC_CoA_404/2023, decision of 10 April 2024, para. 43 – Ocado v Autostore; UPC_CoA_480/2024, decision of 9 January 2025, para. 10 et seq. – Abbott v. Powell Gilbert; UPC_CoA_5/2025, decision of 25 April 2025, para. 8 – Juul Labs v. NJOY; UPC_CoA_886/2025, decision of 22 December 2025, para. 15 – Herbert Smith Freehills Kramer LLP v. Insulet Corporation et al.).

16. Once the court has issued a decision or order concluding the proceedings at the Court of First Instance, the public generally has an interest in the disclosure of pleadings and evidence. This facilitates a better understanding of the decision handed down in the light of the arguments put forward by the parties and the evidence relied upon. It also facilitates scrutiny of the court, which is important for public confidence in the court (UPC_CoA_404/2023, decision of 10 April 2024, para. 47 – Ocado v. Autostore; UPC_CoA_480/2024, decision of 9 January 2025, para. 13 et seq. – Abbott v. Powell Gilbert; CFI_75/2023 (Munich Branch), order of 22 August 2024 – Astellas v. Healios; CFI_255/2023 (Paris Regional Centre), Order of 14 October 2024, para. 17 et seq. – Meril v Edwards; CFI_14/2023 (Munich Regional Centre), Order of 22 October 2024 – Regeneron v Amgen; CFI_252/2023 (Munich Regional Centre), Order of 3 January 2025 – NanoString v Harvard College; UPC_CFI_135/2024 (LD Düsseldorf), Order of 9 April 2025 – Dolby v Beko; UPC_CFI_309/2023 (Paris Regional Court), Order of 9 June 2025, para. 3.3 – NJOY v Juul Labs). As the Court of Appeal held in Abbott v. Powell Gilbert (UPC_CoA_480/2024, decision of 9 January 2025, para. 2), this principle applies, amongst other things, irrespective of whether an appeal against the decision or order is pending.

17. A member of the public may also have a more specific interest in the pleadings and evidence relating to a particular case than the general interest mentioned above. This applies in particular where the applicant has a direct interest in the subject-matter of the proceedings, such as the validity of a patent which also affects them as a competitor or licensee, or where a party in the case is alleged to have infringed a patent by means of a product which is identical to, or similar to, a product which has been or is to be placed on the market by that member of the public. Where a member of the public has such a direct legitimate interest in the subject-matter of specific proceedings, that interest does not arise only after the proceedings have been concluded, but may well exist immediately (UPC_CoA_404/2023, decision of 10 April 2024, para. 53 – Ocado v. Autostore; UPC_CoA_5/2025, decision of 25 April 2025, para. 8 – Juul Labs v NJOY; UPC_CFI_342/2024 (LD Munich), order of 20 December 2024, para. 17 – Phoenix Contact v I.L.M.E.; UPC_CFI_33/2024 (Vienna LD), Order of 12 August 2024 – Swarco v Strabag; UPC_CFI_135/2024 (Düsseldorf LD), Order of 9 April 2025 – Dolby v Beko).

18. A law firm may also be regarded as 'the public' within the meaning of Rule 262.1(b) of the Rules of Procedure. Scrutinising the court's handling of the proceedings enhances the law firm's ability to advise its clients professionally and expertly before the UPC, and serves the interests of the court and its users (UPC_CoA_480/2024, decision of 9 January 2025, para. 10 et seq. – Abbott v. Powell Gilbert; UPC_CoA_886/2025, decision of 22 December 2025, para. 10 – Herbert Smith Freehills Kramer LLP v Insulet Corporation et al.).

b)

19. Following the conclusion of the main proceedings, which has now become final (in the absence of an appeal), the applicant has, in accordance with the principles set out above, a general interest in being granted access to the pleadings and evidence which outweighs the interests referred to in Article 45 of the UPC Agreement. There are no indications that would, in the context of the balancing of interests, militate in favour of refusing or restricting access. In particular, there is no evidence to suggest that the application was made for improper reasons.

20. In so far as the claimant in the main proceedings (originally) objected that 'it is not the purpose of access to the files to enable other law firms to carry out internal training on the basis of the pleadings and submissions […]', this is incompatible with the aforementioned, now established case-law of the UPC Court of Appeal. The same applies to the argument put forward by the Claimant in the main proceedings that the preparation of its own documents and templates for the purpose of complying with formal requirements before the UPC cannot constitute a legitimate interest in inspecting the files.

c)

21. The applicant was not to be granted access to the following documents which she had requested:

    - the summons issued by the court on 2 May 2024, and

    - the minutes of the oral hearing of 17 May 2024.

22. This is because neither of these constitutes pleadings or evidence within the meaning of Rule 262.1(b) of the RoP (see UPC_CFI_177/2023, Düsseldorf local division, procedural order of 17 June 2025, para. 23 – Hepp Wenger Ryffel AG v myStromer AG et al.).

d)

23. Furthermore, the defendant in the main proceedings (to the extent still asserted) has made an admissible and well-founded application that the information contained in the Claimant's submission of 23 August 2024, together with evidence regarding the implementation of measures to remove the products from the distribution channels, as set out in Annexes KM-A 1 and KM-A 2, (in full) (see the defendant's submission of 27 August 2024, para. 9) should be treated as confidential. Insofar as the application referred to paragraph 8 of the submission of 27 August 2024, this is clearly a clerical error, as the application is, in fact, set out verbatim in paragraph 9 of the defendant's submission of 27 August 2024.

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24. Nor may the applicant's request for access to the files extend to this. This is because these submissions, together with their annexes, indisputably contain information requiring confidentiality relating to the defendant's clients and must therefore be excluded from access to the files.

ORDER:

I. The applicant shall be granted access to the pleadings and evidence submitted to the Court by the parties in the main proceedings ACT_459767/2023 (UPC_CFI_7/2023) and recorded by the Registry, in particular to the following documents:

- the statement of claim filed on 1 June 2023 and the amended version dated 4 June 2023, together with all annexes filed subsequently (AR1 to AR29),
- the statement of defence and counterclaim for annulment filed on 12 September 2023, with annexes KMG 0 to KMG 10,
- the claimant's Reply, filed on 13 November 2023, with Annexes AR30 to AR35,
- the defendant's rejoinder, filed on 15 January 2024, with Annex KMG11.

II. Excluded from inspection of the file are

- the information contained in the Claimant's submission of 23 August 2024, containing evidence regarding the implementation of measures to remove the products from distribution channels, together with Annexes KM-A 1 and KM-A 2 (the documents and annexes in full),

to which the applicant shall not be granted access.

III. Furthermore, the applicant's application is also rejected in all other respects.

IV. Personal data within the meaning of Regulation (EU) 2016/679 contained in the pleadings and evidence must be redacted.

Issued in Düsseldorf on 23 July 2026

NAMES AND SIGNATURES

Presiding Judge Dr Thom