



Action n°: UPC 75/2023

Revocation action

## **Order**

**of the Court of First Instance of the Unified Patent Court**

**Central Division (Section Munich)**

**issued on 22 August 2024**

**concerning Rule 262.1(b) and 262.2 RoP**

HEADNOTE: In weighing the interests of the applicant against the interests mentioned in Art. 45 UPCA, once the proceedings have come to an end, as in the present case by way of settlement, the integrity of proceedings is no longer at stake and the balance of interests will normally be in favour of granting access to written pleadings and evidence pursuant to Rule 262.1(b) RoP, subject to the redaction of personal data and the redaction of confidential information pursuant to Rule 262.2 RoP.

KEYWORDS: Article 10, 45 UPCA, Rule 262.1(b), 262.2 RoP. Public access to written pleadings and evidence. Confidentiality request. Redaction of confidential information. Redaction of personal data.

APPLICANT

- 1) **Mathys & Squire LLP**  
(‘Applicant’) - The Shard, 32 London Bridge  
Street - SE1 9SG - London - GB

Represented by Nicolas Fox, Alexander Robinson and Andreas Wietzke of Mathys & Squire

PARTIES TO THE MAIN PROCEEDINGS

- 1) **ASTELLAS INSTITUTE FOR REGENERATIVE MEDICINE**, 9 Technology Drive - MA 01581 -  
Westborough - USA  
(‘Claimant’)

represented by Mark Didmon of Potter Clarkson.

- 2) **Healios K.K**, 7-1, Yuraku-cho 1-chome Chiyoda-ku - 100-0006 - Tokyo - JP
- 3) **Riken**, 2-1, Hirosawa Wako-shi - 351-0198 - Saitama - JP
- 4) **Osaka University**, 1-1 Yamadaoka Suita-shi - 565-0871 - Osaka - JP  
(‘the Defendants’)

represented by James Nicholls and Pamela Tuxworth of JA Kemp.

PATENT AT ISSUE

*Patent no.*

*Proprietor/s*

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**EP3056563**

Healios K.K, Riken, Osaka University

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DECIDING JUDGE

This is an Order of the Judge-rapporteur: András Kupecz.

LANGUAGE OF PROCEEDINGS:

English.

## SUBJECT-MATTER OF THE PROCEEDINGS

Rule 262.1(b) RoP request. Rule 262.2 RoP Request.

## BACKGROUND AND REQUESTS

Mathys & Squire LLP (‘the Applicant’) on 21 November 2023 lodged a request under Rule 262.1(b) of the Rules of Procedure (‘RoP’) of the Unified Patent Court (‘UPC’) with the Central Division, Munich Section, requesting that the Court makes available all written pleadings and evidence filed in relation to case no ACT\_464985/2023 to the Applicant (‘the Application’).

By way of Preliminary Order dated 5 December 2023, the Court informed the Applicant and the parties to the main proceedings that the Court intended to wait for the outcome of the appeal proceedings that were brought at the Court of Appeal against order number 573437/2023 on application number 543819/2023 from the Nordic-Baltic division dated 17 October 2023 (APL\_584498/2023, ‘the Appeal Proceedings’) before proceeding with the Application.

The Court of Appeal rendered its decision in proceedings APL\_584498/2023 (UPC\_CoA\_404/2023) concerning public access to the register on 10 April 2024 (‘the CoA decision’). The Applicant has provided comments to the CoA decision. The Claimant has responded to the Applicant’s comments. The Defendants have not provided any comments.

In the meantime, case no ACT\_464985/2023 was disposed of by way of order dated 23 July 2024 upon unanimous application by the parties (order available on the UPC website [here](#)).

The Applicant, referring to its original request in which it (*inter alia*) reasoned that it had a general interest in forming an opinion on the activities of the Court, confirmed that it maintained its request for access to the written evidence and pleadings on the public court file.

The parties were consulted (Rule 262.1(b) RoP, second sentence). The Claimant opposes the request arguing (in summary) that the Applicant did not provide or have a direct, immediate interest in the subject-matter of the proceedings. The Defendants did not bring forward any observations.

For the event the Court was minded to accept the Applicant’s request, the Claimant requested that certain commercially sensitive information contained in the pleadings (namely, the Claimant’s Reply dated 29 November 2023 and the Defendants’ Rejoinder dated 29 December 2023) are redacted, pursuant to Rule 262.2 RoP. The information concerned relates to the timeline for the Claimant’s product pipeline.

