

UPC CFI, Local Division Hamburg, 17 September 2024, Ballinno v UEFA



PATENT LAW – PROCEDURAL LAW

Public access to the register after rejection of application for provisional measures with decision of 3 June 2024 (Article 45 UPCA, R. 262 RoP)

- Access granted based on claimed general interest in the work and processing of a case by the Court, but subject to confidentiality order regarding technical data and internal company information that is not being publicly available.

Source: Unified Patent Court

UPC Court of First Instance, Local Division Hamburg, 17 September 2024 (Schilling)

UPC_CFI_151/2024

APPLICANT

Powell Gilbert LLP 85 Fleet Street, London, EC4Y 1AE - UK

Represented by Adam Rimmer

CLAIMANT

1) Ballinno B.V. (Claimant) - De IJvelandssloot 41 - 1713BA - Obdam - NL

Represented by Rien Broekstra

DEFENDANTS

1) Union des Associations Européennes de Football (UEFA) (Defendant) - Route de Genève 46 - CH-1260 - Nyon - CH

Represented by Christopher Maierhöfer

2) Kinexon GmbH (Defendant) - Schellingstraße 35 - 80799 - Munich - DE

Represented by Christopher Maierhöfer

3) Kinexon Sports & Media GmbH (Defendant) - Schellingstraße 35 - 80799 - Munich - DE

Represented by Christopher Maierhöfer

PATENT AT ISSUE

Patent no. Proprietor/s EP1944067 Ballinno B.V.

DECIDING JUDGE

Full Panel

Judge-rapporteur Dr. Stefan Schilling

SUBJECT-MATTER

With submission dated 3 July 2024 Powell Gilbert, as a member of the public, requested access to the written pleadings and evidence listed below:

Table with 3 columns: Document Name, Description, Date. Includes Application, Comments pursuant to R.264 RoP, Formal Response to the Order of the Court, Objection to application for provisional measures, Reply to protective letter – comments pursuant to R.264 RoP, Reply pursuant to R.264 RoP.

The applicant argues that the decision the Court rendered on 3 June 2024 rejecting the Claimant’s application for provisional measures against the Defendants (ORD_33145/2024) was one of the first UPC decisions regarding an application for provisional measures. The purpose of the Applicant’s request 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. The Applicant sees access to the listed documents being necessary for this purpose as it will enable it to understand the decision and scrutinise the handling by the Court of the application for provisional measures. The Applicant is explicitly not seeking access to pleadings and evidence in relation to any ongoing proceedings on the merits. It points out that the integrity of any appeal proceedings – as here pending – cannot be a reason to deny access to pleadings and evidence submitted in the first instance proceedings.

PROCEDURAL STEPS

The Parties of the main proceedings were invited by the JR to comment on the application. The Claimant did not make use of the possibility to comment. The Defendants responded and did not object to the Request provided that it is ensured that the documents listed in their submission are being made accessible in a redacted version only. The Defendants claimed that the information highlighted in grey in the annexes to their request includes highly sensitive technical data of Defendants 2) and 3) which must be kept confidential and therefore excluded from public access. They argue that this technical data constitutes internal company information that is not publicly accessible and is protected from unauthorized access by special precautions and must therefore be classified as trade secrets requiring confidentiality.

The Defendants state that this confidential information was included in documents which have been filed initially as follows:

- 1. Application for provisional measures dd. March 18, 2024
2. Objections to application for provisional measures by all Defendants dd. May 8, 2024
3. Reply to protective letter dd. May 8, 2025
4. Replies by all Defendants dd. May 21, 2024
5. Reply by Applicant dd. May 21, 2024
6. Exhibit VB 21 including Annexes 4-26
7. Exhibit VB 35 including Annexes 4-8
8. Exhibit BB 11 including annexes 5 and 6

The Defendants state that the confidential information included in these documents are identified by the versions with grey highlighting which were filed (App_42080/2024) according to R. 9.1 RoP as follows:

