

**Order**  
**of the Court of First Instance of the Unified Patent Court**  
**issued on 13 January 2026**  
**concerning EP 3 905 730**  
**(R. 262A RoP, production request, R. 36 RoP, closure of the written procedure)**

**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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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: infringement action – Request pursuant to R. 262A RoP; production request; request pursuant to R. 36 RoP; closure of the written procedure

BRIEF SUMMARY OF THE FACTS

By brief of 30 December 2025, Defendants (hereinafter referred to as "Samsung") requested that - in the event that Claimant's (hereinafter referred to as "ZTE") submissions regarding the [...] in the Rejoinder to the FRAND counterclaim are not rejected as belated - they themselves be ordered to produce an own licence agreement with a certain third party mentioned in the request and be permitted, pursuant to R. 36 RoP, to elaborate on this licence agreement in order to refute ZTE's arguments based on the [...]. On the same day, Samsung further filed a request under R. 262A RoP to protect information relating to the licence agreement in question.

Samsung argues that ZTE, for the first time in the present proceedings, refers to the published rate of the [...] to justify the alleged FRAND conformity of their offer without providing any explanation why this argument was not represented at an earlier stage of the proceedings.

In the alternative, if ZTE'S submissions in question are not rejected as belated, Samsung opines that their request for a further written pleading and their production request regarding their licence agreement in question should be granted to ensure due process and Samsung's right to be heard. In Samsung's view, the licence agreement in question that covers a part of the patents of the [...] would show that the published headline rate of the [...] is far from being realized in practice and has not been accepted in the market.

Samsung is of the opinion that the information regarding the licence agreement in question is confidential information within the meaning of R. 262A RoP, also insofar as it is already disclosed in their production request.

In their brief of 9 January 2026, Samsung informed the court that their licensee in question consented to the production of the licence agreement in question, provided the confidentiality measure as requested are granted. Under this condition, the production request would not be required anymore.

ZTE opposes the production request and the request under R. 36 RoP. In ZTE's opinion, the production of the licence agreement and any submissions thereon are on the one hand belated and on the other hand unfit to justify Samsung's non-FRAND position and must therefore be dismissed. ZTE asserts that Samsung knows ZTE's argument regarding the [...] from an oral hearing in a parallel proceeding and, at the latest, from a written pleading of ZTE in a parallel proceeding on 12 September 2025. ZTE opines that the requests at hand are a pure procedural tactical move of Samsung in order to further delay the proceedings.

With regard to the confidentiality request, ZTE does not question the confidentiality of the information to be protected. However, ZTE points out that the linking of the three natural persons, who are accepted by Samsung for the access to the confidential information, with the conjunction "or" instead of "and" in the operative part of their request under R. 262A RoP is an obvious clerical error, because it is clear from the rest of the application that three natural persons are to have access on ZTE's side. Anything else would also be unjustified. In addition, ZTE requests that access rights be extended to

- ZTE's external economic expert and his internal economic consultants and assistants, and
- ZTE's authorized UPC representatives and ZTE's appointed legal representatives in the parallel proceedings between the parties and their group companies before the UPC and German courts, namely those of the law firms Taliens and Commeo, and their internal assistants.

With regard to its appointed legal representatives in other proceedings and its external economic expert, ZTE argues that Samsung's narrower request in the proceedings at hand that only designates authorized UPC representatives and their internal assistants as external personnel for the access would contradict their own requests in parallel proceedings before the Regional Court Munich I. In their view, ZTE would be significantly impaired if their external expert who has already provided several expert opinions in the present litigation regarding the parties' offers and counteroffers was denied access to the produced licence agreement relevant from Samsungs' point of view, while there would be no such access restrictions for Samsung's own external expert.

For further details and the requests, reference is made to the parties' brief.

REASONS FOR THE ORDER:

Some of the requests are granted, some are rejected, and some are referred to the panel for a decision:

1. The (implicit) request to disregard ZTE's submissions regarding the [...] as belated is transferred to the panel and postponed until after the oral hearing at the latest.

