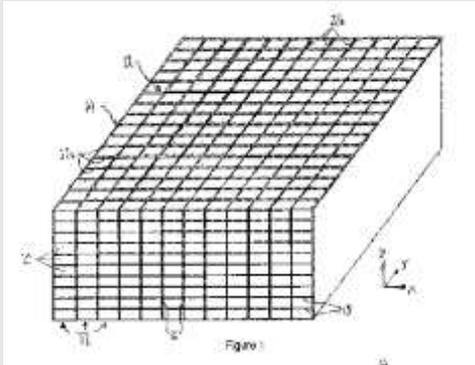


## UPC Court of Appeal, 10 January 2024, Ocado v Autostore



### PATENT LAW - PROCEDURAL LAW

#### Application to intervene in the appeal refused

#### Interest in the result of the action ([Rule 313\(1\) RoP](#))

- [means a direct and present interest in the grant by the Court of the order or decision as sought by the party, whom the prospective intervener wishes to support and not an interest in relation to the pleas in law put forward](#)

12. An interest in the result of the action within the meaning of [R.313.1 RoP](#) means a direct and present interest in the grant by the Court of the order or decision as sought by the party, whom the prospective intervener wishes to support and not an interest in relation to the pleas in law put forward. It is necessary to distinguish between prospective interveners establishing a direct interest in the ruling on the specific request sought by the supported party, and those who can establish only an indirect interest in the result of the case by reason of similarities between their situation and that of one of the parties. A similarity between two cases is not sufficient.

13. It may be that the outcome of this action before the Court of Appeal has an impact on the legal assessments that are to be made in the cases pending before the Munich Section of the Central Division and the Local Division The Hague. However, if it does, it will be because of the guiding effect of case-law alone. The applicants to intervene therefore are claiming only an indirect interest in the result of the case by reason of similarities between their situation and that of one of the parties to this case.

Source: [Unified Patent Court](#)

#### UPC Court of Appeal, 10 January 2024

(Kalden, Simonsson, Rombach)

UPC Court of Appeal

UPC\_CoA\_404/2023

App\_584498/2023

#### ORDER

of the Court of Appeal of the Unified Patent Court issued on 10 January 2024

concerning applications to intervene

**HEADNOTES:** Two applications to intervene in an appeal concerning public access to the register have been refused as inadmissible due to lack of legal interest in the result of the action pending before the court of appeal

**KEYWORDS:** public access to the register, application to intervene; admissibility

**APPELLANT / CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE:**

**Ocado Innovation Limited**

Represented by:

Anna Bladh Redzic Sandart & Partners Advokatbyrå KB

Simon Ayrton Powell Gilbert (Europe) LLP

Thomas Oliver Powell Gilbert (Europe) LLP

Joel Coles Powell Gilbert (Europe) LLP

**RESPONDENT:**



**DEFENDANTS IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE:**

- (1) Autostore AS
- (2) Autostore Sp. z o.o.
- (3) Autostore System AB
- (4) Autostore S.A.S.
- (5) Autostore System GmbH
- (6) Autostore System AT GmbH
- (7) Autostore System Srl
- (8) Autostore System S.L

Represented by:

Laura Ramsay Dehns

Annabelle Beacham Dehns

**APPLICANTS TO INTERVENE:**

(1) Mathys & Squire LLP

Represented by:

Nicholas Fox Mathys & Squire LLP

Alexander Robinson Mathys & Squire LLP

Andreas Wietzke Mathys & Squire LLP

(2) Bristows (Ireland) LLP

Represented by:

Gregory Bacon Bristows (Ireland) LLP

**PANEL**

Second Panel

**LANGUAGE OF THE PROCEEDINGS**

English

**DECIDING JUDGES:**

This order has been issued by the panel consisting of Rian Kalden, presiding judge and legally qualified judge Ingeborg Simonsson, legally qualified judge and judge-rapporteur

Patricia Rombach, legally qualified judge

after referral by the judge-rapporteur on the basis of [Rule 331.2 RoP](#).

**IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE**

□ Date: 17 October 2023

□ Order no. 573437/2023/ UPC\_CFI\_11/2023 of the Nordic-Baltic Regional Division (Judge Stefan Johansson)

**POINT AT ISSUE**

Applications to intervene

**GROUNDS FOR THE ORDER**

### The action before the Court of Appeal, the applications to intervene and the views of Ocado and the Respondent

1. With reference to [Rule 262.1\(b\) RoP](#) on public access to the register, [the Nordic-Baltic Regional Division ordered access for the Respondent to the statement of claim in ACT 459791/2023, after redaction of personal data within the meaning of Regulation \(EU\) 2016/679](#).