1. Exhibit BP 1 - Application for provisional measures by applicant dd. March 18, 2024
2. Exhibit BP 2 - Objection to application for provisional measures by Defendants dd. May 8, 2024
3. Exhibit BP 3 - Reply to protective letter by Applicant dd. May 8, 2024
4. Exhibit BP 4 - Reply by Defendants dd. May 21, 2024
5. Exhibit BP 5 - Reply by Applicant dd. May 21, 2024
6. Exhibit BP 6 - Exhibit VB 21
7. Exhibit BP 7 - Annexes 4 to 26 to Exhibit VB 21
8. Exhibit BP 8 - Exhibit VB 35
9. Exhibit BP 9 - Annexes 4 to 8 to Exhibit VB 35
10. Exhibit BP
- 10 - Exhibit BB 11
11. Exhibit BP 11 - Annex 5 and 6 to Exhibit BB 11.

With App_42080/2024 and App_42110/2024 the Defendants requested that

1. all the information highlighted in grey in the briefs and exhibits, attached to this request as exhibits in redacted form, is confidential information and must be treated as strictly confidential vis-à-vis the public in accordance with [R. 262.2 RoP](#);
2. all the information highlighted in grey according request 1 which are also included in the corresponding documents that were submitted in an unredacted form earlier during the proceedings which include the same confidential information is confidential information and must be treated as strictly confidential vis-à-vis the public in accordance with [R. 262.2 RoP](#).

GROUND OF THE ORDER

The application to have access to the case is admissible. The application is granted, but mainly limited to the redacted versions provided with App_42080/2024 by the Defendants.

1. [Rule 262](#) covers the access of the public to the register, including orders and decisions, but also the written pleadings and evidence lodged at the Court. According to Art. 10 UPCA the register kept by the Registry shall be public, subject to conditions set out in the UPCA itself and the Rules of Procedure. [Art. 45 UPCA](#) stipulates as a general rule that the proceedings of the UPC shall be open to the public unless the Court decides to make them confidential. As a general rule, decisions and orders are automatically made public by the Court, R. 262.1 lit. a) RoP. The access to the written submissions on the other hand is conditioned to a reasoned request, [R. 262.1 lit. b\) RoP](#).

2. The applicant has submitted a reasoned request with respect to [R. 262.1 lit b\) RoP](#). The term „reasoned request“ has to be understood to mean that the applicant needs to provide a credible explanation for why he/she wants access to the pleadings or evidence.

- a) The applicant can rightfully argue that the [decision the Court rendered on 3 June 2024](#) rejecting Ballinno B.V.'s application for provisional measures against Union des Associations Européennes de Football (UEFA), Kinexon GmbH, Kinexon Sports & Media GmbH (ORD_33145/2024) was one of the first UPC

decisions regarding an application for provisional measures. The applicant can further rightfully claim, that in order to gain a better understanding of the decision rendered, it needs to know the arguments brought forward by the parties and the evidence relied on. As a part of the public the applicant has the right to scrutinise the handling of the application for provisional measures by the Court.

b)

The access can on a general basis be granted as the proceeding for provisional measures is terminated at the Court of First Instance and now in the appeal before the CoA. Pending appeal proceedings are no reason to deny access to pleadings and evidence submitted in the first instance proceedings.

c)

When a request to make written pleadings and evidence available to a member of the public is made pursuant to [R.262.1\(b\) RoP](#), the interests of a member of the public of getting access to the written pleadings and evidence must be weighed against the interests mentioned in [Art. 45 UPCA](#). These interests include the protection of confidential information and personal data ('the interest of one of the parties or other affected persons') but are not limited thereto. As the Applicant claimed having a general interest in the work and processing of a case by the Court, it indeed is relevant to gain knowledge of the general lines of arguments and topics discussed by the parties. The Defendants have made use of the right to apply for a confidentiality order with regard to the public according to [R. 262.2 RoP](#). In light of this further application of the Defendants the Court can on the other hand not see that for the purpose pursued by the Applicant it is important to gain knowledge about technical data and internal company information that is not being publicly available.

aa)