The assessment, whether ZTE's submissions on the [...] and any conclusions drawn therefrom are relevant to the decision in the present case and whether they are late filed and therefore to be disregarded, requires an in-depth analysis. As far as the first instance is concerned, the assessment can only be made with certainty at the end of the oral hearing. The judge-rapporteur therefore exercises its discretion (cf. CoA, order dated 24 September 2024, UPC\_CoA\_298/2024, UPC\_CoA\_299/2024, UPC\_CoA\_300/2024, para. 54) to postpone the decision on these issues until after the oral hearing at the latest.

2. Since the ZTE's submissions on the [...] are not rejected at this stage of the proceedings, Samsung's production request and Samsung's request under R. 36 RoP, which are filed for this case, have to be decided upon.

a) Samsung's request under R. 36 RoP is rejected. There is no reason apparent why Samsung's right to be heard necessitates extending the written procedure in the case at hand. Rather, Samsung can still be granted a right to be heard in the interim procedure, if necessary. This applies all the more in the present proceedings, in which the oral hearing is already scheduled to take place in approximately two months, so that the conclusion of the written proceedings must not be delayed.

b) Samsung is provisionally granted the opportunity to respond in writing to the [...] in the interim procedure until 26 January 2026. The panel will then decide on the final admission of this submission at the latest after the oral hearing.

Whether to permit Samsung a response in writing to the ZTE's submissions on the [...] depends on whether ZTE's submissions in this regard are to be rejected. As discussed above, this will be decided later by the panel. Moreover, the assessment, whether ZTE's submissions on the [...] necessitate a response of Samsung in writing, also requires an in-depth analysis and, as far as the first instance is concerned, can only be made with certainty at the end of the oral hearing. In order not to delay the proceedings and to be prepared for all eventualities, the judge-rapporteur therefore exercises its discretion to provisionally allow Samsung to respond to ZTE's submissions on the [...] and to refer the decision on a final admission to the panel that is already deciding on the primary question of the admission of ZTE's submissions on the [...]. The panel will thus decide on all related questions at the latest after the oral hearing.

The preliminary admission includes the preliminary permission to elaborate on the third-party licence agreement of Samsung in this context. However, the provisionally admitted submission must be strictly limited to the assessment of the [...]. Submissions assessing the FRAND conformity

of Samsung's own offers or ZTE's offers in general in the light of the licence agreement in question are expressly not covered by the provisional admission. If Samsung intended to use the third-party licence agreement in question for a general FRAND analysis of its own offers or ZTE's offers, it should have made such analysis at an earlier stage of this proceeding.

3. The confidentiality protection pursuant to R. 262A RoP requested for the production request and envisaged for the third-party licence agreement in question is granted only in part. In this regard, the order is based on R. 262A RoP.

a) The information to be protected is confidential information belonging to Samsung and to its licensee. Taking the circumstances of the individual case and the interests of the parties involved into account, it is justified to protect said information by measures pursuant to R. 262A RoP.

b) Taking the circumstances of the individual case and the interests of the parties involved into account once again, the order at hand is justified.

The confidential information regarding the licence agreement of Samsung with a third party is highly confidential, especially since the interests of the licensee have to be taken into account. It is therefore justified to restrict the access to this type of information to certain persons on ZTE's side. Furthermore, it is justified, by imposing confidentiality obligations on these persons, to ensure that the order is kept confidential from unauthorised persons and is used only for the present proceedings. In this respect, the interests of Samsung and its licensees in protecting the confidential information in question outweigh ZTE's interests in an unrestricted or less restricted access to the information.

ZTE rightfully assumes that the Samsung's confidentiality request aims at granting access to all three of the natural persons of ZTE mentioned therein and that the conjunction "or" instead of "and" is a clerical error, given the remaining content of the request. Apart from that, access to more than one natural person of ZTE is necessary in order to enable consultations between employees of ZTE and to make provisions in the event of absences, for example due to vacation or illness, especially since more than one company of the ZTE Group is involved in parallel proceedings before the LD Mannheim. There are no concerns regarding the reliability and suitability of these three individuals, especially since Samsung proposed them itself and they are already members of the confidentiality club already established in the present proceedings.

