IN THE CENTRAL DIVISION (MUNICH SECTION) OF THE UNIFIED PATENT COURT

CASE NUMBER ACT_464985/2023

EUROPEAN PATENT NUMBER EP3056563

APPLICANT:

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RELEVANT PROCEEDING PARTIES:

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REQUEST FOR COPIES OF PLEADINGS AND EVIDENCE UNDER RULE 262.1 (b)

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I. INTRODUCTION

1. This is a reasoned request of behalf of Mathys & Squire LLP ("the Applicant") submitted under Rule 262.1(b) of the Rules of Procedure of the Unified Patent Court ("RoP") requesting that the Court makes available all written pleadings and evidence filed in relation to case no ACT_464985/2023 to the Applicant.

2. In orders[1] issued on 20 & 21 September 2023 by Judge-Rapporteur Kupecz sitting in the Munich Section of the Central Division of the Unified Patent Court, the Judge-Rapporteur interpreted the public's right to access to written evidence and pleadings filed with the Unified Patent Court in a restrictive manner as being limited to applicants who provide the Court with "*a concrete and verifiable, legitimate reason for making available written pleadings and evidence,*" holding that "*a wish from a natural person to form an opinion on the validity of a patent out of a personal and a professional interest is not a legitimate reason as required by Rule 262.1(b) RoP*" and that a request in order "*to be informed of … proceedings before the Unified Patent Court for the purposes of education and training*" also constituted insufficient reasons under Rule 262.1(b) for making written pleadings and evidence available to a member of the public. [2]

3. In contrast, in an order[3] issued on 17 October 2023 by Judge-Rapporteur Johansson sitting in the Nordic-Baltic Regional Division of the Unified Patent Court, granting a request for access to pleadings and evidence, the Judge-Rapporteur held that an applicant was merely required to provide "*a credible explanation for why he/she wants access"* to such information and that an application for access "*shall be approved unless it is necessary to keep the information confidential"*.[4]

4. As set out in greater detail below, it is contended that, correctly interpreted in the light of:

    a. the obligations of the Court under International and European Union Law;

    b. the legislative history of the writing of the Rule 262; and

    c. exemplary practice by the European Patent Office and the national courts of the signatory states of the Unified Patent Court Agreement;

    Rule 262 RoP should be interpreted such that, by default, written pleadings and evidence are automatically made available to third parties on request, without any specific justification being required; or that, if any justification is required, the fact that it is generally in the public interest to grant access to such documents should

[1] Order no. 550152 in ACTION NUMBER: ACT_459505/2023 issued 20 September 2023 (UPC number UPC_CFI_1/2023) & Order no. 552745 in ACTION NUMBER: ACT_464985/2023 issued on 21 September 2023 (UPC number UPC_CFI_75/2023).
[2] *Ibid.,* Headnotes.
[3] Order No. 459791 in ACTION NUMBER: ACT_459791/2023 issued on 17 October 2023 (UPC number UPC_CFI_11/2023)
[4] *Ibid.* Headnote.

normally be sufficient. Conversely, requests by third parties for access to pleadings and evidence should only be rejected where there are persuasive, specific and concrete reasons which have been provided by a party to the proceedings to make the pleadings and/or evidence confidential. Where such reasons do exist, as far as possible, information which is withheld should be limited specifically to documents or portions of documents for which such reasons apply.

5. Permitting third parties to access such documents is in the public interest given that patents are to be regarded as an exception to the general rule against monopolies which underpins modern economic principles of the free market as applied within the Contracting Member States *e.g.* via competition law. Patents may therefore be regarded in principle as being awarded against the public interest in its broadest sense. At the same time, given the role of patents in promoting innovation, which is also generally recognised as being in the public interest, there is a public interest in ensuring that valid patents be can reliably enforced. A role of the Court is therefore to weigh up the balance of these different interests. These competing objectives and interests, which inevitably impinge upon the public, thereby establish a fundamental public interest in ensuring that only those patents which are valid are granted and maintained, while also ensuring that valid patents are held to be enforceable against infringing acts as defined in law. Further, it is in the public interest to ensure that the Court exercises its duties in as open a manner as possible when deciding on such matters.

6. The public availability of documents submitted in proceedings before the Court will enable the public to be better informed as to the merits of cases which are brought before the court, *e.g.* in order to determine the likelihood of such cases prevailing even while they are ongoing, and to form their own opinions on the merits of cases including those which are settled before a final determination is made by the Court.[5] Providing members of the public with written pleadings and evidence allows the public to inform themselves of the details of — and form their own views on the strengths of — cases brought before the Court. Public access to documents also enables the public to be better placed to comment on the activities of the Court, and to be better placed to hold the Court to account *e.g.* by forming an opinion on whether the Court is striking the right balance between the competing interests underlying the patent system; whether the Court is dispensing justice in an equal manner, *e.g.* without regard to the size or nationality of the parties involved; and whether the Court is taking due account of all arguments and evidence submitted by the parties to proceedings, thereby ensuring protection of the parties' right to be heard[6] and right to a fair trial.[7]

[5] We note here that patents are awarded against the public at large, *i.e.* they create an entitlement *erga omnes*. Proceedings in relation to the infringement or validity of a patent therefore have relevance not only between the parties to the proceedings, but also to the wider public. Seen in this light, arguments and evidence put forward by the parties to the proceedings may also be regarded as having wider relevance beyond the confines of any particular action before the Court.
[6] Unified Patent Court Agreement (UPCA), Article 76
[7] *e.g.* as provided by the European Convention on Human Rights, Article 6, to which not only the EU but all of its Member States (including the UPC Contracting Member States) are parties.

II. PRINCIPLES UNDER INTERNATIONAL AND EUROPEAN UNION LAW

7. It is a fundamental principle of International and EU law that Court proceedings should be open and transparent and that in principle all documents held and received by public bodies should be freely accessible by all, subject only to necessary and narrowly defined restrictions.

