



Mannheim Local Division
UPC_CFI_850/2024
(CCfR: UPC_CFI_421/2025)

Order
of the Court of First Instance of the Unified Patent Court
issued on 23 December 2025
concerning EP 3 905 730
(production request; R. 36, 263 RoP; R. 35 RoP)

CLAIMANT:

ZTE Corporation
ZTE Plaza, Keji Road South, Hi-Tech Industrial Park,
Nanshan District - 518057 - Shenzhen, Guangdong - CN

Represented by Dr
Thomas Lynker

DEFENDANTS/APPLICANTS:

- 1) **Samsung Electronics Co., Ltd.**
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Represented by Dr Jan
Ebersohl
- 2) **Samsung Electronics GmbH**
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Represented by Dr Jan
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5) **Samsung Electronics Benelux B.V.** Represented by Dr Jan
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6) **Samsung Electronics Romania S.R.L.** Represented by Dr Jan
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PATENT AT ISSUE:

European patent EP 3 905 730

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

SUBJECT OF THE PROCEEDINGS: Patent infringement action – Production request, requests pursuant to R. 36, 263 RoP; R. 35 RoP

BRIEF SUMMARY OF THE FACTS

By brief of 1 December 2025, Defendants requested to issue an order against themselves to produce a licence agreement with a certain third party mentioned in their request. On the same day, they further filed a request pursuant to R. 36, R. 263 RoP that relates to new developments in the licence negotiations between the parties' group of companies since their last regular brief and to future written submissions on three of their own third-party licence agreements (including the licence agreement form their production request) that Defendants intend to introduce into the proceedings at hand. By brief of 4 December 2025, Defendants filed a request to hold an interim conference.

Defendants submitted their rejoinder in the infringement proceedings and (only Defendant 1) the reply in the FRAND counterclaim proceedings on 26 September 2025 within the applicable time periods (uploaded due to technical problems in the CMS on 1 October 2025). Claimant responded to the aforementioned reply with its rejoinder in the FRAND counterclaim proceedings on 10 November 2025 within the applicable time period.

Defendants argue that they are prompted to apply for a further written submission by the material developments in the licence negotiations between the parties' group of companies since their last written submission on 26 September 2025. To this effect they elaborate on these developments and point out that this present submission does not itself constitute the further pleading applied for under R. 36 RoP in this regard. The further developments would also make it necessary to adopt the request of their FRAND counterclaim accordingly. Insofar, Defendants are of the opinion that the adoption does not constitute an amendment within the meaning of R. 263 RoP, because the FRAND counterclaim as originally filed expressly included an alternative limb by which the amount payable is pegged to the amount specified in a binding offer of Defendant 1 available at the end of the oral hearing. Their request to grant leave to amend the claim is therefore only made out of utmost precaution in the case that this should be seen differently.

Furthermore, Defendants point out that Claimant did decline to produce any of its own licence agreements with third parties, and refer to their production request of 1 September 2025 in this regard (which was dismissed on 18 September 2025). Against this backdrop, they allegedly sought the consent of their third-party license partners to disclose the relevant own licence agreements in the proceedings at hand. While two licensees have allegedly provided consent subject to certain conditions with regard to the confidentiality regime to be established, the third license partner, being asked on 15 November 2025, has withheld consent by email of 17 November 2025, so that Defendants filed the production request at hand on 1 December 2025 to enable them to orderly disclose this agreement with appropriate safeguards. In this context, the Defendants additionally request, by their aforementioned request pursuant to R. 36, R. 263 RoP of 1 December 2025, to be given leave to further elaborate in a further written pleading on the economic analysis of their aforementioned own third-party licence agreements and the implications therefrom on what is FRAND. The Defendants opine that, while these own licence agreements are not suitable for a direct comparative license analysis, they can nevertheless at least be taken into account for a plausibility check as to whether the respective licence rates offered in the licence negotiations at hand are in line with the standard market practice and therefore fair and reasonable.

