

Access to information on proceedings at the Unified Patent Court

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Articles | **Law stated as at 13-Jan-2025** | European Union

An article on public access to information on proceedings at the Unified Patent Court (UPC), addressing the rules governing access and how the UPC has interpreted them. The article considers the practical consequences for third parties seeking access to this information.

Since the Unified Patent Court (UPC) came into force in June 2023 there has been huge interest in its operation and functioning. While there is always interest in major cases in any legal system, the early cases in the UPC have been subject to deep scrutiny. This is largely because of the uncertainty around litigating in a new court system and how the different divisions of the UPC will approach untested legal issues.

As a result, third parties not directly involved in proceedings have been paying close attention to orders and decisions of the court, as well as seeking access to the pleadings and evidence that have been filed. Given that countries with a wide array of differing legal traditions are participating in the UPC system, it is not surprising that lawyers want insight into the approaches representatives are taking to filings in different cases, and trying to work out which approaches the different divisions of the court may favour.

There is much uncertainty in the UPC, which will persist for some years as its jurisprudence slowly develops. Therefore, access to orders, decisions, pleadings and evidence will remain of interest and importance to a wide range of unconnected third parties, as well as parties who may have a direct interest in the outcome of a particular set of proceedings.

In this article we explore the rules around access to documents at the UPC and the principles of transparency that have emerged from early decisions.

In summary, the current position is that the UPC is much more likely to grant access to pleadings and evidence where the case has reached a decision stage, be that after the grant or refusal of a preliminary injunction (PI), or after a decision on the merits at first instance. This is despite the continuation of the action to a full hearing or appeal. However, getting access to pleadings and evidence earlier in proceedings has been difficult. Access to orders and decisions of the court is proving fairly reliable via their publication on the UPC website.

Legislative framework

The backbone of the UPC's structure is the UPC Agreement (UPCA). This sets out at a relatively high level the principles and practice that govern the court, while the detailed rules are found in the UPC Rules of Procedure (RoP).

Article 45 UPCA provides at a high level that "proceedings shall be open to the public". There are a series of exceptions where "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". Article 58 UPCA goes into more detail on the provisions around confidentiality, stating: "[t]o protect the trade secrets, personal data or other confidential information of a party to the proceedings or of a third party, or to prevent an abuse of evidence, the Court may order that the collection and use of evidence in proceedings before it be restricted or prohibited or that access to such evidence be restricted to specific persons."

These provisions suggest a general principle of openness in the UPC system qualified by broad exceptions, which leave much room for interpretation as to when it is appropriate for the court to restrict access. For instance, the "general interest of justice or public order" could cover all manner of scenarios.

There is no general principle of open justice set out in the preamble to the UPCA. This contrasts with other explicit principles, such as ensuring expeditious and high-quality decisions and balancing the interests of right holders and other parties.

The RoP do not provide much more guidance. Rule 262.1 is most relevant, stating that:

" ... following, where applicable, redaction of personal data within the meaning of Regulation (EU) 2016/679 and confidential information according to paragraph 2

(a) decisions and orders made by the Court shall be published,

(b) written pleadings and evidence, lodged at the Court and recorded by 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."

Under rule 262.2, a party can request that certain information in written pleadings or evidence be kept confidential and provide specific reasons why. The party must identify the parts to be redacted with the request. Where the information is excluded from public access, a member of the public can file an application under rule 262.3 for the excluded information to be made available to the applicant.

The early decisions of the UPC, including the Court of Appeal (CoA), have interpreted these rules and provide some assistance in understanding the UPC's approach to transparency. These are considered below.

Decisions and orders

The position on access to decisions and orders of the court is straightforward. As noted above, rule 262.1(a) RoP provides that these should be published. In practice almost all of these are uploaded

to the UPC Registry and are free for anyone to access from the [UPC website](#). There are cases where a judgment is available on the CMS but is not published on the UPC website, but these are infrequent.

Confidential material can be redacted from decisions before they are made available to the public. The redaction of personal data appears to have been interpreted to include the names of witnesses and (notably) experts and individual litigants in person.

Decisions are made available in the language of proceedings. While proceedings are increasingly being conducted in English (53% (cumulatively) as of the end of December 2024), a significant number are also in other languages (39% German, 4% French, 2% Italian, and 1% each for Danish and Dutch at the same date) (see [UPC: Case load of the Court since start of operation in June 2023 - update by 1 January 2025 \(6 January 2025\)](#)).