A) Right to access to Information under Article 19 of the Universal Declaration of Human Rights

8. The right to access to information held by public bodies has been recognised by the European Court of Human Rights.[8] The basis for such a right is to be found in the right to freedom of expression under Article 19 of the Universal Declaration of Human Rights and extends to a "*right of access to information held by public bodies*" including *"records held by a public body, regardless of…its source*"[9] including a right to access records held by the judicial branches of the State.[10]

B) Rights under the Tromsø Convention on Access to Official Documents

9. The right to access to public documents has also been directly recognised by contracting member states of the UPCA through ratification of the Council of Europe Convention on Access to Official Documents (Tromsø Convention).[11] Under the Tromsø Convention, "*official documents*" are defined as "*all information recorded in any form, drawn up* ***or received*** *and held by public authorities*." In the context of the Tromsø Convention "*public authorities*" include judicial authorities.[12]

10. The Tromsø Convention further stresses that all official documents are in principle public and can be withheld subject only to the protection of other rights and legitimate interests. According to the convention, the parties guarantee "*the right of everyone, without discrimination on any ground, to have access, on request for access to official documents*"[13] and requires that any limitations on the right to access official documents should be:

    "*set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:*

    a) national security, defence and international relations;

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[8] European Court of Human Rights (ECtHR), *Magyar Helsinki Bizottság v. Hungary*, App No. 18030/11, 8 November 2016 (GC)
[9] UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, para 18.
[10] *Ibid*., para 7.
[11] Council of Europe Convention on Access to Official Documents (CETS No. 205), 18 June 2019., ratified by *inter alia* Finland, Hungary, Lithuania and Sweden.
[12] *Ibid*. Application of the convention automatically applies to "*judicial authorities "insofar as they perform administrative functions according to national law.*" - Article 1(2)(a)(i)(2). Application to "*judicial authorities as regards their other activities*" is dependent upon the declaration of a contracting state – Article1(2)(a)(ii)(2).
[13] *Ibid.*, Article 2

b) public safety;
c) the prevention, investigation and prosecution of criminal activities;
d) disciplinary investigations;
e) inspection, control and supervision by public authorities;
f) privacy and other legitimate private interests;
g) commercial and other economic interests;
h) the economic, monetary and exchange rate policies of the State;
i) the equality of parties in court proceedings and the effective administration of justice;
j) environment; or
k) *the deliberations within or between public authorities concerning the examination of a matter*."

C) Recommendations of the Council of Europe

11. Similarly, the Council of Europe, of which all the contracting member States of the Unified Patent Court are members, recommends[14] in language which mirrors the language of the Tromsø Convention that member states provide the public with access, on request, to official documents, subject only to limitations which are necessary in a democratic society and proportionate to certain specified aims stating that:

"Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:

i. national security, defence and international relations;
ii. public safety;
iii. the prevention, investigation and prosecution of criminal activities;
iv. privacy and other legitimate private interests;
v. commercial and other economic interests, be they private or public;
vi. the equality of parties concerning court proceedings;
vii. nature;
viii. inspection, control and supervision by public authorities;
ix. the economic, monetary and exchange rate policies of the state;
x. the confidentiality of deliberations within or between public authorities during the internal preparation of a matter."[15]

D) Right to access to documents under EU law

12. A right to access official documents is also enshrined as a principle of EU law with Article 15 of the Treaty on the Functioning of the European Union (TFEU) providing that:

[14] Recommendation Rec(2002)2 of the Committee of Ministers to the member States on Access to Official Documents, 21 February 2002
[15] *Ibid.*, IV Possible limitations on access to official documents

"*In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible*."

13. Article 15(3) TFEU then proceeds to state that:

"*Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, offices and agencies.*"

14. This right to official documents held by EU institutions is then governed by Regulation (EC) No 1049/2001.[16] Article 2 of that Regulation acknowledges that:

"*Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institution*."

15. This right of access includes a right to access the documents held by the Court of Justice of the European Union, *i.e.* the Union's judicial branch. The underlying premise of these standards is the recognition that openness of public institutions "*enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system*."[17]

16. Exceptions to the right of access are narrowly drawn and set out in Article 4 of that same Regulation which again mirror the content of the Tromsø Convention and the recommendations of the Council of Europe. EU institutions are only permitted to refuse access where disclosure would undermine the public interest as regards public security, defence and military matters, international relations or the financial, monetary or economic policy of the Community or a Member State or where disclosure would undermine the protection of commercial interests of a natural or legal person, court proceedings and legal advice or the purpose of inspections, investigation and audits.

III. THE UNIFIED PATENT COURT AGREEMENT

17. The obligations on the present Court to ensure that proceedings are open to the public are provided in Article 45 of the Unified Patent Court Agreement ("UPCA") as follows:

[16] 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
[17] Regulation (EC) No 1049/2001, Preamble (2).

Public proceedings

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.

18. Under Article 52 UPCA,[18] "*proceedings before the Court*" are stated to *"consist of a written, an interim and an oral procedure*" and hence the obligation under Article 45 UPCA to ensure that *"the proceedings*" are open to the public extends to written pleadings and evidence which are submitted to the Court as part of that "*written procedure*".

19. The mechanism under which the Court enables the public to access written pleadings and evidence is set out in Rule 262.1 RoP which provides that:

"Without prejudice to Articles 58 and 60(1) of the Agreement and subject to Rules 190.1, 194.5, 196.1, 197.4, 199.1, 207.7, 209.4, 315.2 and 365.2, and 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."

IV. LEGISLATIVE HISTORY OF RULES 262.1 & 2 RoP

20. The legislative history of Rules 262.1 & 2 RoP demonstrates a consistent intent on the part of the Drafting Committee that written pleadings and evidence should be available to the public.

21. The predecessor of Rules 262.1 & 2, at that time referred to as Rule 342.1, first appeared in the 8th Draft of the RoP reading as follows:

"Written pleadings and written evidence lodged at the Court and recorded by the Registry shall be available to the public for on-line consultation, unless a party requests that certain information be kept confidential and the Court makes such an order."

22. Hence, even in its first incarnation, the Rules of procedure envisioned that, in principle, all information contained in written pleadings and written evidence would be publicly available on-line, subject only to such redaction as was necessary to protect "*certain information*" (*i.e.* confidential information or personal information) which was required to be kept confidential. The onus was on the parties to

[18] Article 52 UPCA: "*The proceedings before the Court shall consist of a written, an interim and an oral procedure, in accordance with the Rules of Procedure*".

proceedings to *"request"* non-disclosure of such information; and such a request was envisioned as being subject to an order by the Court, *i.e.* such requests would not automatically be granted. These two cumulative requirements for information to be kept confidential are consistent with a system in which disclosure was the default presumption.