A party can at any stage – also after the end of the proceedings – request for confidentiality of certain information submitted under [R.262.2 RoP](#). The Defendants claimed that the information highlighted in grey in the annexes to this request includes highly sensitive technical data of Defendants 2) and 3) which must be kept confidential and therefore excluded from public access. They argue that this technical data constitutes internal company information that is not publicly accessible and is protected from unauthorized access by special precautions and must therefore be classified as trade secrets requiring confidentiality.

bb)

The application of the Defendants is to be granted. Whereas the Claimant relied for its arguing of the case on publicly available data, like YouTubeVideos, the names and findings of the party experts on the technical details of the sensor used in the attacked embodiment have to be seen as privileged information not publicly available. The fact, that a party expert was capable of experimenting with the technical devices used does not make these findings public. The same applies to certain functionalities of the technical devices used the attacked embodiment and the specific detailed comparison

whether or not this is in line with the patented claim and thus a patent infringement. The general line of argument, however, as well as the nature of evidence provided by the parties of the main proceedings as well as the working of the Court can be examined by the applicant based on the redacted versions provided by the Defendants.

The fact, that the Claimant in its submissions cited the information shared by the Defendants does not limit an application according to [R. 262.2 RoP](#) of the Defendants. The right to protect internal company information that is not being publicly available with respect to the public, does not need the same level of carefulness as with respect to the other party. The Defendants have – as it is their obligation – provided the Court with redacted versions of all case documents, where they see their privileged information cited or discussed.

ORDER

I. All the information highlighted in grey in the briefs and exhibits, as applied for by APP 42110/2024 and as attached to the App 42080/2024-request of the Defendants as exhibits in redacted form, is confidential information and must be treated as strictly confidential vis-à-vis the public in accordance with [R. 262.2 RoP](#), that is:

1. Application for provisional measures dd. March 18, 2024
2. Objections to application for provisional measures by all Defendants dd. May 8, 2024
3. Reply to protective letter dd. May 8, 2025
4. Replies by all Defendants dd. May 21, 2024
5. Reply by Applicant dd. May 21, 2024
6. Exhibit VB 21 including Annexes 4-26
7. Exhibit VB 35 including Annexes 4-8 8. Exhibit BB 11 including annexes 5 and 6

II. All the information highlighted in grey according request 1 which are also included in the corresponding documents that were submitted in an unredacted form earlier during the proceedings which include the same confidential information is confidential information and must be treated as strictly confidential vis-à-vis the public in accordance with [R. 262.2 RoP](#).

III. The applicant is granted access to the redacted versions as filed by the Defendant with APP App_42080/2024:

1. Exhibit BP 1 - Application for provisional measures by applicant dd. March 18, 2024
2. Exhibit BP 2 - Objection to application for provisional measures by Defendants dd. May 8, 2024
3. Exhibit BP 3 - Reply to protective letter by Applicant dd. May 8, 2024
4. Exhibit BP 4 - Reply by Defendants dd. May 21, 2024
5. Exhibit BP 5 - Reply by Applicant dd. May 21, 2024

IV. The applicant is granted access to the unredacted versions of the following documents:

Ballinno B.V. to lodge Comments pursuant to R.264 RoP 23/04/2024

Ballinno B.V. to comply with the Order Formal Response to the Order of the Court 23/04/2024

ORDER DETAILS

Order no. ORD_40128/2024 and ORD_52214/2024 in ACTION NUMBER: 16267/2024

UPC number: UPC_CFI_151/2024

Related proceeding no. Application No.: 39793/2024 and 42110/2024

Application Type: Application R. 262.1 (b)

INFORMATION FOR THE SUB-REGISTRY

The relevant redacted documents (order point III.) can be found in App 42080/2024. The unredacted versions (order point IV.) are in the main App 16267/2024.

INFORMATION ON AN R.262.3 APPLICATION

In case a confidentiality request according to R. 262.2 was granted, and thereby specific information is excluded from the public register, a member of the public may lodge an application pursuant R. 262.3 and .4 RoP for an order that any information excluded from public access may be made available by the Court to the Applicant.

[...]
