

Procedural Order
of the Court of First Instance of the Unified Patent Court
issued on 14 October 2025
concerning EP 2 263 098 B1

CLAIMANT:

Ona Patents SL, represented by its Managing Director Raúl Diaz Morales, Carrer de Calàbria 149 En. 1, 08015 Barcelona, Spain,

represented by: Attorney-at-law Dr Christof Augenstein, Attorney-at-law Dr Benedikt Walesch, Attorney-at-law Dr Melissa Lutz, Kather Augenstein, Bahnstraße 16, 40212 Düsseldorf, Germany

Patent Attorney Dipl.-Ing. Benjamin Bubendorfer, Patent Attorney M. Sc. Andreas Rauscher, WBH Wachenhausen Patentanwälte PartGmbH, Müllerstraße 40, 80469 Munich, Germany

electronic address for service: augenstein@katheraugenstein.com

COUNTER-DEFENDANT 2:

Ekahau Oy, represented by the Board of Directors Jeremy Rossen, Brian Conrad Stewart und Ari Olavi Tourunen, Jaakonkatu 5, 00100, Helsinki, Finland

represented by: Attorney-at-law Dr Christof Augenstein, Attorney-at-law Dr Benedikt Walesch, Attorney-at-law Dr Melissa Lutz, Kather Augenstein Rechtsanwälte PartGmbH, Bahnstraße 16, 40212 Düsseldorf, Germany

Patent Attorney Dipl.-Ing. Benjamin Bubendorfer, Patent Attorney M. Sc. Andreas Rauscher, WBH Wachenhausen Patentanwälte PartGmbH, Müllerstraße 40, 80469 Munich, Germany

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DEFENDANTS:

1. Google Ireland Limited, represented by its directors Elizabeth M. Cunningham, David M. Sneddon, Vanessa Hartley, Colin Goulding, Amanda Storey, Gordon House, Barrow Street 4, Dublin 4, D04 V4X7, Republic of Ireland

2. Google Commerce Limited, Gordon House, Barrow Street, Dublin 4, D04 E5W5, Republic of Ireland

represented by: Attorney-at-law Dr Marcus Grosch, Attorney-at-law Dr Jesko Preuß, Attorney-at-law Dr Andreas Hahne, Quinn Emanuel, Hermann-Sack-Straße 3, 80331 Munich, Germany

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PATENT AT ISSUE:

European patent n° EP 2 263 098 B1

PANEL/DIVISION:

Panel of the Local Division in Düsseldorf

DECIDING JUDGES:

This order was issued by Judge Dr Thom acting as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT OF THE PROCEEDINGS: R. 35, 36 RoP

GROUND FOR ORDER

The content of Claimant's unsolicited submission of 1 September 2025 can be divided in two parts:

- 1) the translation of the main requests and the clarification, that injunctive relief is also sought for direct infringement according the auxiliary requests related to the amended form, and
 - 2) the new auxiliary request indirect infringement and the auxiliary requests relating to the amended form of the patent concerning indirect infringement.
1. Admittedly, the Claimant could have worked more carefully by directly translating its main requests and formulating the corresponding auxiliary requests regarding the amendment of the patent in its Reply when it argued their infringement. Since the interpretation of the previous statements suggested that the Claimant also sought these auxiliary requests, the Court would have clarified this at the latest during the oral hearing. This clarification is just anticipated now. Given that, the translation of the main request and the clarification of Claimant's auxiliary requests on the basis of the patent amendment concerning direct infringement are admissible. In this regard, the Defendants are not required to file a response, as this part of the submission did not alter the proceedings in terms of content.
 2. The case is totally different with respect to any of the first-time made requests concerning indirect infringement which the Claimant introduced in its 57-pages long submission. Contrary to Claimant's presentation this new requests do not serve solely to clarify and adapt the relief sought to possible outcomes of the patent proceedings. Indirect patent infringe-

ment is a different type of patent infringement with other and different requirements compared to direct infringement (Art. 26 UPCA). The Claimant is mistaken by stating it merely provides alternative legal characterization of the same underlying acts.

Whether or not a request based on indirect infringement constitutes an amendment to the case can be left open. In any case, new arguments would be necessary to substantiate the requirements of Art. 26 UPCA. However, this leads to the fact that the Claimant wrote outside of any case management regime and, in this respect, would have been obliged to file a R. 36-request first explaining why it was unable to file its brief earlier within the time period of the Reply (see UPC_CFI_733/2024, UPC_CFI_255/2025 (LD Düsseldorf), Order of 12 September 2025, TRUMPF ./ IPG Laser). The Claimant failed to do so. This is even more true as the Defendants rightly point out that they already noted in their Statement of Defence the allegation of the direct patent infringement of the mobile phones being inconclusive for the alleged realization of feature group 9.12 (controller) to the accessory devices which have not been accused by the Claimant. Therefore, the new filed requests are not admissible and are not taken into account.

ORDER:

1. The auxiliary requests indirect infringement (B.) and the auxiliary requests relating to the amended form of the patent (C.) concerning indirect infringement are not admissible and therefore are not taken into account.
2. Defendants' auxiliary request in accordance with R. 36 RoP is dismissed.
3. An interim conference will not be held. With regard to the scope of the dispute, reference is made to the reasons given in the Order of the Panel dated October 13, 2025.
4. The written procedure is closed.

Issued in Düsseldorf on 14 October 2025
Judge Dr Thom