Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC_CFI_130/2024
ACT_14944/2024

UPC_CFI_130/2024
Order
of the Court of First Instance of the Unified Patent Court
Local Division The Hague
delivered on 29/07/2024
concerning public access to the register (R. 262.1 RoP)

Date of receipt of Written Procedure : Not provided

HEADNOTE:

Public access to the register granted (R. 262.1 RoP). Application of criteria set forth in *Ocado v AutoStore* (ORD_19369/2024, UPC_CoA_404/2023).

KEYWORDS:

public access to the register; leave to appeal

REFERENCE CODE ECLI: Not provided

APPLICANT/S

1)	**Powell Gilbert LLP** (Applicant) - 85 Fleet Street - EC4Y1AE - London - GB	Represented by Powell Gilbert LLP (A. Rimmer)

RESPONDENT/S

RELEVANT PROCEEDING PARTIES

1) **Abbott Diabetes Care Inc.** Represented by Eelco Bergsma
(Main proceeding party - Applicant) -
1360 South Loop Road - CA 94502 - Alameda - US

2) **Sibio Technology Limited** Represented by Thomas Gniadek
(Main proceeding party - Defendant) -
6/F., Manulife Place, 348 Kwun Tong Road - - -
Kowloon - HK

3) **Umedwings Netherlands B.V.** Represented by Thomas Gniadek
(Main proceeding party - Defendant) -
Treubstraat 1 - 2288 EG - Rijswijk - NL

PATENT AT ISSUE

Patent no.	*Proprietor/s*
EP2713879	Abbott Diabetes Care Inc.

No SPC details provided

Patent no.	*SPC details*
	SPC ID
	National Designations

No SPC Holders provided

Patent no.	*SPC ID*	National Designations	Holders

DECIDING JUDGE

Judge-rapporteur **Edger Brinkman**

LANGUAGE OF PROCEEDINGS: English

SUBJECT-MATTER OF THE PROCEEDINGS

Application R. 262 RoP – Public access to the file

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SUBMISSIONS

Mr. A. Rimmer, UPC representative, filed a request pursuant to R. 262.1(b) RoP, on behalf of Powell Gilbert, as a member of the public, for access to the written pleadings and evidence listed below (as identified in the UPC CMS) which were lodged in these proceedings:

Stage	**Document Title**	**Date**
Application	PI Application - Application	20/03/24
Abbott Diabetes Care Inc. to lodge	Communication pursuant to Rule 209 - Comments pursuant to RoP264	29/03/24
Sibio Technology Limited to comply with the Order	Formal response to the Order of the Court	23/04/24
Umedwings Netherlands B.V. to comply with the Order	Formal response to the Order of the Court	23/04/24
Abbott Diabetes Care Inc. to comply with the Order	Reply Abbott EP 879 proceedings - Formal response to the Order of the Court	08/05/24

Objection Sibio Technology Limited	Rejoinder to Application for Provisional Measures	15/05/24
Objection Umedwings Netherlands B.V.	Rejoinder to Application for Provisional Measures	15/05/24
Sibio Technology Limited to comply with the Order	Formal response to the Order of the Court	15/05/24
Umedwings Netherlands B.V. to comply with the Order	Formal response to the Order of the Court	15/05/24

According to the request, its purpose is to have a better understanding of the decision rendered, in view of the arguments brought forward by the parties and the evidence relied on. Powell Gilbert is not seeking access to pleadings and evidence in relation to any ongoing proceedings on the merits. Powell Gilbert alleges that the protection of integrity of the proceedings no longer plays a role in the balancing of interests as the proceedings have ended in a final order. Powell Gilbert is not filing this request in an abusive manner or in such a way as to risk the general interest of justice and public order.

The parties were invited by the Judge-Rapporteur to comment by preliminary order of 3 July 2024. All parties filed their comments by letters of 11 July 2024. Both Abbott and Sibio c.s. submit the application should be denied.