Claimant opposes the production request and the request pursuant to R. 36 RoP, as far as it relates to submissions on the own licence agreements of Defendants with third parties, the production of which is announced by Defendants. They argue that the production of Defendants' own licence agreements and any further submissions thereon are belated at the current stage of the proceedings.

Moreover, Claimant also opposes the request pursuant to R. 36 RoP, as far as it relates to new developments in the licence negotiations between the parties' group of companies. Claimant opines that it would not be expedient for the proceedings to allow Defendants to present such new developments in a further written pleading in the written procedure pursuant to R. 36 RoP, as the ongoing licence negotiations would continuously create new facts for both parties on an ongoing basis. Claimant would then also be entitled to respond in writing to such a further written pleading by Defendants. This would lead to a "ping-pong"-effect of reciprocal R. 36 RoP briefs.

For further details, reference is made to the briefs.

Defendants request in their brief of 1 December 2025 regarding R. 36, R. 263 RoP:

pursuant to R. 36 RoP that Defendants be allowed to file a further written pleading concerning Defendants' FRAND defense within a time period to be specified by the Court,

and, in addition (only Defendant 1)

leave to amend the relief sought in the FRAND Counterclaim filed on 19 May 2025 (App_22286/2025) pursuant to R. 263.1 RoP as detailed sub B of the respective brief of 1 December 2025.

Defendants request in their additional brief of 1 December 2025 regarding their production request:

that Defendants be ordered pursuant to Art. 43 UPCA, R. 101, 111 and 331 et al. RoP to produce the license agreement specified in the request.

Defendants further request in their further brief of 4 December 2025 pursuant to R. 9, R. 105 RoP

that an interim conference be convened and that the interim conference be held in Court (R. 105.2 RoP) or, in the alternative, by telephone conference or video conference (R. 105.1 RoP).

Claimant requests:

- I. Defendants' production request of 1 December 2025 be dismissed.
- II. Defendants' request pursuant to R.36 RoP of 1 December 2025 be dismissed.

By order of 2 December 2025, the judge-rapporteur informed the parties that, with regard to new developments in their licence negotiations since their respective last regular brief in the written procedure, it could be preferable to give both sides, in the interim procedure shortly before the oral hearing, the opportunity to comment on those developments instead of extending the written procedure in accordance with any new development in the negotiations. The Defendants welcomed the court's proposal, the Claimant left it to the court's discretion.

REASONS FOR THE ORDER

I. Defendants' requests to issue an order against themselves to produce their own licence agreement with a certain third party and to allow them to elaborate in this licence agreement and two others of their own licence agreements in the written procedure under R. 36 RoP is dismissed, because the requests are late filed.

Defendants were not allowed to wait for whether Claimant will produce own licence agreements with third parties if they want to rely on implications from their own licence agreements. Rather, they were obliged to produce these licence agreements and to make their submissions on them at an early stage of the proceedings. Similarly, where necessary, they were obliged to file any production request regarding such licence agreements at an early stage. This applies regardless of whether they want to rely on these licence agreements for a comparative licence analysis or only for a plausibility check as to whether their licence offer is FRAND and Claimant's licence offer is not. The front-loaded procedure requires the parties to make their submissions at an early stage (cf. for details, LD Mannheim, order of 3 September 2025, UPC_CFI_219/2023, Panasonic v

Xiaomi). In the case at hand, however, the Defendants filed their requests only on 1 December 2025, more than two months after their rejoinder in the infringement proceedings and the reply in the FRAND counterclaim proceedings. The remaining time period until the oral hearing does not automatically justify extending the written procedure. This is all the more true, as the oral hearing in the case at hand is already foreseen for 17 to 19 March 2025.

