

CASE COMMENT

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COURT OF APPEAL OF THE UNIFIED PATENT COURT CLARIFIES CONDITIONS FOR PUBLIC ACCESS TO CASE FILES

On 10 April 2024, the Court of Appeal (CoA) of the Unified Patent Court (UPC) provided eagerly-awaited clarification on the conditions under which third parties may gain access to UPC case files, such as the parties' written pleadings ([here](#)). The case concerned a request by an anonymous third party, originally filed before the Court of First Instance (CFI), Nordic-Baltic Regional Division, to be granted access to written submissions in pending UPC proceedings because they were interested to see how the claim was framed. The Nordic-Baltic Regional division allowed the request ([here](#)). It held that in principle, access to case files should be granted if a credible explanation for the access request is provided, unless it is necessary to keep the requested information confidential.

The CFI's decision signalled a rather liberal approach to public access to case files (at least compared to certain Member States), which was largely confirmed by the CoA. According to the CoA, the Agreement on a Unified Patent Court (UPCA) lays down a general principle that the UPC's 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, in which case access can be restricted or denied.

The interests to be balanced are, on the one hand, those of the member of the public requesting access, and, on the other hand, those of the parties to the proceedings and the general interest of justice and public order, which protect the integrity of the proceedings, security interests, and preclude abusive requests.

To allow the judge-rapporteur to balance these interests, the reasoned request for access to the case file as referred to in Rule 262.1(b) Rules of Procedure must not only specify the files to which access is sought, but also the purpose of the request and an explanation why the documents are necessary for that purpose. Where certain parts of the case file have been designated confidential, a party may file a request as referred to in Rule 262.3 Rules of Procedure that access to such information is nevertheless granted. The latter request is decided on by the full court.

The CoA held that once proceedings have come to an end, the balance is usually in favour of allowing access to non-confidential information. That is so even if the proceedings have ended by way of settlement and no decision was rendered. In addition, a member of the public may also have a direct legitimate interest in the subject of pending proceedings, for instance when they are a competitor or licensee with a specific interest in the patent's validity. In such cases, the balance will also usually be in favour of granting access, though the UPC may impose necessary measures to protect the integrity of the proceedings, for instance an obligation to keep the information confidential.

he case also offered the CoA the opportunity to clarify the requirements for the composition of its panels when it hears cases. Article 9(1) UPCA provides that “Any panel of the Court of Appeal shall sit in a multinational composition of five judges.” However, the CoA ruled that this does not mean that every single decision must be made by a five-judge panel. After extensive analysis, the Court concluded that if there are no technical issues at stake in the proceedings before it, the matter may be decided by a panel of three legally qualified judges, without the need to assign two technically qualified judges.