## FOUNDATIONS

### *262.1(b) request: access to written pleadings and evidence*

Applicant’s request to make available the written pleadings and evidence lodged in case ACT\_464985/2023 is admissible and, subject to the below conditions, allowable.

Access to written pleadings and evidence in the register is governed by (*inter alia*) Art. 10 and 45 of the Agreement on a Unified Patent Court (‘UPCA’) and by Rule 262.1(b) of the RoP. The Court of Appeal in the CoA Decision has interpreted these provisions and has provided general principles as follows:

*“42. As is clear from Art. 10 and Art. 45 UPCA, the general principle laid down in the UPCA is that the register is public and the proceedings are open to the public, unless the balance of interests*

*involved is such that they are to be kept confidential, which means that in such case access to the public is to be denied.*

*43. When a request to make written pleadings and evidence available to a member of the public is made pursuant to R.262.1(b) RoP, the interests of a member of the public of getting access to the written pleadings and evidence must be weighed against the interests mentioned in Art. 45 UPCA. These interests include the protection of confidential information and personal data ('the interest of one of the parties or other affected persons') but are not limited thereto. The general interest of justice and public order also have to be taken into account. The general interest of justice includes the protection of the integrity of proceedings. Public order is at stake e.g. when a request is abusive or security interests are at stake.*

*[...]*

*47. Both parties agree that a member of the public generally has an interest that written pleadings and evidence are made available. This allows 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 allows scrutiny of the Court, which is important for trust in the Court by the public at large. This general interest of a member of the public usually arises after a decision was rendered. At this point, there is a decision that needs to be understood and the handling of the dispute by the Court can be scrutinised.*

*48. The protection of the integrity of proceedings ensures that the parties are able to bring forward their arguments and evidence and that this is decided upon by the Court in an impartial and independent manner, without influence and interference from external parties in the public domain. The interest of integrity of proceedings usually only plays a role during the course of the proceedings.*

*49. This means that these interests – the general interest referred to above and the protection of integrity of proceedings – 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.*

*50. The Court of Appeal notes that if the decision is rendered by the Court of First Instance and an appeal is or may be lodged, this applies only to the written pleadings and evidence in the proceedings at first instance. Withholding access to these documents no longer serves the purpose of protection of integrity of proceedings, since the publicly available decision will contain the relevant arguments and evidence presented by the parties and thus (may) already become(s) subject to public debate.*

*51. Proceedings may however also come to an end before a decision is rendered, for instance by a settlement between the parties, or when an action is withdrawn. Given the general principle that the register and proceedings are open to the public, as mentioned above, once the integrity of proceedings no longer plays a role and thus no longer counterbalances the general interest of a member of the public by access to the written pleadings and evidence, the balance is usually in favour of allowing access (subject to the protection of personal data and confidential information), even if there is no decision to be understood. The case file may still give an insight in the handling of the dispute by the Court and / or serve another legitimate interest of such member of the public, such as scientific and / or educational interests, which is no longer counterbalanced by the integrity of proceedings once the proceedings have come to an end.*

*52. The argument made by Ocado that access should not be given if proceedings have come to an end due to a settlement, as the settlement may have been made on confidential terms, does not hold. R.262.1(b) RoP refers to written pleadings and evidence, not to an out of court settlement agreement. Furthermore, in addition to the protection of confidential information and personal data pursuant to R.262.1 and R.262.2 RoP, even when a settlement would become part of the case file, e.g. under R.365.2 RoP, the Court may order, upon request, that the details of the settlement are confidential.*

[...]

*55. When the general principles set out above are applied to the present proceedings, it is clear that the interest stated by Mr [ ] in his request for access to the statement of claim is one of a general nature. Ocado has not argued that the request was abusive and there is no indication it was. At the time of the impugned order, the proceedings had come to an end by a settlement. Ocado had not requested that certain information contained in the statement of claim should be excluded from public access for reasons of confidentiality or personal data protection. The balance of interest was therefore in favour of allowing access.”*

Applying the relevant provisions and general principles set out by the Court of Appeal to the present case, weighing the interests of the Applicant of getting access to the written pleadings and evidence against the interests mentioned in Art. 45 UPCA, it is clear that the interest put forward by the Applicant in the Application, essentially to gain insight in the handling of the dispute by the Court (see point 6 of the Application), is of a general nature. As the Court of Appeal held in the CoA Decision, once the proceedings have come to an end, as in the present case by way of settlement, the integrity of proceedings is no longer at stake and the balance of interests will normally be in favour of granting access. This is in line with the general principle laid down in the UPCA (cf. Art. 10, 45 UPCA) that the register is public and the proceedings are open to the public, unless the balance of interests involved is such that they are to be kept confidential.