23. Minor amendments were made to Rule 342.1 in the 12th draft of the RoP extending the rule to provide for the public availability of "*written decisions and orders*" as well as the public availability of "*written pleadings and written evidence*".

24. By the time of the 15th Draft of the RoP, which was put out to public consultation, Rule 342.1 had been renumbered to be Rule 262.1. Rule 262.1 was also amended to include a cross-reference to Rule 207.6. Rule 207.6 provides that protective letters are not to be publicly available on the register until forwarded to the applicant if an application for provisional measures is filed. Again this is consistent with a system in which disclosure was to be the default, even if delayed under certain circumstances.

25. At this time, Rule 262.1 read as follows:

    "Without prejudice to Rule 207.6 written pleadings, written evidence, decisions and orders lodged at the Court and recorded by the Registry shall be available to the public for on-line consultation, unless a party requests that certain information be kept confidential and the Court makes such an order."

26. Thus, in the 8th through 15th drafts of the RoP, the rules contained no limitations on third parties' access to "*written pleadings and written evidence"* beyond a requirement to keep confidential only such information that the Court had ordered to be kept from the public file. Such an order required a request from a party to proceedings. Again, this procedure is consistent with a presumption that public disclosure was the default position.

27. In the course of the public consultation, it was noted that if the RoP provided that written pleadings and evidence were made available to the public immediately upon being filed with the Court, the Court would not have an opportunity to consider a request that information should be excluded from public access or restricted to certain named persons before third parties could access such documents.[19]

28. In response to such comments, following the public consultation, a 16th draft was prepared in which Rule 262.1 was amended to provide for a 14-day delay between the lodging of written pleadings and evidence with the court and public access to the documents, with the Rule being revised to read as follows:

[19] Responses to the Public Consultation on the 15th draft of the Rules of Procedure of the UPC, Digest of Comments Received (extract), prepared by the UPC Expert Group.

*"Without prejudice to Rule 207.6 written pleadings, written evidence, decisions and orders lodged at **or made by** the Court and recorded by the Registry shall be available to the public for on-line consultation, unless a party requests that certain information be kept confidential and the Court makes such an order. **Written pleadings and written evidence shall not be made available for public access until 14 days after they are lodged.**"*

(Bold and highlighting in the original)

29. This approach was then subsequently abandoned and in a 17th Draft of the RoP, the rule was instead amended to include cross-references to Articles 58 and 60(1) UPCA (thus clearly limiting the applicability of the rule to the protection of "confidential information" and the prevention of an "abuse of evidence"). Other rules of the RoP which provided for documents to be kept confidential were then added in the 17th Draft of the RoP, with Rule 262.1 reading at that time as follows:

"Without prejudice to Articles 58 and 60(1) of the Agreement and subject to Rule 190.1, Rule 194.5, Rule 196.1, Rule 197.4, Rule 199.1, Rule 207.6, Rule 209.4, Rule 315.2 and Rule 365.2, written pleadings, written evidence, decisions and orders lodged at or made by the Court and recorded by the Registry shall be available to the public, unless a party has requested that certain information be kept confidential and provided specific reasons for such confidentiality. The Registrar shall ensure that information subject of such a request shall not be made available pending an Application pursuant to Rule 262.2. Where a party requests that parts of written pleadings or written evidence shall be kept confidential, he shall also provide copies of the said documents with the relevant parts redacted when making the request".

30. The Preparatory Committee explained that:

"The references which have been added at the beginning of Rule 262.1 ensure that specific provisions on confidentiality both in the UPCA and in the Rules of Procedure remain outside the scope of the new scheme laid down in Rule 262.1, which is as follows:

- *as a general rule, written pleadings and written evidence lodged by the parties as well as decisions and orders of the Court shall be public, if specific rules for confidentiality do not apply;*

- *where a party requests that certain information be kept confidential, that information shall be excluded from public access by the Registrar; the party shall provide specific reasons for its request as well as redacted copies of the relevant parts*." [20]

[20] Notes to the changes made by the Legal Group of the Preparatory Committee in the 17th draft of the Rules of Procedure available at: http://web.archive.org/web/20201023022003/https:/www.unified-patent-court.org/sites/default/files/Digest_Legal_Group_17th_Draft_RoP.PD

31. Once again, it is emphasised that the approach under the 17th draft of the RoP was consistent with an intention that disclosure was to be the default, and that any non-disclosure of documents such as written pleadings and evidence was limited to certain narrowly-defined types of information.

32. In the 18th draft of the RoP,[21] Rule 262.1 was amended to expand the reference to Rule 262.2 to also include a reference to "*or an appeal pursuant to Rule 220.2*" so that information which had been lodged with the Court had been requested to be made confidential would remain confidential pending any appeal of a decision refusing such a request.

33. Thus, nowhere in any of the 8th through 18th drafts of the RoP had there ever been any indication that access to written evidence and pleadings should be limited only to members of the public who could establish a good reason for requiring access to such documents. Rather, the principle of general access to such documents was evident throughout the drafting process.

V. FINAL AMENDMENTS TO THE RULES OF PROCEDURE

34. The final form of Rule 262.1 was by the Administrative Committee in a decision taken on 8 July 2022.[22]

35. The Rule in its final form was split into two parts and amended to read as follows:

> *1. Without prejudice to Articles 58 and 60(1) of the Agreement and subject to Rules 190.1, 194.5, 196.1, 197.4, 199.1, 207.7, 209.4, 315.2 and 365.2, and 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.*
>
> *2. A party may request that certain information of written pleadings or evidence be kept confidential and provide specific reasons for such confidentiality. To this end content of the register is made publicly available according to paragraph 1 (b) only 14 days after it has been available to all recipients. The Registrar shall ensure that beyond this time period information subject of a request for confidentiality shall not be made available pending an Application pursuant to paragraph 3 or an appeal pursuant to Rule 220.2. When a party lodges a request that parts of written pleadings or evidence shall be kept confidential, he shall*

[21] The 18th draft was dated 1st July 2015 but subsequently amended at least twice without being renumbered. We refer herein to the version dated 15 March 2017, which we understand to be the version which was employed as the starting point for making the final amendments required to arrive at the current RoP.
[22] Decision AC/04/08072022_E

also provide copies of the said documents with the relevant parts redacted when making the request.

