



Local division Mannheim
UPC_CFI_ 210/2023

Order

of the Court of First Instance of the Unified Patent Court,

Mannheim local division

issued on 17 September 2024

concerning EP 2 568 724

App_52033/2024

Plaintiff:

Panasonic Holdings Corporation - 1006, Oaza Kadoma, Kadoma-shi - 571-8501 - Osaka - JP
represented by Christopher Weber

defendant:

1)

OROPE Germany GmbH - Graf-Adolf-Platz 15 - 40213 - Düsseldorf - DE

represented by Andreas Kramer

2)

Guangdong OPPO Mobile Telecommunications Corp. Ltd - NO.18 Haibin Road, Wusha, Chang'an
Town, Guangdong Province - 523860 - Dongguan - CN

represented by Andreas Kramer

STREITPATENT:

EUROPEAN PATENT NO. EP 2 568 724

ADJUDICATING BODY/CHAMBER:

Mannheim local division JUDGES:

This Order was issued by the Chairman and judge-rapporteur Prof Dr Tochtermann.

LANGUAGE OF THE PROCEEDINGS: German/English

SUBJECT: Application for the examination of witnesses

Facts of the case

After the conclusion of the interim proceedings, the plaintiff requested in a document filed on the evening of the same day that its party expert be heard in person as a witness at the scheduled oral hearing because the time limit for analysing the written party expert opinion of the opposing party in the short duplicate period regarding the FRAND counterclaim was not sufficient to address the party expert opinion that the defendants had inadequately prepared in the main pleadings. The hearing of the defendant's own party expert as a witness was necessary in order to point out the methodological errors of the opponent's party expert and to establish procedural equality of arms - because the defendants had had a total of five months to deal with the plaintiff's submission on the FRAND counterclaim, the defendant's party expert had had two and a half months. In contrast, the plaintiff only had time from 19 August 2024 to 16 September 2024 for the DUPLIK on the FRAND counterclaim.

Reasons for the decision

The application had to be rejected for several reasons.

Firstly, the application was filed after the conclusion of the interim proceedings. By Order of 16 September 2024, the parties were only given the opportunity to provide information on organisational aspects of the hearing regarding persons attending and documents used at the hearing. The formal conclusion of the interim proceedings in accordance with Rule 110 RoP documents that the proceedings are sufficiently prepared for the hearing from the judge-rapporteur's point of view. The deadlines for the reciprocal documents are set by law and have been extended by the court in individual cases after a hearing. In the case of the FRAND counterclaim at issue here, in the absence of an explicit provision in the Rules of Procedure, the time limit was set by the court in consideration of the interests of all parties involved, including those of the panel, which must prepare for the hearing after the conclusion of the interim proceedings. For this reason, there is only room for the admission of further documents and applications after the conclusion of the interim proceedings in special circumstances, which are not apparent here. The time limit set for the reply to the FRAND counterclaim corresponds almost exactly to the time limit under Rule 29 (c) RoP. The plaintiff claims to have established only after analysing the expert opinion that the extended period was not sufficient, which it extended in agreement with the opponent as requested

had received. No further application for an extension of the deadline was filed. The present application is now aimed at making the submission on the methodology of the counter-expert opinion, which was not made within the deadline set, the subject of the oral hearing by way of a "witness hearing" of the party's own expert witness by means of an application after the conclusion of the interim proceedings. This is not provided for in proceedings before the UPC.

Moreover, the application fails to recognise that, according to its own submission, the person named is not to be heard as a witness. Witnesses provide information on facts that are disputed and relevant to the decision. However, according to the application, the "witness" should not be questioned about their own perceptions of facts. Rather, he is to explain his expert opinion as to why the expert statements of the opposing party are methodologically incorrect. This is not a fact in the legal sense. There is also currently no reason to question the party expert in accordance with Rule 181 RoP.

Insofar as the plaintiff also complains that the defendant's submission in the main pleading itself is insufficient for understanding the private expert opinion submitted as an annex, the panel will, if necessary, deal with the question at the hearing as to what extent - as is correct - submissions not sufficiently made in the main pleading, which can only be understood in detail by studying an annex for oneself, can be taken into account. If the submission cannot be taken into account, there is no need to hear the party expert anyway.

If the submission is deemed admissible and the court deems it necessary to hear the party's expert, this will have to be decided in accordance with Rule 114 RoP.

Tenor of the Order:

The plaintiff's application to hear the plaintiff's expert named in the document dated 16 September 2024 as a witness at the oral hearing to be held on 7 October, 8 October and 10 October 2024 is rejected.

NAMES AND SIGNATURES

Issued in Mannheim on 17 September 2024

Peter Michael Dr
Tochtermann

 Digitally signed by Peter Michael Dr
Tochtermann
Date: 2024.09.17 13:53:58 +02'00'

Prof Dr Tochtermann Chairman

and judge-rapporteur