

EIP

Access to documents from revocation action

**NJOY Netherlands B.V. v Juul Labs International, Inc. (UPC_CFI_316/2023);
Application for access to documents by Nicoventures Trading Limited**

Order dated 24 April 2024 (ORD_587436/2023)[1]

NJOY Netherlands B.V. (“NJOY”) applied to revoke EP 3420921 belonging to Juul Labs and relating to a vaporiser at Paris Central Division. Nicoventures Trading Limited (“Nicoventures”) applied under Rule 262.1(b) RoP for access to various documents from the case file. There is an ongoing opposition at EPO against EP 3420921 where Nicoventures is one of the opponents. NJOY is not an opponent.

Nicoventures gave as the reasons for its request that:

- Arguments and evidence presented at UPC may influence the outcome of the opposition;
- Any new evidence brought at UPC may be admissible in the opposition and positions taken by the patentee in relation to claim interpretation or prior art disclosure may impact on issues in the opposition;
- The UPC action may affect not only the outcome but also the scheduling of the opposition;
- It would be iniquitous to natural justice and the harmonisation and effectiveness of the European patent system to deny access.

Decision

The Court applied the principles set by Court of Appeal on 10 April 2024 (UPC_CoA_404/2023 APL_584498/2023), reported [here](#), in particular balancing the interests of the Applicant against the interests of the parties and of justice or public order

arising from Article 45, and ordered access to written pleadings and evidence.

p2

Reasoned request

The request met the requirements set by the Court of Appeal.

Balancing of Interests

The Applicant had shown a direct interest of involvement in opposition proceedings which was relevant in weighing the balance against the general interest in integrity of ongoing proceedings.

The Court further noted that there is a greater public interest in a revocation action than in infringement proceedings. The existence of an invalid patent “constitutes an objectively unjustified impediment to competition”. Further EPO files are public; the Court considered it reasonable if accessibility of documents concerning parallel proceedings before EPO and UPC would be treated similarly. It is in the public interest that any discrepancies should be considered.

Other matters

The Court granted immediate access as timing was relevant because of the ongoing opposition. The Court did not impose any confidentiality restrictions on use of the documents.

The Applicant had also applied for access to court-generated documents from the CMS. This request was refused. Decisions and Orders of the Court are published anyway (Rule 262.1 (a) RoP), and no legal basis was seen for granting access to the public to other documents generated by the Court.

A request for access to future documents submitted to UPC was also refused. Access to documents filed with the Court in the future would need to be individually requested and each request then considered on its merits in relation to the specific documents requested.

[1] <https://www.unified-patent-court.org/en/node/714>