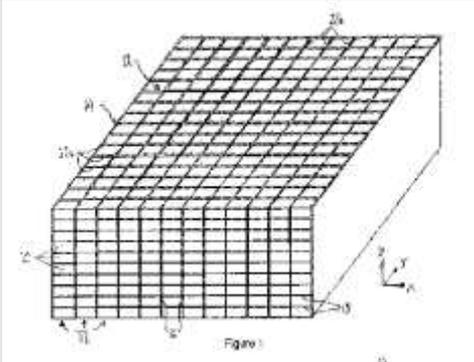


UPC Court of Appeal, 6 November 2023, Ocado v Autostore



PATENT LAW – PROCEDURAL LAW

The appeal shall have suspensive effect, to ensure that there is time to adjudicate Ocado's appeal on the merits from the Order to grant a third party access to documents, which will be enforceable on 7 November 2023 and would make the appeal devoid of purpose. ([Article 74 UPCA](#), [Rule 223 RoP](#), [Rule 262 RoP](#))

- [Application ex officio handled as having extreme urgency by the standing judge \(Rule 223\(4\) RoP\)](#)

3. Although Ocado did not refer to the provision on extreme urgency in [Rule 223.4 RoP](#), the Court of Appeal nevertheless addressed the application for suspensive effect with reference to this provision given the short timeframe before the order was to be enforceable.

Reasons for granting suspensive effect

4. [Art. 74 UPCA](#) stipulates that an appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties. The Rules of Procedure shall guarantee that such a decision is taken without delay.

5. [Rule 233 RoP](#) provides the parties with a possibility to lodge an application for suspensive effect. The Court of Appeal shall decide the application without delay. In cases of extreme urgency the applicant may apply at any time without formality for an order for suspensive effect to the standing judge pursuant to [R. 223.4 RoP](#). The standing judge shall have all the powers of the Court of Appeal and shall decide the procedure to be followed on the application.

6. In the present case, the appeal shall have suspensive effect, to ensure that there is time to adjudicate Ocado's appeal on the merits. In the absence of suspensive effect, the order on access to the documents in question will be enforceable on 7 November 2023, which would make the appeal devoid of purpose.

Source: [Unified Patent Court](#)

UPC Court of Appeal, 6 November 2023
(Simonsson)

UPC Court of Appeal
UPC_CoA_407/2023
App_584588/2023

ORDER

of the Court of Appeal of the Unified Patent Court issued on 6 November 2023 concerning the application for suspensive effect under [Rule 223 RoP](#)

HEADNOTES:

Suspensive effect for an appeal of an order on access to documents under [R. 262.1\(b\) RoP](#), an order which would otherwise have been enforceable soon, to ensure that there is time to adjudicate the appeal on the merits.

KEYWORDS:

Suspensive effect, access to documents, extreme urgency, standing judge

APPLICANT AND APPELLANT:

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

DEFENDANTS AND RESPONDENTS:

(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

THIRD PARTY

[xxx]

PANEL

Second Panel

LANGUAGE OF THE PROCEEDINGS

English

DECIDING JUDGE:

This order has been issued by the standing judge

Ingeborg Simonsson

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

□ Date: 17 October 2023

□ [Order no. 573437/2023 of the Nordic-Baltic Regional Division \(Judge Stefan Johansson\)](#)

POINTS AT ISSUE

Suspensive effect of order on access to documents

ADMISSIBILITY

The application for suspensive effect is admissible.

GROUND FOR THE ORDER

The order subject to appeal and Ocado's application for suspensive effect

1. With reference to [Rule 262.1\(b\) RoP](#) on public access to the register, the Nordic-Baltic Regional Division ordered access for the Third party to the statement of claim in ACT_459791/2023, after redaction of personal data within the meaning of Regulation (EU) 2016/679, on 7 November 2023.

2. Ocado, the claimant in ACT_459791/2023, has appealed the order (APL_584498/2023, UPC_CoA_404/2023) and applied for suspensive effect. Ocado has set forth that according to the order of the Nordic-Baltic Regional Division, the Third party will have access to the documents in question from 7 November 2023, and if the Court of Appeal does not grant suspensive effect, the appeal will not be effective. Ocado argues that the appeal is well founded and that the correct position under [R.262.1\(b\) RoP](#) requires resolution by the Court of Appeal.

3. Although Ocado did not refer to the provision on extreme urgency in [Rule 223.4 RoP](#), the Court of Appeal nevertheless addressed the application for suspensive effect with reference to this provision given the short timeframe before the order was to be enforceable.

Reasons for granting suspensive effect

4. [Art. 74 UPCA](#) stipulates that an appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties. The Rules of Procedure shall guarantee that such a decision is taken without delay.

5. [Rule 233 RoP](#) provides the parties with a possibility to lodge an application for suspensive effect. The Court of Appeal shall decide the application without delay. In cases of extreme urgency the applicant may apply at any time without formality for an order for suspensive effect to the standing judge pursuant to [R. 223.4 RoP](#). The standing judge shall have all the powers of the Court of Appeal and shall decide the procedure to be followed on the application.

6. In the present case, the appeal shall have suspensive effect, to ensure that there is time to adjudicate Ocado's appeal on the merits. In the absence of suspensive effect, the order on access to the documents in question will be enforceable on 7 November 2023, which would make the appeal devoid of purpose.

7. For the adjudication of the appeal on the merits, the action will be assigned to a panel.

ORDER

The Court of Appeal orders that the appeal shall have suspensive effect and that the Third party is not to obtain access to the statement of claim in ACT_459791/2023, pending the decision on the merits of the Court of Appeal.

INSTRUCTIONS TO THE REGISTRY

In addition to service to the parties of this order, a copy of this order shall be forwarded without delay to the Nordic Baltic Regional Division. Issued on 6 November 2023

Judge

Standing judge Ingeborg Simonsson

Information about enforcement (Art. 82 UPCA, Art. Art. 37(2) UPCS, R. 118.8, 158.2, 354, 355.4 RoP) An authentic copy of the enforceable decision will be issued by the Registrar upon request of the enforcing party, R. 73, 69 RegR.