



**UPC\_CFI\_8/2023**  
**Procedural Order**  
**of the Court of First Instance of the Unified Patent Court**  
**delivered on 18/09/2024**

HEADNOTES:

Article 45 UPCA means that also the written procedure of the Court shall, in principle, be open to the public unless the Court decides to make it 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. If a person has made an application under Rule 262.1(b) for access to pleadings or evidence and provided a credible explanation for why he/she wants access, the application shall be approved unless it is necessary to keep the information confidential.

KEYWORDS:

RoP 262.1 (b)

APPLICANT/S

- 1) **Erik Krahbichler** Represented by Erik  
(Applicant) - Drottninggatan 11 - 25284 - Krahbichler  
Helsingborg - SE

RELEVANT PROCEEDING PARTIES

<b>Claimant</b>	<b>Edwards</b>	<b>Lifesciences</b>	<b>Corporation</b>
One Edwards Way - 92614 - Irvine, California – US			
Represented by Magnus Dahlman Siddharth Kusumakar, Tessa Waldron and Bryce Matthewson			

Defendent I Meril Lifesciences PVT Limited - Bilakhia House, Survey No. 135/139, Muktanand Marg, Chala, - 396191 - Vapi, Gujarat - IN

Defendent II Meril GmbH- Bornheimer Strasse 135 – 137 - 53119 - Bonn - DE

Defendent III Smis International OÜ Harju maakond, Kesklinna linnaosa, Kaarli pst 9-1a - 10119 - Tallinn - EE

Defendent IV Sormedica UAB - V. Kuzmos str. 28 - 08431 - Vilnius - LT

Represented by Dr Andreas von Falck , , Alexander Klicznik, Kerstin Jonen, Felipe Zilly Claude, Lukas Wollenschlaeger, Beatrice Wilden (Hogan Lovells International LLP) Assisted by: Dr. Kyra Lueg-Althoff

### PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor/s</i>
<b>EP2628464</b>	Edwards Lifesciences Corporation

### DECIDING JUDGE Kai Härmand

#### COMPOSITION OF PANEL – FULL PANEL

Presiding judge	<b>Stefan Johansson</b>
Judge-rapporteur	<b>Kai Härmand</b>
Legally qualified judge	<b>Rute Lopes</b>
[Technically qualified judge	<b>Elisabetta Papa]</b>

LANGUAGE OF PROCEEDINGS: English

#### SUBJECT-MATTER OF THE PROCEEDINGS

Request for access to the written pleadings and evidence

#### SUMMARY OF FACTS

1. On 5 June 2024 Erik Krahbichler filed a request to access pleadings and evidence in several cases (counterclaims App. Nos.: 33491/2024; 33492/2024; 33493/2024; 33494/2024 and infringement claim App. No.: 33316/2024). On 19 June 2024, the Judge Rapporteur issued an order requiring Erik Krahbichler to identify the identity of the applicant and specify the nature of its interest in the proceedings. On 2 June 2024, Erik Krahbichler filed a further submission. The parties have been invited to submit their comments and they submitted their written comments on 16 July 2024.

2. The Applicant requested access to all pleadings and evidence as a member of the public, in particular being a board member and investor in a medical device company within the field of cardiac implant technology. The purpose of this request is therefore based on a direct interest and concern as a competitor regarding the validity of the patent of the proceedings with regard to a third-party product under development potentially similar to the allegedly infringing products of the defendants and covered upon market entry by the granted claims of the present patent of the proceedings.

3. Claimant requests the request to be dismissed. Claimant argues that request must include a concrete, verifiable and legitimate reason for making written pleadings and evidence available to a member of the public. Claimant refers to the Munich CD order of 20 September 2023 in Amgen v. Sanofi-Aventis, UPC\_CFI\_1/2023 and Court of Appeal decision in Ocado v AutoStore dated 10 April 2024 (ORD\_19369/2024, UPC\_CoA\_404/2023. In the request no mention was made of the Applicant involvement in any medical company (let alone SWAT Medical), and the request was explicitly said to be filed as a member of the public or investor in medical device technology. The Applicants have not specified the nature of the pleadings and evidence which are being sought, but simply cast the net as widely as possible, seeking "all pleadings and evidence".

4. Defendants request the request to be dismissed and access to all written pleadings and evidence in the present proceedings is to be denied already because the R.262-Request does not comply with the requirements set out in Rule 262.1(b) RoP in the strict alternative, that the R.262-Request be dismissed to the extent that any written pleadings, evidence or other submissions as further specified below in Section B.2. be excluded from access; III. in case the R.262-Request is granted in part or in full, that it be ordered that the applicants are required to keep the written pleadings and evidence the applicants were given access to confidential and not to use the information obtained against Counterclaimants, be it in court proceedings or out of court (see Section C.); IV. the applicants of the R.262-Request are ordered to bear the costs (see Section D.).

Defendants argue that the Court has to must weigh the interests of a member of the public in getting access to the written pleadings and evidence against the interests mentioned in Art. 45 UPCA. In Ocado Innovation Limited v Autostore AS the Court of Appeal has clarified the balance and how the meaning of reasoned request has to be interpreted. Defendants also refer to the Munich CD order of 2 0.10.2023 in Sanofi-Aventis Deutschland GmbH et al. v Amgen Inc.

