

**Procedural Order
of the Court of First Instance of the Unified Patent Court
issued on 14/05/2025
concerning EP 2 746 957
concerning App_18493/2025
(R. 12.5, R. 36 RoP)**

CLAIMANT/APPLICANT

TOTAL SEMICONDUCTOR, LLC
- 101 E. Park Blvd., Ste 600 - 75074 - Plano,
Texas – US

Represented by Thomas Lynker

DEFENDANTS

- 1) **Texas Instruments Incorporation**
- 12500 TI Blvd - 75243 - Dallas – US

Represented by Klaus Haft

- 2) **Texas Instruments Deutschland GmbH**
- Haggertystr. 1 - 85356 - Freising – DE

Represented by Klaus Haft

- 3) **Texas Instruments EMEA Sales GmbH**
- Haggertystr. 1 - 85356 - Freising – DE

Represented by Klaus Haft

PATENT AT ISSUE

European Patent No. EP 2 746 957

PANEL/DEVISION:

Panel of the Local Division in Mannheim

DECIDING JUDGES:

This order was issued by the legally qualified judge Böttcher acting as judge-rapporteur.

LANGUAGE OF PROCEEDINGS: English

SUBJECT-MATTER OF THE PROCEEDINGS: Patent infringement action – Request pursuant to R. 12.5, R. 36 RoP

BRIEF SUMMARY OF THE FACTS AND THE REQUEST:

Claimant requests to allow the filing of a further written submission according to R. 12.5, 36 RoP in response the Defendants' rejoinder.

Claimant had previously already filed a similar request, which was dismissed for formal and substantive reasons (App_77563/2025, ORD_15972/2025). An application for review pursuant to R. 333 RoP (App_18490/2025) is pending, which was filed at the same date as the request at hand.

Claimant sticks to its opinion that the points brought forward by Defendants in their rejoinder are misleading and require clarification. For justifying the request, Claimant is now further elaborating on the reasons why a further written submission should be allowed. Claimant points out and explains that, in their rejoinder, Defendants arguing for the first time that the attacked embodiments utilize Adaptive Voltage Scaling (AVS) "Class 0" and why Claimant needs to address Defendant's allegedly new arguments concerning AVS. Claimant brings forward that AVS Class 0 does not mean that the attacked embodiments do not make use of Dynamic Voltage Scaling.

Defendants oppose the request. They point out that repeating the same request is inadmissible. Apart from that, the request is unfounded. They bring forward that the statements regarding AVS Class 0 were only made in response to Claimant's reply.

For further details, reference is made to the parties' briefs regarding the request at hand.

Claimant requests:

that the Judge-Rapporteur allows the filing of a further written pleading, within a time period to be specified, preferably four weeks

Defendants request:

to refuse Claimant's repeated request.

REASONS FOR THE ORDER:

The final decision on the admission of further written submissions is partially postponed until the oral hearing and otherwise rejected. Insofar as the decision is postponed, Claimant shall be given

two weeks to submit its submission in writing, being strictly limited to AVS Class 0. Afterwards Defendants have the opportunity to respond within two weeks.

1. The request is admissible.

Contrary to Defendants, a decision on a procedural issue does not become final and binding in the same sense as decisions on the merits (*res judicata*). However, on a regular basis, a repeated request on the same procedural issue, which has already been decided, without any change in the factual or legal situation is an abuse of law and inadmissible. Due to the special circumstances of the individual case at hand, the request, insofar as it is not rejected by the present order, does not, exceptionally, constitute such an abuse of rights. Claimant sufficiently explained why it did not elaborate on its request from the outset (App_18490/2025). Given the content of the order at hand, i.e. partly transferring the decision to the panel and otherwise dismissing the request, its issuance is not blocked either by the fact that an application for a review of the order dismissing Claimant's first request is still pending.

