

24 May 2022

Mr Alexander Ramsay  
Chair of the Administrative Committee  
of the Unified Patent Court

**IP2Innovate calls for preserving the increased transparency of patent litigation data in the UPC Rules of Procedure**

Dear Mr Ramsay,

IP2Innovate, a coalition of small and large companies that create innovative products and services in Europe and collectively hold thousands of European patents, would like to share with you our concerns regarding recently proposed amendments to Rule 262 of the UPC Rules of Procedure, which governs public access to the register.

The current version of Rule 262 states that *“written pleadings, evidence, decisions and orders lodged at or made by the Court and recorded by the Registry shall be available to the public, unless a party has requested that certain information be kept confidential and provided specific reasons for such confidentiality”*. IP2Innovate strongly supports this version of Rule 262 and the public availability of these documents. We are also calling on Member States to make all national patent litigation filings and court decisions publicly available.

We understand the need to align the Rules of Procedure with new EU law that has come into effect since the drafting of their last version. We understand that the Administrative Committee of the UPC is specifically considering any requirements to amend Rule 262 under the EU’s General Data Protection Regulation (GDPR).

We are concerned that this could lead to amendments that are broader than necessary to ensure compliance with the requirements for the protection of personal data under the GDPR. We would, for example, be highly concerned if the legal substance of court decisions and orders, would only be made available *“upon reasoned request”*, and that the decision to grant access would be subject to consultation of the parties.

In general, the public availability of court decisions and orders as well as pleadings and evidence promotes the proper functioning of the patent system. Because the patent grant represents a bargain between the inventor and the public in which the inventor receives rights in exchange for making the invention public, the public and users of the patent system have a critical interest in understanding how courts are interpreting and enforcing those rights.

For the Unified Patent Court, the general principle of public availability of all court decisions and orders as well as pleadings and evidence should be maintained, as it is crucial to build confidence and trust in the new Court. Not only will potential users gain confidence on what to expect from the new system, but the Court and the efficiency of proceedings will also be helped by informed pleadings that are more pertinent to the information needs and considerations of the Court. The public availability of pleadings will also prevent litigants from making inconsistent arguments in other proceedings, which will improve the litigation process and promote honesty.

From a public policy perspective, transparency is also essential for analysing trends and informing decision-making on any possibly needed adjustments to the system that would improve its ability to support innovation and economic growth.

The UPC presents an opportunity to improve upon the current challenges to obtain information on patent litigation cases in EU member states, which is costly, difficult, and incomplete. This has often hampered the ability to identify trends that may require adjustment of the legislative framework and has deprived public-private dialogue on any such adjustments of a sound basis of evidence.

As a new and yet unproven system, the UPC is particularly vulnerable to unexpected and unforeseen effects of its governance rules. Transparency on case law development is of utmost importance to identify and react to such trends in a timely manner.

We understand that the UPC must comply with the GDPR, however, the GDPR's risk based approach specifically provides for the ability to process personal data for purposes of pursuing public interests, which is integral to the functioning of UPC. In addition, patent cases are unlikely to include any personal data. Sensitive information in patent cases tend to be either technical information about how an accused product works or financial/sales/licensing data of the parties, which can be redacted from pleadings or opinions where it might occur.

**IP2Innovate therefore urges the UPC Administrative Committee to preserve the principle of public access to the legal substance of patent litigation filings and court documents.**

Yours sincerely,

Patrick Oliver

Executive Director of IP2Innovate