36. The Decision of the Administrative Committee was accompanied by an Annex (Annex I) explaining the amendments being made.

37. From the content of the Annex, it is apparent that the primary motivation for the amendments made to Rule 262 was due to the General Data Protection Regulation ("GDPR"), which had entered into force after the public consultation on the RoP. This is demonstrated by the fact that the explanation accompanying the amendments repeatedly references the Court's obligations under the GDPR and the need to protect personal data.

38. More specifically, the explanation in the Annex begins by noting that considerations when granting access to the UPC are twofold as: *Documents may contain personal data protected by the General Data Protection Regulation (EU) 2016/679 (GDPR). Also, any other information like business or trade secrets which a party has a legitimate interest to be kept confidential must be withheld from public knowledge*."[23]

39. The explanation then notes that "*the UPC is bound by the rules of GDPR for which specific guidelines will lead the practical implementation by the UPC*"[24], and then proceeds to note that: *"The GDPR applies not only to administrative but also to judicial activities of Courts. The UPC as a common Court of Member States is subject to the same obligations under Union law as any national Court, Articles 1 (2), 20, 24 (1) a UPCA. The GDPR-Guidelines apply this approach to the UPC including when it is acting in its judicial capacity."*[25]

40. The explanation then continues stating that in relation to decisions and orders: "*When preparing a decision or order the Court will – to the extent necessary – need to establish a redacted version for publication satisfying the requirements of the GDPR and confidentiality requests under paragraph 2.*"[26]

41. Whereas in relation to written pleadings and evidence the explanation states that "*an application procedure will be necessary*" (*i.e.* the application procedure provided for in amended Rule 262) and that "*requested information would be provided after the data check and where applicable, the redaction of personal information*"[27] and that "*likewise, parts of the content classified as confidential information would be redacted in the documents to the public*."[28]

42. The explanation concluded that:

[23] Annex I, Rule 262 Explanation page 39 paragraph 1.
[24] *Ibid.*, page 39 paragraph 3.
[25] *Ibid.*, page 39 paragraph 5.
[26] *Ibid.*, page 40 paragraph 4.
[27] *Ibid.*, page 40 paragraph 6.
[28] *Ibid.*, page 40 paragraph 7.

"*The UPC would with this approach follow the example practiced by the General Court (GC) and the Court of Justice of the EU (CJEU). Both courts have recognized that they are bound by the GDPR not only in their administrative, but also in their judicial activities. This follows from Art. 2 GDPR which does not exempt judicial activities from its scope of application. For this purpose, the courts are empowered to render a party concerned in the case anonymous either upon application by a party or of its own motion (cf. Art 95 RoP CJEU; Art. 66 RoP GC).*"[29]

43. Nowhere in the explanation of the final amendments to Rule 262 is it stated that the intent of the amendment was to restrict access to written pleadings and evidence to applicants who could provide a court with a concrete reason for doing so.

44. Although the final version of Rule 262 introduced for the first time a requirement for third parties to make an explicit request for access to evidence and pleadings, this should be interpreted in light of the circumstances set out above. The intention was not to significantly raise the barrier to public access to documents. Rather, the comments of the drafting committee, stating that: "*requested information **would** be provided after the data check and where applicable, the redaction of personal information,*"[30] indicate a continuing intention on the part of the drafting committee that written pleadings and evidence "*would be provided*" to applicants on request subject only to such redactions which were necessary to protect confidential and/or personal information. The requirement in final Rule 262.2 for parties to proceedings to justify why *"certain"* (*i.e.* specifically-defined) information contained in their written submissions should not be disclosed is consistent with this continuing intention that disclosure would be the norm, subject only to narrowly-defined exemptions.

VI. EXEMPLARY PRACTICE IN THE EUROPEAN PATENT OFFICE, THE COURT OF JUSTICE OF THE EUROPEAN UNION, AND NATIONAL COURTS

45. Article 24(1) UPCA identifies the European Patent Convention ("EPC") and national law among the sources of law upon which the Court is to base its decisions. For that reason, it is contended that the approaches of the European Patent Office and national courts with respect to access to written evidence and pleadings are instructive as to how the present Court should interpret similar provisions. The approach of the Court of Justice of the European Union, which (of course) is entrusted with the interpretation of Union law such as that discussed above, should also be regarded as instructive.

A) European Patent Office

46. The approach of the European Patent Office ("the EPO") is perhaps one of the most instructive examples of a tribunal's approach to transparency. As the Court will be very well aware, in addition to being a granting agency for European patents,

[29] *Ibid.*, page 40 paragraph 9.
[30] *Ibid.,* page 40 paragraph 6.

the EPO is also empowered to revoke granted European and Unitary patents through its Opposition Procedure.[31] As such the EPO shares jurisdiction over the revocation of such patents with the Unified Patent Court and in this respect deals with subject matter which is identical to the subject matter of revocation cases heard by the present Court.

47. Access to information filed with the EPO is the subject of Article 128 of the EPC and Rules 144-147 of the associated Implementing Regulations ("Rules").

48. All files relating to European patent applications are made available to the public via the EPO's website[32] following publication of a European patent application.[33] This means that the entirety of the prosecution file of a European patent application is available to the public from that date. That includes throughout any opposition procedure after grant when third parties seek to revoke a granted patent. The file remains publicly accessible after grant or after opposition proceedings have been concluded.

49. The only exceptions to the public availability of documents filed with the EPO are the exceptions laid down in Rule 144 EPC which excludes documents relating to "*the exclusion of or objections to members of the Board of Appeal or Enlarged Board of Appeal*"; "*draft decisions and notices and all other documents, used for the preparation of decisions and notices, which are not communicated to the parties*"; and "*designations of inventors where an inventor has waived his right to be mentioned*".