The UPC also has a court diary through which third parties can see who is bringing a case against whom, and the dates for hearings (although no other details are included). This is helpful as far as it goes, but some courts have been less ready to add their hearings onto the page than others.

Pleadings and evidence

The position on accessing pleadings and evidence filed at the UPC is more complex. There is no US-style docketing system for accessing evidence and, unlike the UK, pleadings are not accessible from the court file. Instead, a party wishing to access these documents must submit a "reasoned" request to the UPC under Rule 262.1(b).

The leading UPC decision on how the court should approach requests and what might be considered a valid reason has come from the CoA in [Ocado v AutoStore, \(UPC CoA 404/2023\) \(10 April 2024\)](#) (see [Legal update, Composition of Court of Appeal panel \(Unified Patent Court\)](#)).

Background to *Ocado v AutoStore*

In *Ocado v AutoStore*, a member of the public applied for access to Ocado's statement of claim (the individual's name was redacted from the published decisions in keeping with the requirement to remove personal data). The Nordic-Baltic Regional Division of the UPC, before which the case was to be heard, ordered that access be granted, after redaction of personal data. Ocado appealed the order.

Ocado's position was that access to filings may be justified to allow the public to understand the basis for a final decision. However, it submitted that this meant members of the public should be granted access only after the final decision had been given. Ocado argued that before this, or where a case settled with no decision, that there was no justification for granting access unless the applicant could establish a direct interest in the subject matter of the proceedings. Ocado also raised the issue that not all of the defendants had been served at the time of the request.

The individual making the request submitted that there was no requirement for all defendants to have been served, and that in any case it was clear they were all aware of the statement of claim in the case. The individual also submitted that access should always be granted regardless of the stage of the proceedings and regardless of their nature (that is, infringement or validity). They further submitted that a "reasoned" request merely meant that they must specify which documents were

requested, but that there was no further need to set out the basis for requesting the documents. They argued that the onus should be on the party seeking to deny the request to set out their reasoning, and that the only legitimate basis was the protection of confidential information and personal data.

Principles in *Ocado v AutoStore*

Early in the UPC's case history, the courts of first instance were not generous in their approach to what could be an acceptable reasoned request for access to pleadings and evidence. For example, in *Amgen, Inc v Sanofi-Aventis Deutschland GmbH UPC_CFI_1/2023*, the Munich local division refused an anonymised applicant's request for access because the request needed to contain "a concrete, verifiable and legally relevant reason, i.e. more than just any (fictitious) reason. In other words: a legitimate reason is required for making available written pleadings and evidence to a member of the public." The reason given for the request was that "the patent at issue and its legal validity (or lack thereof) are of interest to one of Applicant's clients".

When the matter came before the CoA in *Ocado v AutoStore*, the CoA decided that the general principle laid down by the UPCA was that proceedings, including the written portion, should be open to the public unless the balance of interests suggested otherwise. Interests that might weigh against granting access included the protection of confidential information and personal data, but were not limited to these issues. The "general interest of justice and public order" must also be considered.

To allow this balancing exercise to take place, the party requesting access must set out the reasons why they have an interest in getting access. That was what was meant by a "reasoned" request; it must specify the purpose of the request and explain why access was necessary for that purpose.

The court performs a similar balancing exercise in considering a request under rule 262.3 to weigh the legitimate interests of both parties.

When it comes to the balancing exercise that the court must conduct, the CoA decided that:

- The general interest of the public in being given access usually arises after a decision has been handed down by the court.
- In contrast, during the course of proceedings there is an interest in the "protection of the integrity of proceedings" to ensure that the parties can bring forward their arguments and evidence, and that these are then decided on by the court in an impartial and independent manner.
- As a result, the balancing exercise usually leans in favour of access being granted after proceedings have ended, whether through a decision or settlement.
- The court can also grant access before proceedings have ended but, in these cases, a higher burden is placed on the applicant for access. The applicant will need to demonstrate "a direct interest in the subject-matter of the proceedings". Examples are validity proceedings where the applicant is interested as a competitor or licensee, or where the applicant is accused of infringing the patent through a product that is similar to the subject matter of the proceedings.

- Even where the applicant has established a direct interest, the court must still balance that interest against the general integrity of the proceedings. While the CoA suggests that the balance will usually weigh in favour of granting access where there is a direct interest, this may come with obligations, such as a confidentiality restriction applying until the proceedings have ended.

In summary, it is generally easier for parties to gain access to documents after proceedings have ended, while for ongoing proceedings the applicant must establish a direct interest to be granted access. What the court may see as proceedings that have "ended" is discussed further below.