The purpose is not clear and plausible as the applicant and co-applicant SWAT Medical AB operates in the field of embolic protection devices. Embolic protection devices are neither prosthetic heart valves as herein concerned nor delivery catheters nor a system comprising a prosthetic heart valve and a delivery catheter. Rather, embolic protection devices are used to protect against cardiac embolism during TAVI and thus, in particular, strokes, by filtering or diverting cardiac emboli during TAVI to reduce cardiac embolic events. Given the different intended use and configuration of such devices, there can obviously be neither a concern "regarding the validity of the patent of the proceedings with regard to a third-party product under development potentially similar to the allegedly infringing products of the defendants and covered upon market entry by the granted claims of the present patent of the proceedings" nor an interest precisely related to the subject-matter of the proceedings at hand.

Identical request was filed in the counterclaim proceedings concerning • EP 3 646 825 B1 (App\_33487/2024, App\_33489/2024), • EP 3 669 828 B1 (App\_33485/2024), • EP 3 769 722 B1 (App\_33473/2024, App\_33475/2024, App\_33476/2024, App\_33478/2024, App\_33480/2024,

App\_33481/2024) and that a largely identical request was filed in the infringement proceedings concerning • EP 3 646 825 B1 (App\_33373/2024), • • EP 2 628 464 B1 (App\_33316/2024), • EP 3 669 828 B1 (App\_33377/2024), and • EP 3 769 722 B1 (App\_33375/2024).

Counterclaimants and the public's interest in the integrity of the pending proceedings prevails any interest in getting access to written pleadings and evidence submitted in the counterclaim proceedings as herein concerned.

#### GROUNDS FOR THE ORDER

Public scrutiny of the court procedures and access to public information are both valuable principles of the democracy and the rule of law. According to the Art 47 of the Charter of Fundamental Rights of the European Union, the principle of fair trial includes the possibility of a public trial.

Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents stipulates in its recital 2, that openness contributes to strengthening the principles of democracy and respect for fundamental rights. Pursuant to the Art 1 (a), the public shall have the widest possible access to the institutions' documents. However, the right of access is subject to limits for reasons of public or private interest. According to Art. 4 (2) access to a document may be refused in order to protect court proceedings and legal advice, which ensures the protection of the integrity of the proceedings.

The UPCA have to be interpreted in the light and in line of the general principles of the EU law. Therefore, the transparency and public access of the proceedings have to be widely interpreted.

Article 45 UPCA stipulates that the proceedings of the Court 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. This general provision is not limited to decisions, orders or oral hearings, but refer to the proceedings as such. According to Article 52 UPCA, the proceedings before the Court consist of a written, an interim and an oral procedure. In this Courts view, this means that also the written procedure shall, in principle, be open to the public, unless the Court decides to make it 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.

Rule 262 RoP contain provisions on the publics access to decisions and orders made by the Court, and to written pleadings and evidence. It specifies that decisions and orders made by the Court shall be published, while 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.

The Court acknowledges that public generally has an interest in written submissions and evidence being made available. This allows for a better understanding of the decisions of the court and it also allows for the court's scrutiny, which is important for public confidence in the court.

However, the Court has to weight the interests of the parties against the purpose of the request. The applicant sets out a very general request to obtain written pleadings and evidence because of a direct interest and concern as a competitor regarding the validity of the patent of the proceedings

with regard to a third-party product under development potentially similar to the allegedly infringing products of the defendants and covered upon market entry by the granted claims of the present patent of the proceedings.

The core essence of the patent system is to give monopoly over information that may be considered trade secret in nature in return for a detailed disclosure of the invention. The 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.

A civil litigation is in its essence a private dispute and the protection of the integrity of the proceedings ensures that the parties can present their arguments and evidence independently and without influence and the court, as intermediary, is able impartially and independently, without unnecessary interference from third parties, solve the conflict. The interest in the integrity of the proceedings usually lasts until the end of the proceedings, meaning that the general interest mentioned above and the protection of the integrity of the proceedings – are usually properly balanced when a member of the public is granted access to pleadings and evidence after the proceedings have been terminated by a decision of the court.

The 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.

The protection of the integrity of the ongoing proceedings hereby outweighs the interest in information asserted by the applicant, so that the parties can present their arguments and evidence and so that the court can conduct the proceedings impartially and independently, without influence or interference from external parties in the public sphere. Therefore, the access to the pleadings and a evidence is denied at this point in time.

As the request is rejected there is no need for the Court to formulate a position in the confidentiality issue raised by the parties.

#### ORDER

1. The request for access to pleadings and evidence is rejected.
2. Leave for appeal is granted.

#### INFORMATION ABOUT APPEAL

Leave to appeal of the order shall be granted as it is of the general interest to clarify the interpretation of the law.

#### INFORMATION ABOUT COSTS AND DAMAGES

The costs can be decided in separate proceedings at the request of the party. The Applicant is ordered to bear the costs of the proceedings.

ORDER DETAILS

Order no. ORD\_36465/2024 in ACTION NUMBER: ACT\_459769/2023

UPC number: UPC\_CFI\_8/2023

Action type: Infringement Action

Related proceeding no. Application No.: 33493/2024; 33492/2024; 33491/2024; 33316/2024

Application Type: APPLICATION\_ROP262\_1\_b