

EIP

Access to documents – representation

Ocado v Autostore – appeal on access to documents UPC_CoA_404/2023

Order of 8 February 2024[1]

In the Appeal by Ocado against the Order^[2] from the Nordic Baltic regional division granting a request under Rule 262.1(b) for inspection of the statement of claim, the question arose whether the person requesting access to that document required representation by a UPC representative for the proceedings.

Both Ocado and the requester submitted to the Court of Appeal that such a person should not require representation. Both were of the opinion that the requester is not a “party” requiring representation, and moreover the requester argued that requiring representation simply to seek access to a document filed at the court would place an unnecessary burden on that individual and would undermine the ability of the public to ensure that proceedings are open. Autostore did not comment.

Despite these submissions, the Court of Appeal ruled that the concept of “party” requiring representation according to Rule 8.1 RoP was broader than the parties to the action, and that unless specified otherwise (as for example in Rule 5 RoP in relation to opt-outs), any person undertaking any application or action with respect to the UPC required representation. This conclusion was justified on the basis that:

- The access to the written pleadings and evidence requires a reasoned request. It is appropriate that representation is required for this purpose.
- The procedure for considering such a request is in principle adversarial, for which representation is called for.

The Court of Appeal therefore held that the requester should have been represented

before the Court of First Instance and must also be represented before the Court of Appeal. Accordingly, it disregarded the Statement of response lodged by the requester as it was not lodged by an authorised representative pursuant to Article 48 UPCA.

The requester was given 14 days to instruct a representative and (re)lodge a Statement of response.

The oral hearing to consider the substantive issue of the criteria for the UPC granting access to documents filed at the Court is scheduled for 12 March 2024. Irrespective of what is decided on this issue, the present Order creates a significant barrier to members of the public from even applying for such access, since they will need to instruct a UPC representative to make the request.

[1] <https://www.unified-patent-court.org/en/node/568>

[2] Reported <https://eipamar.com/en/knowledge-hub/article/upc-grants-access-to-pleadings-for-the-first-time/>