50. In addition, the President of the European Patent Office has exercised[34] his powers under Rule 144(d) EPC to exclude: medical certificates; documents relating to the issue of priority documents, file-inspection proceedings and the communication of information from the files and requests of exclusion of information from the files as well as requests for accelerated search and/or examination from the files.[35]

51. Parties may request that documents or parts of documents may be excluded from file inspection at a party's reasoned request if their inspection would be prejudicial to the legitimate personal or economic interests of natural or legal persons.[36] As set out in the EPO *Guidelines for Examination*, any such request *"needs to be duly substantiated and point out in which specific way the legitimate personal or economic interests of the party are affected and what are the consequences thereof rather than merely making a statement concerning a party's interests in general."*[37] The Boards of Appeal of the EPO have held that a "*merely abstract*

[31] Articles 99-105 EPC.
[32] https://register.epo.org/
[33] Article 128(4) EPC.
[34] Decision of the President of the European Patent Office dated 12 July 2007 concerning documents excluded from file inspection (Special Edition No.3, OJ EPO 2007, republished in Supplementary Publication 4, OJ EPO 2016, pages 281-282)
[35] *Ibid.*, Article 1(1).
[36] *Ibid.*, Article 1(2)(a).
[37] EPO *Guidelines for Examination*, Part A, Chapter XI, section 2.3

prejudice to hypothetical personal or economic interests" is not a sufficient bar to disclosure, and that "*the party requesting such exclusion should rather show that public access to certain documents would be prejudicial to specific and concrete personal or economic interests*."[38] Similarly the EPO may also exclude documents from publication on its own motion if inspection would be *prima facie* prejudicial to the legitimate personal or economic interests of natural or legal persons other than a party or his representative.[39] Such documents are provisionally excluded from publication pending a final decision on the request. If the request is not granted, the documents become open for inspection as soon as the decision refusing exclusion becomes final.[40]

52. Hence, in principle, all written evidence and pleadings in opposition proceedings are open to the public. The sole exceptions are where parties are able to establish that there is a good reason for the exclusion of documents from the public file, typically where disclosure would be prejudicial to the personal or economic interests of third parties; or, exceptionally, where the EPO establishes of its own motion that such circumstances exist.[41]

53. It is contended that it would be sensible for the Court to interpret the process set out in Rule 262 RoP in the light of practice in the EPO. As noted above, the jurisdiction of the EPO in Opposition matters is identical to that of the present Court in Revocation Proceedings.

54. The interests of the parties and the public in access to written pleadings and evidence in Oppositions and Revocation Proceedings are identical. The public in general has an interest in knowing whether or not a patent is valid as a patent monopoly impacts all members of the public regardless of whether they are participants in active legal proceedings. Access to written pleadings and evidence in such proceedings enables third parties to make informed commercial decisions as to the likelihood of a patent being held to be invalid or infringed at the earliest opportunity.

55. It is contended the only practical difference between the process set out in Rule 262 RoP and that adopted by the EPO is a matter of timing. In the case of EPO procedures, the onus is on parties to initiate a request for a document to be excluded from the public file. In contrast, in the case of the process of the present Court as set out in Rule 262 RoP, it is the request of the third party which initiates the process.

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[38] Technical Board of Appeal decision T 379/01, cited in *Case Law of the Boards of Appeal*, 10th edition, July 2022, III.M.1.2.1

[39] Decision of the President of the European Patent Office dated 12 July 2007 concerning documents excluded from file inspection (Special Edition No.3, OJ EPO 2007, republished in Supplementary Publication 4, OJ EPO 2016, pages 281-282), Article 1(2)(b).

[40] *Ibid.*, Article 1(3).

[41] Also characterised as "exceptional" in *Case Law of the Boards of Appeal*, 10th edition, July 2022, III.M.1.2

56. Nowhere in the process adopted by the EPO is a third party required to establish any particular reason for wanting access to written pleadings or information from the public file. Rather the onus is on the parties to proceedings to satisfy the tribunal, at the point when they submit information to it, that publication of information would be prejudicial to the legitimate personal or economic interests of natural or legal persons.

57. There is no reason to suggest that access to documents in revocation actions before the present Court should me more restricted than access to documents in EPO opposition proceedings.

B) Court of Justice of the European Union

58. The approach of the General Court and the Court of Justice of the European Union ("the CJEU") is instructive for two reasons as the explanatory annex to the Decision of the Administrative Committee of 8 July 2022 expressly referenced the procedures of the General Court and the Court of Justice,[42] and the Judge-Rapporteur, in the decision of the Munich section of the Central Division of 20 September 2023,[43] referenced the rules of the General Court in his decision to justify his interpretation of Rule 262.1.

59. As noted by the Judge-Rapporteur in the decision of 20 September 2023 cited above, access to evidence and pleadings in the General Court is governed by Article 38(2) of the Rules of Procedure of the General Court which states that:

"*No third party, private or public, may have access to the file in a case without the express authorisation of the President of the General Court, once the parties have been heard. That authorisation may be granted, in whole or in part, only upon written request accompanied by a detailed explanation of the third party's legitimate interest in having access to the file.*"

60. Although the Rules of Procedure of the General Court are an example of a restriction on access to court files, that does not mean that Rule 262 RoP should be construed to impose similar restrictions on third parties requesting access to written pleadings and evidence before the present Court.

61. The Rules of Procedure of the General Court have been in existence in their current form since 4 March 2015 and therefore were available to the UPC drafting committee for much of the process of drafting the UPC's Rules of Procedure. However, as noted above, at no time during that drafting process did the drafting committee include restrictive language requiring a written request to provide a *"detailed explanation"* of a *"third party's legitimate interest in having access to the file."* To the contrary, and as noted above, the sole reference to any *"legitimate interest"* may be found in the explanatory notes to the final version of the RoP,

[42] Annex I, Rule 262; Explanation, page 40, paragraph 9.
[43] Order no. 550152 in ACTION NUMBER: ACT_ 459505/2023 issued on 20 September 2023 (UPC number UPC_CFI_1/2023)

which relates only to the legitimate interests of parties regarding the protection of confidential information.