2. To the extent outlined in the following, the decision on the request at hand is partially postponed until the oral hearing and thus transferred to the panel. In all other respects, the request is dismissed.

a) One of the main points in dispute between the parties is whether the attacked embodiments implement dynamic voltage adjustment, namely Dynamic Voltage Frequency Scaling (DVFS), or only Dynamic Frequency Scaling (DFS). It seems to be true and undisputed, that the underlying ARM-architecture in general allows for DVFS. The question is rather whether the attacked embodiments make use of this option or implement DFS only.

b) Contrary to Claimant, Defendants did not open a total new line of argument in their rejoinder. Rather, they stuck to their stance that a dynamic voltage adjustment, namely Dynamic Voltage Frequency Scaling (DVFS), is not implemented and merely responded to the functionality AVS and AVS Class 0 mentioned by Claimant in its reply (paras. 40, 48), thereby explaining why this is not a dynamic voltage adjustment either. Only the specific argument of Defendants on the properties of AVS, namely AVS Class 0, is a new aspect. However, the assessment as to whether the statement of defence and the documents submitted up to (including) the reply gave Claimant sufficient reason to elaborate further on AVS Class 0 in its reply can be made only after the whole infringement case has been examined. The same applies to Defendants' objection that Claimant would have already had reason to address this point in its statement of claim if it wishes to base infringement on the implementation of AVS Class 0. Furthermore, it can only be assessed with certainty once the construction of the patent and the relevant facts of the case are established by the panel whether AVS Class 0 is relevant at all. Claimant itself emphasizes that whether the attacked embodiments implement AVS Class 0 has no bearing on their ability to scale voltage during operation via Dynamic Voltage Scaling (cf. request, para. 11).

Against this backdrop, in order not to delay the proceedings, it seems appropriate that Claimant is given the opportunity to supplement its written pleadings with regard to AVS Class 0 - strictly limited to a response to Defendants' rejoinder in this regard - in advance, pending the decision on whether such submission has to be finally allowed in substance.

To do so, a time period of two weeks appears reasonable and sufficient, given the fact that Claimant has been aware of Defendants' rejoinder for some time and has to deal with arguments contained therein anyway, which it has apparently already done. In addition, Claimant had to

prepare for the possibility that it would be given an opportunity to further elaborate in writing on AVS Class 0.

Claimant then will have the opportunity to respond, also within two weeks.

Longer time periods would impair the preparation of the oral hearing, which is scheduled for 22 and 23 July 2025.

c) In all other respects, the request can be already dismissed at this state because there is – from the outset – no justification for allowing new arguments that go beyond the discussion of AVS Class 0 in strict response to Defendants’ rejoinder.

As already discussed, Claimant itself is of the opinion that an implementation of AVS Class 0 does not prevent dynamic voltage scaling. Thus, there are no grounds whatsoever for allowing Claimant to expand or improve its written submissions beyond the aspect of AVS Class 0 (strictly limited to a response to Defendants’ rejoinder).

ORDER

1. The final decision on whether a new submission in writing with regard to AVS Class 0 will be allowed is postponed until after the oral hearing. Pending the decision, Claimant has the opportunity to further elaborate in writing on AVS Class 0 (strictly limited to a response to Defendants’ rejoinder) until **28 May 2025**. Afterwards, Defendants may respond in writing until **11 June 2025**.

On Defendants’ side, only Defendant 1 is technically selected for the comments in the CMS in order to avoid multiple uploads of a possibly unified statement by Defendants. Should a Defendant wish to submit a separate statement, such Defendant is free to do so by uploading its separate statement alongside the statement of Defendant 1 in the workflow at hand. If all Defendants decide not to comment, they are requested to click the respective button in the CMS. Otherwise, the workflow will not return to the court

2. In all other respects, Claimant’s request is dismissed.
3. The parties are informed that it is intended to close the written procedure at the end of 11 June 2025.

ORDER DETAILS

Order no. ORD_18861/2025 in ACTION NUMBER: ACT_14978/2024

UPC number: UPC_CFI_132/2024

Action type: Infringement Action

Related proceeding no. Application No.: 18493/2025

Application Type: Generic procedural Application

Issued in Mannheim on 14 May 2025

NAME AND SIGNATURE

Böttcher
Legally qualified judge