Application of *Ocado v AutoStore*

The principles established by the UPC CoA in *Ocado v AutoStore* have since been applied several first instance decisions.

Cases where access granted

Ongoing proceedings where applicant had direct interest

In *NJOY v Juul* [UPC_CFI_316/2023](#) (24 April 2024), the Paris Central Division granted access despite the fact that proceedings were ongoing. This was because the applicant (Nicoventures) was involved in parallel opposition proceedings at the EPO relating to the same patent. Given that both the UPC and EPO proceedings related to the validity of the patent, Nicoventures had sought access to understand the validity arguments the patentee was putting forward at the UPC and to be able to refer to those in the EPO proceedings.

The court agreed that Nicoventures had demonstrated a direct interest. It noted that generally a revocation action concerned the public interest to a higher degree than infringement proceedings, and so it would generally be easier to gain access to documents in revocation proceedings than in infringement proceedings.

An important point in this decision is that the court granted access only to documents that had already been filed. Nicoventures had also sought general access to future filings in the proceedings, but the court decided that there was no basis in the UPC rules to allow this. The implication is that an applicant would need to make a fresh request every time new documents were uploaded, although presumably future requests would not be contested in the same way unless new grounds arose to resist granting access.

In *Phoenix Contact GmbH & Co KG v Industria Lombarda Materiale Elettrico ILME SpA and another* [CFI 342/2024](#) (20 December 2024) (judgment transcript available only in German), the Munich Local Division adopted the same approach where the party seeking access was involved in EPO opposition proceedings concerning the same patent as in the UPC proceedings. The court decided that the opponent in pending opposition proceedings had a legal interest in inspecting the file pursuant to Rule 262.1(b) during the ongoing UPC proceedings.

Access post-PI

In *Abbott v Sibio UPC CFI 131/2024* (application for access) (29 July 2024), The Hague Local Division granted access to a law firm to aid its "better understanding" of a PI decision rendered by the court. Sibio had argued that this did not amount to a legitimate interest for access, but the court disagreed, finding that the integrity of the proceedings would not be damaged by the access at the point where the PI had been determined. The decision was welcome news for lawyers seeking to understand proceedings better as these worked their way through the UPC.

Abbott had separately argued that the request was premature because an appeal of the decision was ongoing. The court disagreed, finding that once first instance proceedings had ended there was no longer a need to withhold access to protect the integrity of the proceedings. It is also important to note that the request was limited to documents relating to the PI decision, and did not extend to the ongoing main action proceedings (which would have required the applicant to demonstrate a direct interest in access).

In *Abbott Diabetes Care Inc v Sibio Technology Ltd and another* (ORD_67618/2024) *UPC_CoA_480/2024*; *UPC_CoA_481/2024* (9 January 2025), the CoA dismissed an appeal by Abbott against the Local Division's decision (see *Legal update, Scope of general interest in public access to first instance pleadings and evidence applying after decision or order (Unified Patent Court)*). The CoA maintained that the access given to the pleadings at the stage in the proceedings was in line with the RoP, even when the PI decision was under appeal. The CoA went as far as to say that once first instance proceedings had concluded, there was generally no reason to protect the integrity of the first instance proceedings, regardless of whether it dealt with all the arguments and evidence in the case.

Contrary to Abbott's view, there was no reason to depart from the usual principles if the order concerned an application for provisional measures, like a PI, under Rule 206 of the RoP. This principle applied regardless of the fact that, after the grant of provisional measures, proceedings on the merits would usually follow. Just as a public discussion of the case could not be avoided during the appeal proceedings, neither could a public discussion of the case during the subsequent proceedings on the merits. The same principle applied if the information and evidence were also subject to parallel proceedings, for example, because the parallel proceedings dealt with the same patent, or with patents in the same patent family.

Referring to its decision in *Ocado v Autostore*, the CoA confirmed that a "reasoned request" in Rule 262.1 (b) of the RoP meant a request that specified not only which written pleadings and evidence the applicant wished to get, but also the purpose of the request, and that explained why access to the specified documents was necessary for the purpose. In this way, the request provided all the information that was necessary for the judge-rapporteur to make the required balance of interests.

The CoA decided that the applicant's interest "to have a better understanding of the decision rendered in view of the arguments brought forward by the parties and the evidence relied on" corresponded to the general interest named in *Ocado*, which arose after a decision had been rendered.