62. The Rules of Procedure of the General Court are, of course, just one example of court rules relating to access to court documents and as correctly noted by the Judge-Rapporteur in the decision of 20 September 2023 cited above: "*rules and practices in relation to access to case files vary significantly*."[44] Hence there is no reason to conclude that the approach to access to court files by the CJEU should be determinative in the interpretation of Rule 262 RoP.

63. Further, and as noted above, references to the practice of the General Court and Court of Justice were explicitly made by the drafting committee in the context of amending the wording of the RoP to accommodate the Court's obligations under the GDPR.

64. As noted in the annex accompanying the decision amending the draft rules of procedure,[45] both the General Court and the Court of Justice have recognized that they are bound by the GDPR in both their judicial and their administrative activities.

65. To that end, the CJEU has issued a decision[46] supplementing the court rules to provide EU citizens and natural and legal persons residing or having a registered office in the EU with a right to access all documents drawn up or received in its possession as part of the courts' administrative functions.[47]

66. In contrast to the General Court's rules of procedure, this decision, implementing the courts obligations under the GDPR provides a general right of access to documents held in an administrative context, subject to a right for the court to refuse access where disclosure would undermine i) the public interest as regards public security, defence and military matters, international relations and/or the financial, monetary or economic policy of the EU or a member state; ii) the privacy and the integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data; iii) the commercial interests of a natural or legal person including intellectual property; iv) court proceedings and legal advice; and/or v) the purpose of inspections, investigations and audits.[48] Applicants are not obliged to state reasons for a request for information.[49]

67. Hence in the context of the Courts of European Union, two distinct practices are evident: one in which (in line with Article 38 of the Rules of Procedure of the General Court) access is expressly restricted to third parties who can establish a legitimate interest in accessing the court file; and a second (as set out in the CJEU's Decision of 26 November 2019 as cited above) in the context of the court's

[44] *Ibid*., page 6, paragraph 4.
[45] Note 24, *Supra*.
[46] Decision of the Court of Justice of the European Union concerning public access to documents held by the Court of Justice of the European Union in the exercise of its administrative functions, dated 26 November 2019.
[47] *Ibid.,* Article 1(1) and Article 2(1).
[48] *Ibid*., Article 3(1) &(2).
[49] *Ibid*., Article 4(5).

administrative functions adopted by the court in the light of its obligations under the GDPR which restrict access solely on the basis of specific identified exclusions and where applicants are not required to state reasons for their request.

68. Given that the final amendments made to Rule 262 RoP were made in the context of accommodating the present court's obligations under the GDPR, it is contended that the latter approach should also be considered when interpreting the intention behind and the meaning of the final amendments made to Rule 262 RoP.

C) Approaches of selected National Courts

69. The approaches of national courts are also instructive for the interpretation of Rule 262 RoP.

70. As the court will be well aware, the Unified Patent Court shares jurisdiction for determining infringement and validity of European patents in force in the Contracting Member States with the national courts of those Member States.

71. The approaches of national courts to the availability of written evidence and pleadings in revocation and infringement proceedings is therefore highly instructive. It is contended that it is highly unlikely that, when setting up the Unified Patent Court, it was the intention of the Contracting Member States to provide an alternative venue for taking decisions on the infringement and revocation of European patents in their jurisdictions which would be less transparent than proceedings in their own courts.

i. Finland

72. The transparency of court proceedings in Finland is governed by the Act on the Publicity of Court Proceedings in General Courts (370/2007). The stated principle behind the Act is that "*Court proceedings and trial documents are public unless provided otherwise*"[50].

73. Unless an order is made to keep a document secret, documents, which include both documents submitted to the court as well as documents prepared in court for court proceedings,[51] all become public when a case has been considered in oral proceedings or, if no oral proceedings are held, when a decision is issued on the principal claim.[52] The right to obtain documents is absolute and does not depend upon an applicant demonstrating any legitimate interest in a case.

74. Trial documents are kept secret only to the extent that they contain specific types of sensitive information (*e.g.* information relating to public security, information regarding the private life, health *etc.* of a person, *etc.*)[53] or on the basis of "*a weighty*

[50] Section 1 Act on the Publicity of Court Proceedings in General Courts. An unofficial English translation of this act is available at: http://www.finlex.fi/fi/laki/kaannokset/2007/en20070370.pdf.
[51] *Ibid.*, Section 3(5).
[52] *Ibid.*, Section 8.
[53] *Ibid.*, Section 9(1).

public or private interest connected with the case or on the request of a person whom the information concerns". [54]

ii. Slovenia

75. Access to information held by the state in Slovenia is regulated by the Access to Public Information Act.[55] The law applies equally to all three branches of the State: the executive, the legislative and the judiciary. A right of access applies to documentary material which a public body has created itself, in collaboration with other bodies, or has acquired from a third entity.[56] In principle, all public information is available on request[57] subject only to certain specific exceptions.

76. Exceptions include exceptions for accessing information acquired for the purposes of civil court proceedings where disclosure would prejudice such proceedings,[58] information classified as a trade secret under Slovenian law,[59] and personal data the disclosure of which would constitute an infringement of the protection of personal data in accordance with the Act governing the protection of personal data.[60] Even then access may still be permitted, if the public interest in the disclosure outweighs the public interest in restricting access to the information.[61]

77. The procedure for accessing civil court files is governed by Article 150 of the Slovenian Civil Procedure Act.[62] This provides that parties to proceedings have a right to inspect and copy litigation files in which there are involved. In addition, third parties may also inspect and copy court files where they can establish that there is a "justifiable benefit" in doing so. Whilst proceedings are pending access requests are assessed by the court deciding the case. After a case has been closed, access is granted either by the President of the Court or by a court official appointed for that purpose.

iii. Sweden

78. The right of access to information held by the State has been recognised in Swedish law for more than two hundred and fifty years since the passage of the Freedom of the Press Act of 1766. The principle of public access (*"offentlighetsprincipen"*) is considered an essential principle of Swedish

