

Order
of the Court of First Instance of the Unified Patent Court
issued on 5 June 2025
concerning EP 2 839 403
(App_25532/2025)

CLAIMANT:

Fingon LLC, 57 Pond Brook Road - CT 06470 - Newtown - US,

represented by: Simon Reuter

DEFENDANTS/APPLICANTS:

- 1. Samsung Electronics GmbH,**
Frankfurter Straße 2 - 65760 - Eschborn – DE,

represented by: Henrik Timmann

- 2. Samsung Electronics France S.A.S.,**
6 Rue Fructidor - 93400 - Saint-Ouen-sur-Seine – FR,

represented by: Henrik Timmann

PATENT AT ISSUE:

European patent EP 2 839 403

PANEL/DIVISION:

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 THE PROCEEDINGS: English

BRIEF SUMMARY OF THE FACTS:

The Defendants object to the Claimant's reply in the infringement proceedings allegedly basing the infringement action on new facts without applying for leave to amend the case.

Defendants argue that the S25 models on which Claimant now relies and which were only released this year are "different products" from those attacked in the statement of claim. Moreover, the newly introduced (alleged) Trusted Applications (TAs) and their properties and alleged "permissions", also constitute an amendment of the case within the meaning of R. 263 RoP. In their opinion, the addition of a different physical product into the proceedings is equivalent to suddenly relying on completely different aspects of the product in order to argue the alleged patent infringement. These new set of factual allegations require a comprehensive analysis and assessment on the part of the Defendants. Thus, the infringement allegation now relies on completely new objects which could and should have been introduced into the proceedings with the statement of claim. Defendants are of the opinion, that the requirements of R. 263 RoP are not met.

Moreover, Defendants seek an order pursuant R. 334 (f), R. 9 (2) RoP excluding the new aspects from consideration.

In the alternative, Defendants seek an extension of the time period pursuant R. 29 (d) RoP. In their view, the period must be at least three months, so that it corresponds to the time that would have been available to Defendants to prepare their defense if Claimant had already raised its allegations in the SoC (see UPC_CoA_36/2024, APL_4881/2024, APP_12628/2024, order of 11 March 2024). Given the tremendous efforts that deem to be necessary to counter the - still extremely vague, but now even more extensive - assertions in Claimant's reply, Defendants regard a term of at least five months seeming more appropriate.

Claimant opposes the requests in its entirety.

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

Defendants request:

- I. leave to amend the case is rejected (R. 263 RoP) with respect to the introduction of the following subject matters:
 - Blockchain Trusted VM TA (BC_VM TA)
 - VisaPayTA
 - Mastercard Pay TA
 - PayPal TA
 - Samsung Pay TUI TA
 - ICCCTA
 - Device Attestation
 - Distinguished ID (DID)
 - Samsung Keymaster TA
 - WidevineTA
 - SKPMTA
 - Process Authentication TA
 - Soter64TA

- "e-fuse" called Warranty Bit
 - firmware of Samsung Galaxy S25 Ultra 5G model SM-S938B
 - firmware of Samsung Galaxy S25 model SM-S931B
- II. the subject matters mentioned in motion I above are excluded from consideration (R. 334(f) RoP; R. 9(2) RoP);
- III. in the alternative: Defendants' deadline pursuant to R. 29 (d) RoP is extended until three months after Defendants have been notified of the Chamber's decision on motions I and II.

Claimant requests:

Defendants' motions in the Request are dismissed.

In the case that the Court considers that Claimant's submissions in the Reply concerning further Trusted Applications, permissions, and device functionality, and their implementation in particular in the Samsung Galaxy S25 constitute an amendment of the case within the meaning of R. 263 RoP, Claimant hereby requests by way of precaution that the Court,

grants leave to amend the case pursuant to R. 263.1 RoP, allowing Claimant to introduce and rely upon the following additional subject matter as set out in its Reply dated May 20, 2025:

- Blockchain Trusted VM TA
- Visa Pay TA
- Mastercard Pay TA
- PayPal TA
- Samsung Pay TUI TA
- ICC TA
- Samsung Keymaster TA
- Widevine TA
- SKPM TA
- Process Authentication TA
- Soter64 TA
- Device Attestation
- Distinguished ID (DID)
- Warranty Bit ("e-fuse")
- Firmware of the Samsung Galaxy S25 Ultra 5G (SM-S938B)
- Firmware of the Samsung Galaxy S25 (SM-S931B)

REASONS FOR THE ORDER:

The decision on the request to exclude the impugned submissions from consideration is postponed until after the oral hearing, and thus transferred to the panel. In all other respects, Defendants' requests are dismissed.

1. There is no amendment to the case.

Not every new argument constitutes an “amendment of a case” requiring a party to apply for leave under R. 263 RoP. An amendment of a case occurs when the nature or scope of the dispute changes. For example, in an infringement case, this occurs if the plaintiff invokes a different patent or objects to a different product (cf. Court of Appeal, order of 21.11.2024, UPC_CoA_456/2024, UPC_CoA_456/2024, paras. 22 et seqq.).

