

**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\_18494/2025  
(R. 263 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 – Application pursuant to R. 263 RoP

## BRIEF SUMMARY OF THE FACTS AND THE REQUEST:

Claimant applies for leave to amend its case pursuant to R. 263 RoP to the effect that the infringement action also covers the AM67x product as an attacked embodiment.

The application was filed on 16 April 2025. Defendants lodged their rejoinder in the infringement proceedings on 3 February 2025 and their rejoinder in the proceedings regarding the application to amend the patent on 3 April 2025. The oral hearing is scheduled for 22 and 23 July 2025.

Claimant states that, after Defendants had lodged their rejoinder in the infringement proceedings containing new arguments, it discovered by coincidence that Defendants had begun offering said new product in Germany. Claimant argues that the amendment could not have been made with reasonable diligence at an earlier stage, taking into account that the earliest release date of said product appears to be 10 December 2024, because the AM67x SDK User Guide was released at that date. In Claimant's opinion, the amendment does not unreasonably hinder Defendants in the conduct of their defence because the AM67x product is essentially identical to the other attacked embodiments that are also based on the same processor.

Defendants oppose the amendment. They point out that the amendment could have been made at an earlier state, given the fact that the relevant product overview (exhibit C 17) Claimant bases its case with regard to AM67x on was already available online on 18 April 2024 and that Claimant does not use any information from the AM67x SDK User Guide. In Defendants' opinion, the amendment, if admissible, would unreasonably hinder them in the conduct of their defence, because Claimant did not provide any explanation regarding the implementation by AM67x of the features of the asserted claim of the patent-in-suit and, in addition, the infringement allegation based on "flexible processing PDN scheme" is totally new.

For further details, reference is made to the parties' briefs.

Claimant applies

for leave to amend its case (R. 263 RoP) so that the Statement of Claim dated 22 March 2024 (ACT\_14978/2024 UPC\_CFI\_132/2024) also covers as an attacked embodiment the AM67x product, which Defendants began selling in Germany after Claimant's Statement of Claim was filed.

Defendants request:

- I. to refuse Claimant's request.
- II. In the alternative: Set a reasonable time limit for Defendants, preferably at least four weeks, to respond on the amendments as to their substance.

REASONS FOR THE ORDER:

The final decision on whether to grant leave to amend the case according to Claimant's application of 16 April 2025 is postponed until the oral hearing. Pending that decision, Defendants are given the opportunity to respond to the amendments in substance.

1. When assessing whether leave pursuant to R. 263 RoP is granted, the conflicting interests of the parties must be weighed up, taking into account all the circumstances of the individual case.

In the case at hand, one of these circumstances may be as to whether the new explicitly attacked embodiments of the type AM67x processors (ARM Cortex-A53) have the same actual characteristics with regard to the features of the relevant patent claim as the attacked embodiments listed in the statement of claim and whether they will thus be covered by the operative part of a decision on the merits anyway. Even if there were relevant differences in the characteristics, it may be decisive whether such differences are only a matter of nuances or lead to a completely different product.

Whether this is the case can only be assessed with certainty once the construction of the patent and the relevant facts of the case are established by the panel.

However, it should be noted that it is generally not permissible, under the guise of extending the infringement action to a further embodiment, to introduce into the proceedings an actual characteristic as infringing, which is common to both the originally attacked embodiment and the new attacked embodiment but which was not previously the subject of the proceedings. Consequently, in this case, circumstances, if raised late, must also be disregarded in relation to the originally attacked embodiment.

2. When postponing the final decision on an application pursuant to R. 263 RoP, the interests of the parties have to be considered, taking into account all the circumstances of the individual case.

In the proceedings at hand, Defendants are not unduly hindered by the postponement. In order not to infringe the patent-in-suit, they have to assess anyway as to whether the new AM67x processors (ARM Cortex-A53) implements the relevant features. Moreover, at this stage of the proceedings, it is not manifestly obvious that the requirements pursuant to R. 263.2 RoP are not met. With regard to R. 263.2 (a) RoP, this may *inter alia* depend on the significance of the publication of the user guide (exhibit C 17) only on 10 December 2024 and when the new attacked embodiment was placed on the market within the relevant territory.

3. In order to respond in writing to the amendment with regard to its substance, a time period of four weeks appears reasonable and appropriate, taking into account the subject of the amendment. Defendants themselves proposed a time period of at least four weeks as an auxiliary request. A longer time period would impair the preparation of the oral hearing. Since the application to amend the case was filed only on 16 April 2025, there is no reason and no room for

providing an opportunity for Claimant to comment in writing on Defendants' response, given the fact that the oral hearing is scheduled for 22 and 23 July 2025.

#### ORDER

The final decision on whether to grant leave to amend the case according to Claimant's application of 16 April 2025 is postponed until the oral hearing. Pending that decision, Defendants are given the opportunity to respond in writing to the amendment in substance until **11 June 2025**.

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.

#### ORDER DETAILS

Order no. ORD\_18870/2025 in ACTION NUMBER: ACT\_14978/2024

UPC number: UPC\_CFI\_132/2024

Action type: Infringement Action

Related proceeding no. Application No.: 18494/2025

Application Type: Application for leave to change claim or amend case/pleading (RoP263)

Issued in Mannheim on 14 May 2025

#### **NAME AND SIGNATURE**

Böttcher

Legally qualified judge