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[54] *Ibid.*, Section 9(2).
[55] Zakon o dostopu do informacij javnega značaja (published in Official Gazette RS, No. 24/2003). An unofficial English translation of this act is available at https://www.ip-rs.si/en/legislation/access-to-public-information-act/ .
[56] *Ibid.*, Article 4.
[57] *Ibid.*, Article 5.
[58] *Ibid.*, Article 6(1)(8)
[59] *Ibid.*, Article 6(1)(2)
[60] *Ibid.*, Article 6(1)(3)
[61] *Ibid.*, Article 6(2)
[62] Zakon o pravdnem postopku, (published in Official Gazette No 26/1999). An unofficial English translation of this act is available at http://www.pisrs.si/Pis.web/cm?idStrani=prevodi.

constitutional law, and is regarded as one of the four fundamental laws forming the modern Swedish constitution.[63]

79. In Sweden, the right to access *public documents* is now governed by the Swedish constitutional law for the freedom of the press ("Tryckfrihetsförordningen").[64] A document (a written representation or a recording) is a public document if it is *kept* by a public authority (*e.g.* a court) and can be considered to have been *received* (upon arrival or receipt by an authorized person) or *produced* (upon expedition of the document in question) by the authority in question. According to the Tryckfrihetsförordningen, a public document shall be delivered immediately or without delay upon a request. [65]

80. In principle, a request to access a public document cannot be lawfully refused unless the request concerns *confidential information* according to applicable provisions, such as the provisions of the Swedish Public and Secrecy Act ("Offentlighets och sekretesslag").[66] Any confidentiality assessment is made *ex officio* by the relevant authority and a decision to not deliver certain documents or information may be appealed. Unless strict confidentiality applies in a specific situation, it is necessary for the authority to consider the strength of confidentiality in the specific case and potential damages following a delivery of requested documents/information. The authority is also required to consider the potential occurrence of relevant consents to a request, applicable exceptions in the specific situation and whether a requested document may be delivered with reservations. Where confidentiality applies, the confidential information is often redacted from the delivered document.

81. It is contended that there is a very strong argument that the provisions of Article 45 UPCA and Rule 262 RoP will not ever have been intended to impose greater restrictions on the public availability of documents in proceedings before the present Court than in proceedings before the Swedish courts or other authorities. This is because, as noted above, Swedish practice arises from a fundamental constitutional principle. It is contended that Swedish participation in the UPCA presupposes both that (i) the UPCA is compatible with the Swedish constitution; and that (ii) the UPCA will not be interpreted or applied in ways which render it incompatible with Swedish constitutional requirements.

82. As the Court will be aware, the UPC is defined in Article 1 UPCA as a court "*common to the Contracting Member States*". As a court "*common to*" several Member States, the UPC is also a (national) court of each individual one of those

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[63] https://www.riksdagen.se/sv/sa-fungerar-riksdagen/demokrati/grundlagarna/; available in English at https://www.riksdagen.se/en/how-the-riksdag-works/democracy/the-constitution/

[64] Tryckfrihetsförordningen (1949:105), Chapter 2, Article 1; unofficial English translation available at https://www.riksdagen.se/globalassets/05.-sa-fungerar-riksdagen/demokrati/the-freedom-of-the-press-act.pdf

[65] *Ibid.*, chapter 2, Article 15

[66] Offentlighets- och sekretesslag (2009:400). An unofficial summary in English is available from the Swedish Ministry of Justice at https://www.regeringen.se/contentassets/f381325faa3b41dc859080a0b1b4c994/public-access-to-information-and-secrecy.pdf and a machine translation of the Act is also provided herewith.

Member States and must therefore be subject to the same constitutional requirements as any other national court of each of those Member States.

83. The position of the UPC as a national court is implicit in (*inter alia*) the obligation of the UPC to request preliminary rulings from the CJEU in accordance with Article 267 TFEU.[67]

84. It is also made explicit by the amendments to the recast Brussels (I) Regulation[68] which were introduced by Regulation (EU) No 542/2014.[69] Under the recast Brussels (I) Regulation, exclusive jurisdiction in proceedings concerned with "*the registration or validity of patents*" belongs to "*the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of an instrument of the Union or an international convention deemed to have taken place*".[70]

85. New Articles 71a(1) and (2)(a) of the recast Brussels (I) Regulation, as inserted by Regulation 542/2014,[71] provide that:

> *1. For the purposes of this Regulation, a court common to several Member States as specified in paragraph 2 (a 'common court') shall be deemed to be a court of a Member State when, pursuant to the instrument establishing it, such a common court exercises jurisdiction in matters falling within the scope of this Regulation.*
>
> *2. For the purposes of this Regulation, each of the following courts shall be a common court:*
>
> *(a) the Unified Patent Court…*

86. In assuming exclusive jurisdiction for proceedings under at least Articles 32(1)(d) and (e) UPCA, the UPC's jurisdiction therefore arises from its position as a court of the Member State or States to which those proceedings relate. As a national court, it is contended that the UPC must be subject to the same constitutional requirements as any other national court of a Contracting Member State to the

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[67] This obligation is set forth in the Recitals to the UPCA and in Article 21 UPCA. Article 267 TFEU provides a legal basis for such preliminary rulings to be made only when questions falling within its competence arise in proceedings "before any court or tribunal of a Member State". There is no legal basis in Article 267 TFEU for any other body to request a preliminary ruling.

[68] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

[69] Regulation (EU) No 542/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation (EU) No 1215/2012 as regards the rules to be applied with respect to the Unified Patent Court and the Benelux Court of Justice. The UPC is subject to the recast Brussels (I) Regulation according to Article 31 UPCA.

[70] Recast Brussels I Regulation, Article 24(4), first paragraph. Article 24(4), second paragraph, provides that such exclusive jurisdiction also applies in respect of European patents granted for Member States by the European Patent Office.