Applying these principles, contrary to Defendants, Claimant’s reply to the statement of defence does not involve an amendment of a case. Contrary to Defendants, in its reply, Claimant did not extend its claim to previously not attacked embodiments. Rather it brought forward further illustrative examples for how the attacked embodiment allegedly works.

In its statement of claim, Claimant designates the attacked embodiment as “Samsung Knox” and “Samsung Knox platform” respectively, whereas it considers the so-called Trusted Execution Environment (TEE) and the so-called Trusted Applications (TAs) that are related thereto to be part of “Samsung Knox” and the “Knox Vault” to be one version of this TEE, whereas it considers TEE as such a specific security feature of the ARM processor cores designed by the company ARM (cf., e.g., SoC, paras. 74, 78, 82, 132, 155). In its statement of claim, Claimant illustrates the alleged mode of operation of the attacked embodiment by referring to the application “Samsung Blockchain Keystore” by way of example only (cf. SoC, para. 83 “representative application”). The infringement allegations are not restricted to particular smart phones and tablets either but relate to smartphones and tablets that implement the attacked functionalities. In this regard, the scope of the infringement actions even extends to smartphones and tablets which are placed on the market in the future (seen from the perspective of the statement of claim) as long as they implement said features.

It is well understood that Defendants are pleading that the TEE (being basically provided by the ARM TrustZone) and the security functionalities under the Samsung Knox brand have to be strictly distinguished and work independently of each other as independent different systems with no connection between them and that the TAs relate to the TEE only (cf. SoD, paras. 78 et seqq.), meaning that, in Defendants’ view, both security systems do not make use of the teaching of the patent-in-suit and cannot be viewed together. It is also well understood that, according to Defendants, the Samsung Blockchain Keystore application (running under TEE) does not make use of the patented teaching, because – besides inter alia lacking a secure zone according to the patent-in-suit – the TAs Claimant relied on do not call each other.

However, independent of whether TEE is part of the Samsung Knox brands or relates to a separate independent security system, it is clear from the outset that Claimant wishes to attack the functionalities in connection with TEE as outlined and illustrated by elaborating on Samsung Blockchain Keystore as an illustrative example only. Against this backdrop, a mere misrepresentation, if any, that the attacked functionalities are marketed under the brand name “Knox” is not decisive for determining the subject matter of the action. Moreover, the further illustrative examples of TAs outside the application Samsung Blockchain Keystore do not constitute new attacked embodiment, but are further arguments to demonstrate and prove how, in Claimant’s view, the security system with the TEE concept conceptually works referring to further examples.

The fact that the Samsung Galaxy S 25 models (Ultra 5 G model SM-S938B and model SM-S931B) analysed by Claimant for its reply were launched only this year (i.e. after the statement of claim was filed) do not constitute new attacked embodiments either because neither Claimant nor Defendants state that this mobile phone differs in its features, which are discussed with regard to the alleged infringement, from the previous ones.

2. The decision on the request to exclude the impugned submissions from consideration is postponed until after the oral hearing, and thus transferred to the panel (cf. Court of Appeal, order of 21.11.2024, UPC_CoA_456/2024, UPC_CoA_456/2024, para. 28).

At the current stage of the proceedings, it is open whether the impugned submissions are relevant. Thus, there is no need to decide at this stage whether these submissions should be disregarded. Rather, the decision is postponed until after the oral hearing, and thus is transferred to the panel. At this stage, a decision can be made taking the full picture into account.

3. Defendants' request to extend the time period pursuant to R. 29 (d) RoP is dismissed.

As outlined above, Claimant's reply does not extend the scope of the case to new embodiments. The attacked functionalities are implemented in Defendant's own products. The functionalities in question relate to few specific functionalities which, if necessary, have to be checked across the exemplary applications addressed by Claimant. Against this backdrop, Defendants did not sufficiently substantiate why the regular time period pursuant to R. 29 (d) RoP does not suffice to respond. This is all the more true if the application, which Claimant addresses, are conceptually working in the same way with regard to the attacked functionalities as Claimant alleges. In order to substantiate the request for extension of the time period it is not sufficient just to refer to abstract aspects without specifying in a specific manner that and why the internal examination of specific functionalities of applications implemented in own products for allegedly years needs so long despite the fact that Claimant's external expert, which seems to have had no access to the complete internal code and documents of Defendants, seems to have done it within the period for Claimant's reply.

ORDER:

1. The decision on the Defendant's request to exclude the impugned submissions contained in Claimant's reply to the statement of defence in the infringement proceedings from consideration is postponed until after the oral hearing, and thus transferred to the panel.
2. In all other respects, Defendants' requests are dismissed.

ORDER DETAILS

Order no. ORD_25877/2025 in ACTION NUMBER: ACT_63404/2024

UPC number: UPC_CFI_750/2024

Action type: Infringement Action

Related proceeding no. Application No.: 25532/2025

Application Type: Generic procedural Application

Issued in Mannheim on 5 June 2025

NAME AND SIGNATURE

Böttcher
Judge-rapporteur