Even if Defendants were allowed to wait for whether Claimant will produce its licence agreements with third parties, they would have been obliged to submit their own licence agreements and, where necessary, file a respective production request immediately after the receipt of the Reply in the infringement proceedings at the latest, because it was clear by then that Claimant is not prepared to produce its own licence agreements, because it considers them to be not relevant. Even if Defendants were allowed to wait for the outcome of their request to order Claimant to produce its licence agreement with a certain third party, which was dismissed on 18 September 2025, they would have been obliged to make their submissions on their own licence agreements and file their respective requests immediately thereafter. In order to be prepared for this, they had to contact their respective licensees well in advance.

The fact that the licence agreement of the production request and the two further licence agreements are already submitted in parallel national proceedings and therefore known to the Claimant does not alter the result. The decisive factor is at what point in the present proceedings the submission on the license agreements in question is made and the production request is submitted.

As far as Claimant may further imply that the licence agreements in question should have been introduced in the out-of-court negotiation between the parties at an earlier stage, if Defendants consider them to be relevant, this could be left open at this stage of the proceedings. The order at hand only deals with the procedural requests regarding a production order and R. 36 RoP.

II. The request pursuant to R. 36 RoP regarding new developments in the licence negotiation since Defendants' last brief in this regard is also dismissed.

On a regular basis, license negotiations proceed independently of the time periods set out in the RoP. However, this does in principle not justify to allow the parties further written pleadings pursuant to R. 36 RoP, thereby extending the written procedure timewise. Otherwise, the written procedure will never end, if the parties continue their licence negotiations. Rather, it is sufficient to give both parties, in the interim procedure shortly before the oral hearing, the opportunity to inform the court in writing on the new developments since their respective last regular brief in this regard. The panel can then decide at the latest in its decision on the merits of the case whether and to what extent the new submissions are to be admitted in the proceedings.

As a rule, 30 pages are sufficient for such additional briefs updating the case before the oral hearing. If there have been significant new developments in individual cases that require further pages, the parties may consult out-of-court on increasing the number of pages and apply accordingly for an increase in due course, thereby providing a meaningful justification.

A period of two weeks prior to the oral hearing should generally be sufficient and appropriate for filing the briefs on the new developments (unless future experience with FRAND cases before the UPC provides better insights). If, again in individual cases, significant further events occur between the expiry of the aforementioned time period and the oral hearing, each party is free to present them and request that they be admitted to the proceedings.

III. The decision on the admissibility of the latest and any further adjustment of the FRAND counterclaim to new developments in the licence negotiations between the parties is postponed until after the oral hearing. Only then will it be clear whether the current adjustment is relevant.

IV. Given the tight schedule of the LD Mannheim with oral hearings until March 2026, an interim conference is currently not possible and not planned. Instead, as is customary at the Local Division Mannheim, the parties will receive a notice in good time before the oral hearing, setting out points, which, in the preliminary view of the judge-rapporteur, may be the focus of the oral hearing. Such notice serves the purpose to facilitate the preparation of the oral hearing. It does not limit the right of the parties to address further points in the course of the oral hearing, which they wish to discuss.

ORDER

- I. The requests of Defendants dated 1 December 2025 to allow them further written pleadings pursuant to R. 36 RoP are dismissed.
- II. The request of Defendants dated 1 December 2025 to issue a production order against themselves regarding the licence agreement with the third party specified in their production request is dismissed.
- III. The parties are informed that the judge-rapporteur intends to close the written procedure after 30 December 2025 (R. 35 (a) RoP). At the current stage, no (oral) interim conference is planned.
- IV. Both parties may submit an additional written brief in the interim procedure until 3 March 2026, which shall be strictly limited to new developments in the licence negotiations between the parties' group of companies since the last brief of the respective side in this regard. Such additional brief shall not exceed 30 pages. The font size shall not be smaller than 12 points. The panel will finally decide at the latest in its decision on the merits of the case whether and to what extent the additional submissions are to be admitted in the proceedings.
- V. The decision on the admissibility of the latest and any further adjustment of the FRAND counterclaim to new developments in the licence negotiation between the parties is postponed until after the oral hearing.

Issued in Mannheim on 23 December 2025

NAME AND SIGNATURE

Böttcher
Judge-rapporteur