Abbott – put succinctly – submits that as the order has been appealed (by Sibio c.s.), the proceedings for a preliminary injunction and other provisional measures are still ongoing and that it is therefore premature to grant access to any of the requested documents on file. According to Abbott, the integrity of proceedings is still at issue. Also, the order granting the relief sought (UPC_CFI_130/2024, ACT_14944/2024) did not address substantive arguments, as the validity or infringement were not contested. Hence, the substantive arguments and evidence presented in the case are therefore not in the public domain and are not already subject to public debate. These arguments and evidence may now be addressed by the Court of Appeal. The integrity of the appeal proceedings is therefore to be maintained. Abbott further invokes the appeal in the parallel proceedings on patent EP 3,831,283 (UPC_CFI_131/2024, ACT_14945/2024). Abbott points out that its interests outweigh Powell Gilbert's unspecific interests and that Powell Gilbert could have attended the oral hearing. Finally, with reference to R. 262.2 RoP, Abbott requests that all annexes to briefs remain withheld from access. In particular, Annex E1 which is designated confidential, should remain withheld.

Sibio c.s. – equally put succinctly – submit that Powell Gilbert has failed to sufficiently demonstrate, pursuant to R. 262.1(b) RoP, a legitimate interest in the disclosure of all written pleadings and associated evidence. A mere professional interest in the decision underlying this case does not suffice for such a request. According to Sibio c.s., the jurisprudence and factual circumstances of the case, as well as the fundamental argu□ments of the parties, are already adequately disclosed through the public decision of the LD The Hague. This negates the necessity for further inspection of the written pleadings, especially those of the Defendants. Furthermore,

the facts of the case can be sufficiently ascertained through publicly available information, still according to Sibio c.s.

GROUNDS FOR THE ORDER

In its decision of 10 April 2024, the UPC Court of Appeal in *Ocado v AutoStore* (ORD_19369/2024, UPC_CoA_404/2023) reasoned as follows (Paragraphs 47-50):

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

In as far as Sibio c.s. and Abbott submit that Powell Gilbert do not have a sufficiently (specific) interest with their request, this argument must fail as the Court of Appeal recognized that access to documents to enable better understanding and scrutiny of decisions is a legitimate reason for a request for pleadings and evidence (paragraph 47). Also, the Court of Appeal held that this interest outweighs any interests of the parties involved once the proceedings in question have ended. From paragraph 50 cited above, it is further clear that in case of an appeal, withholding access to the documents in first instance no longer serves the purpose of protection of integrity of proceedings. Hence, Abbott's argument based on the fact that an appeal was lodged should also fail. The fact that not all arguments were addressed by the court of first instance does not alter this reasoning and the CoA decision does not make or hint on making such distinction. It would also be very burdensome for the court to filter out any arguments that may not have been (fully) addressed in its decision or order, as Abbott apparently seeks.

In as far as Abbott seeks to withhold access to all annexes and in articular to Annex E1, this is to be denied as well. No annex was filed while applying for confidentiality under R. 262A and

Abbott also did not provide any specific reasons for confidentiality of (any of) those annexes in its comments of 11 July 2024.

From R. 220/224 RoP and 73 UPCA it might not be totally clear if and when an appeal of this order can be lodged, while it appears this should at any rate be made possible. The Judge-Rapporteur will therefore grant leave to appeal. To prevent an appeal to become meaningless, a term of 15 days before access is granted is to be observed (and unless no appeal is filed within that period).

ORDER

1. Powell Gilbert is to be granted access to the pleadings and evidence they request within 15 days from service of this order, on the condition that no party has filed an appeal within that period.
2. Leave to appeal is granted.

INSTRUCTIONS TO THE PARTIES AND TO THE REGISTRY

Parties did not indicate so far that they wish any anonymization of private data. However, Abbott and Sibio c.s. will be able to submit once again (within 7 days after this order) if and where there is any private data to be withheld. The parties should be aware that the Registry will only perform an automated (therefore perhaps: rather perfunctory) screening of the documents for private data.

INFORMATION ABOUT APPEAL

An appeal to this order may be brought in accordance with Art. 73 UPCA and R. 220 RoP within 15 calendar days of the notification of this order.

INFORMATION ABOUT COSTS AND DAMAGES

No costs or damages incurred.

ORDER DETAILS

Order no. ORD_39917/2024 in ACTION NUMBER: App_39761/2024
UPC number: UPC_CFI_130/2024
Action type: Not provided
Related proceeding no. Application No.: 14944/2024
Application Type: Application for provisional measures (RoP206)

Edger Frank BRINKMAN

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Date: 2024.07.29 19:43:47 +02'00'