As Abbott had not requested that information should be excluded from public access for reasons of confidentiality or personal data protection, the CoA held that the first instance court had correctly decided that the balance of interest was in favour of allowing access.

In *Ballinno v UEFA UPC CFI 151/2024* (17 September 2024), the Hamburg Local Division granted access on the basis that the relevant stage of proceedings had ended, but subject to redaction of confidential material. Again, the court granted access only to the pleadings and evidence relating to the PI, not any further or future materials.

Access following settlement

In *Astellas v Healios UPC CFI 75/2023* (22 August 2024), the Munich Local Division granted access as the proceedings had ended through settlement, rather than a decision of the UPC. As indicated in *Ocado v AutoStore*, termination of the proceedings through settlement also results in the balance tilting in favour of granting access. The court granted a request to allow the redaction of confidential information before the material was handed over to the applicant.

Access following decision on merits

In *NanoString Technologies Europe Limited v President and Fellows of Harvard College CFI 252/2023* (3 January 2025) the Munich Central Division ruled on a request by a third party for access to the pleadings and evidence that had been lodged by the parties in a revocation action, in which a final decision to revoke the patent had been given on 17 October 2024 (see *Legal update, Pending national revocation action does not preclude UPC revocation action (Unified Patent Court)*). In the January application, the applicant, Berggren (an IP law firm), submitted that its reasoned request for access was made on the basis that it had a general interest in better understanding how the UPC had conducted the action and arrived at the decision on revocation. The UPC stated that this was important for the ability of the applicant, a firm of UPC representatives, to provide a professional and expert service to its clients, benefitting the UPC as well as its users. The court allowed the request because a final decision had already been given in the case. The UPC summarised the factors it had considered, stating that once a final decision had been rendered by the court, a member of the public generally had an interest in written pleadings and evidence being made available. This allowed for a better understanding of the decision rendered, in view of the arguments brought forward by the parties and the evidence relied on. It also allowed for the scrutiny of the court, which was important for trust in the court by the public.

Therefore, the applicant had a (general) interest in getting access to the written pleadings and evidence in the revocation action, which had ended by way of a decision by the court. As the CoA held in *Ocado*, where the proceedings had ended, the balance of interests would normally be in favour of granting access.

The court highlighted that the parties had not put forward any facts or arguments that could have shifted the balance of interests in favour of withholding or restricting access, and that the interests of other affected persons were adequately considered by redacting personal data (within the meaning of *Regulation (EU) 2016/679* as required by Rule 262.1(a)). Furthermore, there were no indications before the court that the general interests of justice or public order were at stake. Therefore, nothing more stood in the way of granting access.

Cases where access refused

These all concerned ongoing proceedings where the applicant claimed a direct interest.

In *SWARCO v STRABAG UPC CFI 33/2024* (12 August 2024) (judgment available only in German), the Vienna Local Division denied a request for access at an early stage of the proceedings. The applicant for access had supplied products of a similar kind to those said to infringe in the UPC proceedings. These products had been supplied to a third-party that was defending an infringement claim in the District Court of Ljubljana, Slovenia. The claimant in the UPC proceedings was the same as the Slovenian national proceedings, that is, the patentee.

The applicant argued that it had a direct interest in the UPC proceedings and so should be given access to the pleadings and evidence filed there. The patentee claimant objected to the request on the basis that there was no evidence that the allegedly infringing products in the two sets of proceedings were similar. It also argued that to demonstrate a direct interest in the UPC proceedings, the applicant would need to show that it had a legal relationship with the defendant in those proceedings, for example a supply contract.

Arguably taking a more restrictive approach to access than other UPC divisions, the court agreed with the claimant that to gain access to pleadings and evidence before a decision had been handed down, the applicant must demonstrate a legal interest in the proceedings, which it had failed to do. To assess the infringement position in the Slovenian proceedings, the court suggested that the applicant look at the publicly accessible claims of the patent and assess infringement on that basis; there was no need to see the documents in the UPC proceedings.

This appears to be a narrower reading of "direct interest" than that suggested by *Ocado v AutoStore* and adopted in *NJOY v Juul*. However, a distinction may be that *NJOY* related to validity while *SWARCO* concerned infringement.

In *Edwards Lifesciences v Meril UPC CFI 8/2023* (18 September 2024), the applicant, SWAT Medical, a medical device company, claimed to be a competitor of the parties to the instant UPC proceedings. It argued that the basis of its application was to understand the potential risk of infringing the patent that was the subject of the proceedings.