The Claimant has not put forward any arguments which shift the balance of interests in the present case towards withholding access. The arguments that the Applicant does not have a direct or immediate interest in obtaining the requested access, even if these were accepted by the Court, do not alter the assessment, since the interest of a general nature invoked by the Applicant suffices now that the proceedings have come to an end and this general interest is no longer counterbalanced by the integrity of the proceedings. It has not been argued that the request was abusive and the Court has no reason to believe that it is. There are furthermore no indications before the Court that the general interest of justice, the interests of other affected parties or public order are at stake. The Claimant's interest in protecting confidential information is adequately served by allowing the redacting of the confidential information (see below). Access to the written pleadings and evidence lodged and recorded in the register in case ACT\_464985/2023 is therefore granted to the Applicant, subject to the redaction of personal data within the meaning of Regulation (EU) 2016/679 (Rule 262.1 RoP, first sentence) and the redaction of confidential information in accordance with Rule 262.2 RoP, see below.

#### *Claimant's request pursuant to Rule 262.2 RoP*

The condition under which the Claimant requested the redaction of certain pleadings pursuant to Rule 262.2 RoP, that the Court would be minded to grant access to the written pleadings, is fulfilled. The Court will therefore decide upon said request which is admissible and allowable.

The Claimant requests that certain information within the written pleadings (namely, the Claimant's Reply to the Defence to Revocation dated 29 November 2023 and the Defendants' Rejoinder to the Reply to the Defence to Revocation dated 29 December 2023) be kept confidential. The information in question relates to the timeline for the Claimant's product pipeline and was submitted in order to support its position in relation to the valuation of the claim. The Claimant provided specific reasons for the requested confidentiality of this information, namely that disclosure of this information to third parties would risk causing commercial damage, particularly when taking into account that the Applicant may well act for competitors of the Claimant or other interested parties. According to the Claimant, preserving the confidentiality of this information is even more pertinent following the confidential settlement agreed between the parties. When making the request, the Claimant also provided copies of the said documents with

the relevant parts redacted. The requirements of Rule 262.2 RoP are therefore satisfied and the request is granted. The Registry is instructed accordingly.

### *Leave to appeal*

Leave to appeal is granted. In view of this, access to the pleadings and evidence will be granted as soon as possible after 16 days starting on the date of service of this order, and provided that no party has lodged an appeal within that period, in order to prevent a possible appeal from becoming meaningless (also see LD the Hague, ORD\_39938/2024 in App\_39789/2024 (UPC\_CFI\_131/2024) dated 29 July 2024, p. 5, final par. of the Grounds and Nordic-Baltic RD order dated 17 October 2023, application 543819/2023, UPC 11/2023).

### ORDER

1. The Applicant shall be granted access to the written pleadings and evidence lodged and recorded in the register concerning case ACT\_464985/2023, after redaction of personal data within the meaning of Regulation (EU) 2016/679 and subject to keeping confidential of certain information as per point 2 below, as soon as possible after 16 days starting on the date of service of this order and on the condition that no appeal is lodged against this order.
2. The information contained in the Claimant's Reply to the Defence to Revocation dated 29 November 2023 and the Defendants' Rejoinder to the Reply to the Defence to Revocation dated 29 December 2023 is to be kept confidential for the relevant parts as indicated by the Claimant in the redacted versions of said documents provided. Only the redacted versions provided by the Claimant shall be made available to the Applicant.
3. Leave to appeal is granted.

Issued on 22 August 2024

KUPECZ

Judge-rapporteur

### INSTRUCTIONS TO THE PARTIES AND TO THE REGISTRY

The Registry is instructed to, subject to the above conditions and orders, make available the written pleadings and evidence lodged and recorded in the register in case ACT\_464985/2023 to the Applicant.

INFORMATION ABOUT APPEAL

Leave to appeal is granted. The present Order may be appealed within 15 days of service of this Order which shall be regarded as the Court's decision to that effect (Art. 73(2)(b)(ii) UPCA and 220.2, 224.1(b) RoP).

ORDER DETAILS

Order no. ORD\_591107/2023 in Action Number: ACT\_464985/2023

UPC number: UPC\_CFI\_75/2023

Action type: Revocation Action

Related proceeding no. Application No.: 588681/2023

Application Type: APPLICATION\_ROP262\_1\_b