



Local Division Mannheim

UPC_CFI_414/2024

Procedural Order

of the Court of First Instance of the Unified Patent Court

issued on 14 May 2025

CLAIMANT

Centripetal Limited, Galway Technology Centre, Mervue Business Park -7XPF+6C -Galway –IE

Represented by Ralph Nack

DEFENDANTS

- 1) **Keysight Technologies, Inc.** Represented by Klaus Haft
(Applicant) - 1400 Fountaingrove Parkway -
95403 - Santa Rosa - US

- 2) **Keysight Technologies Deutschland GmbH** Represented by Klaus Haft
(Applicant) - Herrenberger Straße 130 - 71034
- Böblingen - DE

PATENT AT ISSUE

European Patent No. EP 3 821 580

PANEL/DIVISION

Panel of the Local Division in Mannheim

DECIDING JUDGES:

This order was issued by the legally qualified judge Prof. Dr. Tochtermann acting as presiding judge and 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 applied for leave to amend its case pursuant to R. 263 RoP on 13 March 2025 in parallel to submitting its Reply to the Statement of Defence (App 12235/2025) in case the court should regard new submissions contained in the Reply not as further legal arguments only. In the application, it copied the Reply and highlighted those parts in red, which relate to submissions, which possibly might be considered to require such leave. The respective parts of the Reply (cf. 91-114 and 169-188) refer to the alleged software solution “Threat Simulator” and the alleged further gateway component “ThreatARMOR”.

To have clarity on the scope of the proceedings and the need to defend against the new submissions, defendants submitted a request to be heard on whether or not the new allegations and/or arguments require leave and if such leave shall be granted (App 15688/2024). In that workflow both sides were allowed to comment.

Meanwhile, upon their request, the time limit for the rejoinder had been extended until 13 June 2025 in the light of the new submissions in the Reply (App 15766/2025).

In their comments, Claimant submits that no leave to amend the case were necessary as the submissions related to facts only which had already been part of the SoC. Therefore it were to be qualified as additional arguments only which had been triggered by defendant’s prior-use right defence alone. The prior-use defence were solely based on internal documents of defendants so that the defence would have been unforeseeable by Claimant. If qualified as an amendment to the case, the prerequisites of R. 263 RoP were met. Neither were defendants deprived of their possibility to defend adequately, nor could the inclusion of Threat Simulator and ThreatARMOR

in the Attacked Embodiments have been made with reasonable diligence at an earlier stage. Procedural economy would mandate to grant such leave as the consequence were superfluous additional separate proceedings.

Defendants argue to the contrary and submit that leave were necessary in the first place as the new submissions concerned additional attacked embodiments. However, such leave could not be granted as due to previous US proceedings Claimant would have had all reason to already include the submissions concerned in its SoC.

For further details of the parties' arguments reference is made to the exchanged submissions in the cited workflows.

Claimant applies

only in the event that the Court holds a differing opinion, e.g. with regard to the newly addressed Threat Simulator software and ThreatARMOR (see above, sections C.IV, C.V and D.II, D.III, i.e. see mn. (91)-(114) and mn. (169)-(188), highlighted in red in the Reply version submitted in the R. 263 RoP workstream), Claimant requests leave to amend the case.

Defendants apply

to dismiss the Claimant's Application for leave to amend its case.

REASONS FOR THE ORDER:

The final decision on whether to grant leave to amend the case according to Claimant's application is postponed until the oral hearing at the latest. Pending that decision, Defendants are given the opportunity to respond to the amendments in substance with the already extended time period (13 June 2025).

No further rounds of briefs will be allowed in response to defendant's Rejoinder as far as it addresses the before mentioned points in the present proceedings before the closure of the written procedure. The court reserves the right to either proceed under Rule 114 RoP in a further hearing, make orders under Rule 103, 334 (f), (g), (i), 104(a),(b) RoP during the Interim Procedure or to decide upon the newly addressed Threat Simulator software and ThreatARMOR in separated proceedings where further submissions may then be allowed if deemed necessary.

1. When assessing whether leave pursuant to R. 263 RoP is granted, the conflicting interests of the parties must be weighed, 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 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 or not or if they qualify as distinct

attacks. 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 had been established by the panel. The same holds true for the question whether or not the new submissions were solely triggered by the scope of the prior use rights defence in the SoD.

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 in their possibility to defend themselves by the postponement. The time limit for the Rejoinder had already been extended to allow for more time to respond to the new submissions. Even if a moderated further extension should be deemed necessary and applied for as the defendants only now have clarity to what they will have to respond in the Rejoinder, the oral hearing date (9/10 October 2025) leaves room for such moderate extension.

ORDER

The final decision on whether or not to grant leave to amend the case according to Claimant's application of 13 March 2025 and whether such leave is necessary is postponed until the oral hearing at the latest.

Issued in Mannheim on 14 May 2025

NAME AND SIGNATURE

Tochtermann
Presiding judge and judge-rapporteur

ORDER DETAILS

Order no. ORD_16635/2025 in ACTION NUMBER: ACT_41285/2024

UPC number: UPC_CFI_414/2024

Action type: Infringement Action

Related proceeding no. Application No.: 15688/2025

Application Type: Generic procedural Application