2. Ocado has appealed the order.

3. On 22 November 2023, Mathys & Squire LLP lodged an application to intervene, bringing forward the following grounds as regards the legal interest in the result of the action before the Court of Appeal. Mathys & Squire LLP has applied to the Munich Section of the Central Division of the UPC under [R.262 RoP](#), requesting that the Court make available to Mathys & Squire LLP all written pleadings and evidence filed in relation to ACT\_464985/2023 (UPC\_CFI\_75/2023). The application raises substantively identical issues to the issues raised in the present appeal. Interpretation of [R.262.1 RoP](#) by the Court will be determinative of the success or otherwise of the application before the Central Division (Munich Section). Further, the proceedings in the Central Division in relation to the application for access to documents in ACT\_464985/2023 have been stayed pending the outcome of the action before the Court of Appeal.

4. On 22 December 2023, Bristows (Ireland) LLP lodged an application to intervene, bringing forward the following grounds as regards the legal interest in the result of the action before the Court of Appeal. Bristows (Ireland) LLP has applied in action ACT\_549536/2023 under [R.262.1\(b\) RoP](#) for access to the written pleadings and evidence lodged at The Hague Local Division in that action on the basis that it wishes to understand the proper scope and validity strength of the patent at issue. Having made such an application, and being aware of the apparent divergences of approach seen in the decisions concerning [R.262.1\(b\)](#) to date and that the outcome of the appeal will clearly have an effect on its own application, Bristows (Ireland) LLP believes it has a legal interest in intervening.

5. Ocado, the Respondent and the Autostore companies have been given the opportunity to be heard about the admissibility of the applications to intervene ([R.314 RoP](#)).

6. Ocado has submitted that Mathys & Squire LLP's application to intervene should be refused as being inadmissible. With reference to the legislative background of Part 5, Chapter 6, Section 5 RoP, Ocado argues that Article 40 of the CJEU Statute has had an influence on the UPC RoP's requirements for intervention. Ocado takes the view that there are good public policy reasons for an approach to interventions which means that a proposed intervener's interest in points of law being considered in the proceedings in which the proposed intervener wishes to intervene, is insufficient to permit intervention ([Order of the Vice-President of the Court of 24 June 2021 in C-220/21 P\(I\) ratiopharm and Others v Orion and](#)

[Commission, EU:C:2021:521](#), para 18). According to Ocado, courts of several Contracting Member States, such as the Netherlands and Sweden, require an intervener to have a direct factual or legal interest in the outcome of the proceedings.

Ocado has expanded its arguments by saying that the 'result of an action' means the operative part of the order, requiring the intervener to have a legal relationship with one of the parties or the actual subject matter of the dispute of the action (e.g., a patent), which could be directly affected by the operative part of the order or the enforcement of the decision. The decision in the action before the Court of Appeal will not directly concern Mathys & Squire LLP, and similarities in proceedings is an insufficient basis for an application to intervene. Finally, Ocado has argued that there are very significant differences between the facts of Mathys & Squire LLP's application under [R.262.1\(b\) RoP](#) and the facts of this appeal.

7. Ocado has not reacted to Bristows (Ireland) LLP's application to intervene.

8. The Respondent has had no objection to the applications to intervene. According to him, the meaning of the proceedings being open to the public under [Article 45 UPCA](#) (the proceedings under [Article 52](#) consisting of a written, an interim and an oral procedure), and the interpretation of [R.262 RoP](#) on public access to the register, are matters of importance to a broader public than the parties to these particular proceedings.

9. The Autostore companies have not reacted to any of the applications to intervene. Reasons for the order

10. Pursuant to [R.314 RoP](#), the judge-rapporteur shall decide on the admissibility of an application to intervene by way of order. Under application of [Rule 331.2](#) the judge-rapporteur has referred this order to the panel.

11. While all the formal requirements for the applications to intervene have been met ([R.313.2 through 313.4 RoP](#)), the question here is whether the applicants have established a legal interest in the result of the action before the Court of Appeal ([R.313.1 RoP](#)). This is a substantive test that must be met for an application to intervene to be admissible.

12. An interest in the result of the action within the meaning of [R.313.1 RoP](#) means a direct and present interest in the grant by the Court of the order or decision as sought by the party, whom the prospective intervener wishes to support and not an interest in relation to the pleas in law put forward. It is necessary to distinguish between prospective interveners establishing a direct interest in the ruling on the specific request sought by the supported party, and those who can establish only an indirect interest in the result of the case by reason of similarities between their situation and that of one of the parties. A similarity between two cases is not sufficient.

13. It may be that the outcome of this action before the Court of Appeal has an impact on the legal assessments that are to be made in the cases pending before the Munich Section of the Central Division and the Local Division The Hague. However, if it does, it will be because of the guiding effect of case-law alone. The

applicants to intervene therefore are claiming only an indirect interest in the result of the case by reason of similarities between their situation and that of one of the parties to this case.

14. This means that the applicants have failed to establish a legal interest in the result of the action before the Court of Appeal. The applications to intervene are inadmissible in substance.

**ORDER**

The Applications to intervene are refused as inadmissible.

Issued on 10 January 2024

**NAMES AND SIGNATURES**

Judges

Presiding judge: Rian Kalden

Legally qualified judge and judge-rapporteur: Ingeborg Simonsson

Legally qualified judge: Patricia Rombach

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