[71] Regulation (EU) No 542/2014, Article 1

UPCA. As Sweden is such a State, this means that the UPC is subject, among other requirements, to the fundamental principles of Swedish constitutional law which are set out above, and that the interpretation and application of Article 45 UPCA and Rule 262 RoP should comply with those requirements. However, even if the Court disagrees that it is *bound* by such requirements, it is contended that Swedish law should nevertheless be regarded as a highly persuasive authority as an example of an approach taken in a Contracting Member State having a particularly high degree of transparency to judicial proceedings.

iv. United Kingdom

87. Although the United Kingdom is no longer a Contracting Member State to the UPCA, it both signed and ratified the UPCA and remained a signatory throughout much of the legislative history of the RoP, up to and including the 18th draft. It is therefore contended that the practice of the courts of the UK (in particular, the English courts, in which virtually all UK patent litigation takes place) should be regarded as instructive for the interpretation of the RoP to the extent that the RoP are similar to the applicable rules in UK litigation.

88. The English Court rules have certain similarities with Rule 262 RoP in that the Civil Procedure Rules distinguish between two groups of documents, documents where a third parties have an automatic right of access and documents which are only available upon an application to the Court.

89. As with Rule 262 RoP, the Civil Procedure Rules provide that all judgments and orders given by the Court are available to third parties on request.[72] Additionally, the Civil Procedure Rules also provide that Statements of Case (*i.e.* documents setting out the details of a claim, defence and any counterclaim and reply)[73] may be obtained on request. Such documents may be requested as soon as proceedings have been served and acknowledgement of service has been filed.[74]

90. Requests for access to orders and statements of case must be in writing.[75] No reasons are required to be provided by a party making a request. Access requests are made via the court website and the documents are made available upon payment of an administrative fee.[76]

91. Third parties can also apply[77] to the court to obtain copies of any other document submitted to the court (*e.g.* witness statements, expert reports, *etc.*). In the case of such applications, the court considers the reasons provided by an applicant as to why granting access to such documents would advance the principle of open

[72] Civil Procedure Rule 5.4C(1)(a)
[73] CPR 2.3(1) defines "statement of case" as meaning "*claim form, particulars of claim where these are not included in a claim form, defence, Part 20 claim, or reply to defence, and (b) includes any further information in relation to them voluntarily or by court order …*"
[74] Civil Procedure Rules 5.4C(1)(a) & 5.4C(3)(a)&(b).
[75] *Ibid.*, 5.4D(1)(b).
[76] *Ibid.*, 5.4D(1).
[77] *Ibid*. 5.4B(2)

justice against any risk of harm that disclosure might cause the judicial process or the legitimate interests of others.

92. In its leading decision[78] regarding access to documents, the Supreme Court has expressly linked third party access to court documents with the rule of law. Lady Hale, delivering the Judgment of the Court, quoted the words of Toulson LJ in an earlier appellate judgment:[79]

"*Open justice. The words express a principle at the heart of our system of justice and vital to the rule of law. The rule of law is a fine concept but fine words butter no parsnips. How is the rule of law itself to be policed? It is an age old question. Quis custodiet ipsos custodes – who will guard the guards themselves? In a democracy, where power depends on the consent of the people governed, the answer must lie in the transparency of the legal process. Open justice lets in the light and allows the public to scrutinise the workings of the law, for better or for worse."*

93. The Supreme Court noted that:

'*The default position should be to grant access to documents placed before a judge and referred to by a party at trial unless there was a good reason not to do so*."[80]

94. Accepting that:

"*There may be very good reasons for denying access. The most obvious ones are national security, the protection of the interests of children or mentally disabled adults, the protection of privacy interests more generally, and the protection of trade secrets and commercial confidentiality*."[81]

95. Concluding that:

"*In short, non-parties should not seek access unless they can show a good reason why this will advance the open justice principle, that there are no countervailing principles of the sort outlined earlier, which may be stronger after the proceedings have come to an end, and that granting the request will not be impracticable or disproportionate*."[82]

96. It is contended that English practice has direct relevance to the interpretation of Rule 262 RoP in that it is illustrative of a scheme for access to court judgments which seeks to balance the interests of the parties against the principle of open justice and the importance of transparency in court proceedings. It is further

[78] *Cape Intermediate Holdings Ltd v Dring [2019] UKSC 38*
[79] *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court (Article 19 intervening)* [2012] EWCA Civ 420; [2013] QB 618
[80] *Ibid.*, paragraph 13.
[81] *Ibid.*, paragraph 46.
[82] *Ibid.*, paragraph 46.

contended that a number of principles can be derived from the practice of the English courts.

97. Firstly, it is contended that English practice demonstrates that the overriding principle is a consideration as to whether or not a request serves the purposes of open justice; and that for that reason the default position should be to grant access unless there is a good reason not to do so.

98. Secondly, access to court documents should be possible as soon as a document enters the court process. In the case of documents submitted to the Unified Patent Court, it is contended that this occurs as soon as the existence of a document is acknowledged in the Registry.

99. Thirdly, it is contended that there is a particularly strong public interest that the contents of pleadings submitted to the court should be available to the court unless there are good reasons for such pleadings to be kept confidential. In the case of the English Civil Procedure rules this is achieved through permitting access to such pleadings automatically. This serves the purpose of open justice as it permits third parties to understand the content of disputes being considered by the Court. It is contended that this consideration is equally applicable to public interest in understanding matters pending before the Unified Patent Court.

VII. CONCLUSIONS

100. In conclusion, it is contended that:

- Article 45 UPCA and Rule 262 RoP should be interpreted such that there is a presumption in favour of access by third parties to written pleadings and evidence submitted during proceedings before the Court.

- Notwithstanding the requirement of Rule 262.1(b) RoP for a "*reasoned request*", the presumption in favour of access should be exercised without requiring third parties to provide any specific reasons *e.g.* amounting to a "*concrete, verifiable and legally relevant reason*"; or, at most, should be exercised on the basis that it is generally in the public interest to grant access to such documents, bearing in mind the public interest in open administration of justice and the role of the court in balancing the competing economic rationales *vis-à-vis* the public which underpin the patent system.

- Where a request under Rule 262 is denied, such denial should be based on the provision of persuasive, specific and concrete reasons provided by a party to the proceedings, *e.g.* that the disclosure of certain information would be prejudicial to the legitimate personal or economic interests of that party, such as with regard to information protected by GDPR or confidential commercial information.

- Any exemptions to the principle of third-party access to documents should be construed narrowly. Where access to information is denied, that information should be withheld only to the extent absolutely necessary to protect the interests of parties to proceedings.

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