Like the decision in *SWARCO*, the Nordic-Baltic Regional Division noted that:

"[t]he description of the invention and the wording of the claim should be sufficiently precise to enable potential competitors to understand whether the invention they are developing or proposing to develop, infringes or may infringe an already existing patent. The description of the allegedly infringing patent and the allegedly infringed patent are already in the public domain as both of them are granted patents. Therefore, the pleadings and the evidence of the case would not be able to add such information that does not already exist in public domain."

In other words, where the reason for the request is based on better understanding the infringement position in relation to a patent, the court is likely to reject the request for sight of the pleadings and evidence on the basis that third parties can read the patent without requiring access to documents in the UPC proceedings. Overall, the court decided that the protection of the integrity of the ongoing proceedings outweighed any interest the applicant may have in accessing the information.

Meril had also argued that the applicant's product was quite different to the subject matter of the patent in the UPC proceedings (embolic protection devices rather than prosthetic heart valves), and so on this basis it did not need to be granted access. The court noted in response that:

"[t]he specific medical field where applicant or co-applicant operate is not very much relevant in the eyes of this Court as a company may change its line of activity any time. The legitimate interest may also be that a legal entity, planning to change its activities, is making preparations to do so."

SWAT Medical had, at the same time, separately submitted a request in the Paris Central Division in proceedings that involved the same parties, Edwards and Meril, but which related to a different patent ([UPC CFI 255/2023 \(14 October 2024\)](#)). The court decided here that the mere fact an applicant operated in the same field as the patent in dispute was insufficient to establish a specific interest in the documents of the proceedings. It also decided that SWAT Medical had not adequately alleged, nor proven, that they were in fact active competitors of Meril and Edwards, and, as a result, concerned with the validity of the patent.

However, in contrast to the approach taken by the Nordic-Baltic Regional Division, the Paris Central Division granted access on the basis that SWAT Medical had shown that it was "carrying out preparatory activities to possibly enter the market concerned by the patent at issue", and that this tipped the balance in favour of granting access. This was likely in large part driven by the fact that the Paris proceedings had ended by the time the access request was decided and so the Court found there was no longer a need to protect the integrity of the proceedings.

Meril had requested that if access were granted it should be limited to documents relating exclusively to the validity of the patent, with the exclusion of all documents relating to infringement or any potential further ancillary documents of the case. The court denied the request. Meril's further request that the applicant, once they had gained access, be required to keep the documents confidential was also denied.

However, Meril and Edwards were granted leave to appeal and the effects of the order were suspended until the deadline for filing an appeal had passed. For more information, see [Legal update, Public access to pleadings and evidence in concluded proceedings \(Unified Patent Court\)](#).

Practical consequences

Based on the decisions of the UPC so far, particularly the CoA in *Ocado v AutoStore*, there is a general principle of open justice built into the UPC system. Third parties should in principle be able to access decisions and orders of the court freely, subject to redactions for confidential material. More broadly, third parties should be able to access pleadings and evidence filed with the court.

However, when it comes to pleadings and evidence there are restrictions on this access. Particularly during the course of proceedings before a decision is issued, third parties need to provide reasons to justify why they should be given access to the documents they are requesting and demonstrate a "direct interest" in being granted access.

It also appears that it will be easier to justify a request to access information relating to the validity of a patent rather than infringement. Certain UPC divisions have taken a restrictive view of access around infringement issues, suggesting that applicants can simply look at the patent to assess their infringement risk. In practice, patentees explain more about their views on construction of the patent in infringement proceedings and so objectively this would seem to be relevant to third parties assessing their infringement position, but, so far, the UPC does not seem to agree.

Perhaps unusually, at least to those from an English law background, one of the factors the UPC considers weighs against granting access is the "integrity of proceedings". The theory behind this appears to be that parties should be free to litigate without worrying what impact their pleadings or evidence should have outside of those proceedings, in the sense of external parties influencing or interfering with the UPC's decisions (see *Ocado* paragraph 48). However, that concern can be overcome where a third party is able to demonstrate an interest in being given access and largely falls away when proceedings come to an end.

On the positive side for those seeking access to pleadings, access during the PI stage of a dispute appears to be viewed by the UPC as not damaging to the integrity of the substantive infringement proceedings once the PI has been granted or the application for the PI rejected. This approach has also been extended to situations where cases have been settled. Both developments mean that access is now much simpler where modest reasons are involved; effectively, reasons such as gaining a better understanding of UPC procedure may be sufficient in those circumstances, although they will still require a reasoned request to the court.

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