



Central Division
Paris Seat

ORDER
of the Court of First Instance of the Unified Patent Court
Central division (Paris seat)
issued on 24 January 2024
concerning the application RoP262.1(b) No. App_67889/2024
UPC_CFI_164/2024

HEADNOTE: The interest in ensuring that the parties present their arguments and evidence and that the Court conducts the proceedings impartially and independently, without influence and interference from external parties in the public sector, is of the paramount importance and, as such, prevails over the competing interest in access to the case file where this latter interest cannot be satisfied through access to the written pleadings or evidence of the proceedings as the matter at hand concerns a purely legal and general issue.

KEYWORDS: public access to the register.

APPLICANT:

Institute of Professional Representatives before the European Patent Office - Bayerstraße 83
80335 Munich, Germany

represented by Tilman Pfrang, Meissner Bolte Patentanwälte Rechtsanwälte PartmbB

RESPONDENTS:

Suinno Mobile & AI Technologies Licensing Oy - Fabianinkatu 21, 00130 Helsinki, Finland

represented by [REDACTED]

Microsoft Corporation - One Microsoft Way, Redmond Washington 98052-6399, USA

represented by Tilman Müller-Stoy, Bardehle Pagenberg

PATENT AT ISSUE:

European patent n° EP 2 671 173

PANEL:

Panel 2

Paolo Catalozzi	Presiding judge and judge-rapporteur
Tatyana Zhilova	Legally qualified judge
Wiem Samoud	Technically qualified judge

DECIDING JUDGE:

This order is issued by the Presiding judge and judge-rapporteur Paolo Catalozzi

SUMMARY OF FACTS AND PARTIES' REQUESTS:

1. On 23 December 2024 the applicant filed an application, pursuant to Rule 262 (1) (b) of the Rules of Procedures, requesting access to the written pleadings and evidence in the case between the respondents, registered as No. ACT_18406/2024 UPC_CFI_164/2024, including the written pleadings and evidence in all related proceedings originating from said case. The applicant argues that they are the professional body of all European Patent Attorneys and justifies the request with the interest on the question of the status of inhouse European Patent Attorneys before the Unified Patent Court and their representation rights, which has been the subject of some of the orders issued in the proceedings.
2. Suinno Mobile & AI Technologies Licensing Oy, claimant in the action mentioned in the application, did not oppose file inspection for those parts of the case file that do not contain confidential information and left to the discretion of the Court to decide how, and to what extent, this limited file inspection would occur or would not occur (see written comments submitted on 9 January 2024).
3. Microsoft Corporation, defendant in the said action, left the decision on the application for file inspection to the discretion of the Court.

GROUNDS FOR THE ORDER:

Public access to the register: the general framework.

1. According to Article 10 (1) of the Unified Patent Court Agreement ('UPCA'), "Subject to the conditions set out in this Agreement and the Rules of Procedure, the register kept by the Registry shall be public". Article 45 'UPCA' adds that "The proceedings 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".

2. Rule 262 (1) (b) 'RoP' specifies that "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; ...".
3. As acknowledged by the Court of Appeal (see order issued on 10 April 2024, UPC_CoA_404/2023), the aforementioned provisions make clear that 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.
4. Therefore, when a request to make written pleadings and evidence available to a member of the public is made pursuant to Rule 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 Article 45 ('UPCA'). These interests encompass the protection of confidential information and personal data ('the interest of one of the parties or other affected persons') but also the general interest of justice, which includes the protection of the integrity of proceedings, and the public order.
5. In order to allow the judge-rapporteur to balance all the interests set forth in Article 45 'UPCA', the applicant must specify the purpose of the request and explain why access to the specified documents is necessary for that purpose, thus providing all the information.
6. It may be pointed out that a member of the public may have a direct interest in the subject-matter of the proceedings – such as the validity of a patent that he is also concerned with as a competitor or licensee, or where a party in that case is accused of infringing a patent by a product which is the same or similar to a product (to be) brought on the market by such member of the public – and in that case this interest does not only arise after the proceedings have come to an end but may very well be immediately present.

The balance of the opposing interests.

7. The applicant argues that it has a specific interest in the subject-matter of the proceedings as the issue of the rights of European Patent Attorneys to represent their employers before the 'UPC' was addressed in two orders delivered by the Court and an appeal on this issue is pending before the Court of Appeal.
8. The applicant points out that a significant majority of its members have been registered as 'UPC' representatives to date and a substantial part of them are inhouse European Patent Attorneys. The applicant further emphasizes that its members regularly change from private practice to industry, or vice versa and that, therefore, the pending appeal concerns the fundamental question of the status of inhouse European Patent Attorneys before the 'UPC' and their representation rights.
9. This judge-rapporteur holds that the mere fact of being interested in the outcome of a specific legal issue, concerning the interpretation of statutory provision of the 'UPCA', which is debated before the Court may not be sufficient to grant access to the case file where the interests mentioned in Article 45 'UPCA' were deemed to be more relevant.

10. In the case at hand, the interest in protecting of the integrity of the ongoing proceedings outweighs the interest in accessing information asserted by the applicant. Indeed, the interest in ensuring that the parties present their arguments and evidence and that the Court conducts the proceedings impartially and independently, without influence and interference from external parties in the public sector, is of the paramount importance and, as such, prevails over the competing interest in access to the sought information (see on this point Paris CD, order issued on 23 September 2024, UPC_CFI_189/2024; North Baltic RD, order issued on 17 September 2024, UPC_CFI_8/2023; Vienna LD, order issued on 12 August 2024, UPC_CFI_33/2024).
11. In this regard, it may be noted that the applicant's request is grounded in its members' interest in the Court's determination of the contentious issue regarding whether they may represent parties before the 'UPC' for whom they also serve as in-house counsel or not. This interest cannot be satisfied through access to the case file as the matter is purely legal and of a general nature, rendering knowledge of specific case facts largely irrelevant.
12. It may also be noted that Information regarding arguments against the right of in-house counsel to represent their clients before the 'UPC' can readily be found in the orders issued by this Court on this very point (and cited in the application) and that the Court of Appeal's decision on this matter is imminent.
13. These latter factors also provide evidence that the interest in the integrity of the proceedings outweighs the applicant's interest in access to the case file.

Conclusions.

14. For these grounds the application must be dismissed.

ORDER

The judge-rapporteur,

rejects the request for access to the register filed by Institute of Professional Representatives before the European Patent Office on 23 December 2024.

Issued on 24 January 2024.

The presiding judge and judge-rapporteur

Paolo Catalozzi

Paolo
Catalozzi

Firmato digitalmente
da Paolo Catalozzi
Data: 2025.01.24
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ORDER DETAILS

Order no. ORD_67980/2024 in ACTION NUMBER: ACT_18406/2024

UPC number: UPC_CFI_164/2024

Action type: Infringement Action

Related proceeding no. Application No.: 67889/2024

Application Type: APPLICATION_ROP262_1_b