

Kluwer Patent Blog

Immediate access to documents granted by Paris Central Division in NJOY Netherlands v Juul Labs – a step towards open justice in the UPC?

Charlie French (Bristows) · Wednesday, May 22nd, 2024

On 24 April 2024, the UPC's Central Division in Paris granted Nicoventures Trading Limited access to written pleadings and evidence under RoP 262.1(b) in a patent revocation case brought by NJOY Netherlands B.V. against Juul Labs International, Inc (ORD_587436/2023 in UPC_CFI_316/2023). Nicoventures had made the document access request on 15 November 2023, however the Paris Central Division stayed its consideration of the application pending the Court of Appeal's decision on the Rule 262.1(b) request in the *Ocado v AutoStore* proceedings, which was handed down on 10 April 2024 (UPC_CoA_404/2023 APL_584498/2023).

This is the second decision in which access to documents has been granted under Rule 262.1(b), following the decision of the Nordic-Baltic Regional Division to grant access to documents in *Ocado v AutoStore*, which was upheld by the Court of Appeal. To date, eight other requests under Rule 262.1(b) have been refused (two have been withdrawn and three are yet to be decided). The latest decision may be an indicator that the tide is beginning to change on document access requests in the UPC following the Court of Appeal decision in *Ocado v AutoStore*, at least in the context of revocation actions.

Nicoventures' request for documents

Nicoventures, an opponent in parallel EPO opposition proceedings concerning the same patent, sought three categories of documents: (i) all written pleadings and evidence submitted by both parties in the main action as identified in the Case Management System (CMS); (ii) further materials submitted to the UPC but not yet visible in the CMS; and (iii) court-generated documents in the CMS (a notification of the positive outcome of formal checks, acknowledgement of lodging and a request to the EPO relating to the pending proceedings for the purposes of RoP 295(a) and RoP 298).

In relation to (i) and (ii), Nicoventures submitted that the arguments and evidence presented at the UPC might influence both the outcome and the scheduling of the EPO proceedings. In relation to (iii), Nicoventures argued that RoP 262.1(a) and 262.1(b) were intended to cover the documents of the Register exhaustively and should include court-generated documents other than Decisions and Orders or, alternatively, the Court should use its discretion to make these documents available via a procedure analogous to RoP 262.1(b).

Juul (the patentee and defendant in the main action) objected to all three requests.

The decision of the Paris Central Division

The Court recognised Nicoventures' legitimate interest in accessing written pleadings and evidence given their potential influence on the EPO proceedings and, weighing Nicoventures' interests against the general interest in the integrity of proceedings, the Court held that the balance was in favour of granting immediate access. Although the Court of Appeal stated in *Ocado v AutoStore* that the interest of the general public usually arises *after* a decision is rendered, the position was different in this case as it might be too late for Nicoventures to use the information in the EPO proceedings if access was not granted immediately. The Court also noted that revocation actions concern the public interest to a greater degree than infringement proceedings as the general public has an interest in the revocation of patents that have been wrongly granted and create an objectively unjustified impediment to competition. It was also in the public interest for any discrepancies between the UPC and EPO proceedings to be considered.

Nicoventures was therefore granted immediate access to the written pleadings and evidence that were visible in the CMS. However, the Court denied access to future materials and documents not yet published in the CMS, citing the need for a balancing of interest in relation to future documents and a lack of legal basis and potential burden on the Registry in relation to existing documents that have not yet been published. The Court also denied access to the court-generated documents requested by Nicoventures, finding no legal basis in the RoP for these documents to be made public.

What does this mean for future document access requests?

This decision under RoP 262.1(b) represents a notable shift from the long line of earlier decisions rejecting requests for access to documents in UPC proceedings. The Paris Central Division appears to set a lower bar for third party document access requests in revocation actions, particularly where there are parallel EPO proceedings (as is often the case). In this case, the party seeking revocation of the patent in the UPC action (NJOY) is not an opponent in the parallel EPO proceedings, which the Court notes but does not address in the rationale for granting the request so it is unclear how much of a factor this was in the decision to grant access to Nicoventures.

It will be interesting to see whether future decisions follow the same reasoning and whether this is extended to encompass any parallel invalidity proceedings relating to the same patent (including national proceedings) or even situations where there is no parallel litigation given the general public interest in weeding out wrongly granted patents.

The decision was not a total success for Nicoventures given the Court's rejection of its requests for court-generated documents and documents that are not yet visible within the CMS. It may also be subject to a Court of Appeal decision in due course. However, many users of the UPC system will be hopeful that the Paris Central Division's approach indicates a step towards open justice in the UPC.

To make sure you do not miss out on regular updates from the Kluwer Patent Blog, please subscribe [here](#).

Kluwer IP Law

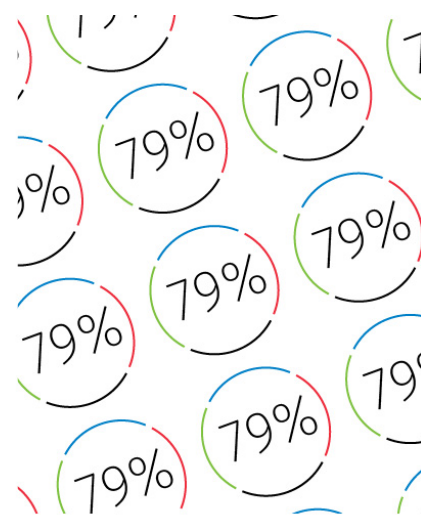
The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.

79% of the lawyers think that the importance of legal technology will increase for next year.

Drive change with Kluwer IP Law.

The master resource for Intellectual Property rights and registration.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change

This entry was posted on Wednesday, May 22nd, 2024 at 10:15 am and is filed under [Procedure](#), [UPC](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.