The external economic expert and his internal economic consultants and assistants must also be given access. Samsung intends to compare the [...] with the rate of the third-party license agreement in question. In the absence of any pointer to the opposite, ZTE needs the assistance of its external economic expert in order to assess the conclusion drawn by Samsung in this regard. Licence rates may need to be made comparable through economic calculations before comparison. In order to scrutinize whether and to what extent this is necessary in the present case, ZTE must be able to rely on its external expert and his internal team who are already involved in the proceedings at hand. Samsung does not claim that its own external expert would also have no access. There are no concerns regarding the reliability and suitability of ZTE's external expert and his internal team, especially since they are already members of the confidentiality club already established in the present proceedings.

Finally, there are no concerns that UPC representatives who represent ZTE in other parallel proceedings between the parties' group of companies before the UPC or German national courts are also granted access. However, such access has to be strictly restricted to registered UPC

representatives. Only UPC representatives are additionally bound by the rule of conduct for UPC representatives (cf. R. 290.2 RoP) and can be additionally sanctioned in this regard, if they violate their confidentiality obligation. Such violation would also constitute a violation of the general obligations of UPC representatives enshrined in the rules of conduct and could cast doubt on their suitability and reliability needed to participate in the proceedings (cf. R. 291 RoP). Moreover, ZTE could also appoint its appointed legal representatives from the national German proceedings, who are registered UPC representatives, as additional representatives in the proceedings at hand in order to achieve the same effect with regard to access.

For the avoidance of doubt, the UPC representatives, who are representing ZTE in national German proceedings and given access by this order, are not allowed to introduce confidential information from the proceedings at hand, which they know exclusively from the proceedings at hand (if any), into national German proceedings.

c) The protection also covers the confidential information if it should be discussed in an oral hearing or repeated in a decision on the merits. A decision on the further requests 5 to 7 will be made in the respective situation. The exclusion of the public and unauthorised persons from an oral hearing shall be announced at the relevant oral hearing if the confidential information is to be discussed there. Any request pursuant to R. 262.2 RoP will also be dealt with later, should the underlying situation arise.

However, it should be noted that the protection relates to the specific information only. Therefore, in particular, the abstract FRAND discussion will take place publicly.

Only if specific circumstances that are the subject of the R. 262A RoP order are affected will the public be excluded. The same applies to the reasoning in the decision on the merits in this regard, if any. If there is a need for discussion on this matter in the oral hearing, a non-public discussion will be held on whether and to what extent the public should be excluded.

4. According to its explanations, Samsung requires the license agreement in question in order to provide the intended response to ZTE's submissions on the [...]. Since the consent of Samsung's third-party licensee to the submission of the licence agreement in the proceedings at hand is tied to the granting of the confidentiality regime requested by Samsung for its production request and this confidentiality regime is not established in full by this order, the production request has not become void and has to be decided.

The judge-rapporteur exercises his discretion to grant Samsungs' request to issue an order against itself to produce the licence agreement in question.

This is based on the principles as set out in LD Mannheim, order of 30 April 2024, UPC\_CFI\_218/2023, Panasonic v. Xiaomi et al. There are no reasons apparent that would preclude the production in the case at hand, in particular not in the light of the interests of the licensees concerned. The licence agreement concerned is protected by the confidentiality regime established by this order. As discussed above, this confidentiality regime is both appropriate and sufficient. It does not deviate in a decisive way from the confidentiality regime accepted by Samsung's third-party licensee. There is no indication that ZTE's external economic expert and his internal team do not have the required suitability and reliability to ensure that they do not misuse the information in question and treat it as strictly confidential. The same applies to registered UPC representatives who represent ZTE in national German proceedings.

However, Samsung is given the opportunity to withdraw its request to issue a production order against itself in order to avoid the production of the licence agreement in question if they wish to do so. Therefore, the production order is made subject to a condition in this regard.

ORDER

- I. Samsung's request pursuant to R. 36 RoP is dismissed.
- II. Samsung is provisionally granted the opportunity to respond in writing to the [...] until **27 January 2026**. The provisionally admitted submission must be strictly limited to the assessment of the [...]. Submissions assessing the FRAND conformity of Samsung's own offer or ZTE's offer in general are expressly not covered by the provisional admission.
- III. The decision on the final admission of the submission provisionally permitted pursuant to paragraph II. above and the decision on whether to reject ZTE's submissions on the [...] are referred to the panel and therefore postponed until after the oral hearing at the latest.
- IV. At its own request, Samsung is ordered to produce, in the proceedings at hand, the following license agreement until **27 January 2026**:  
[...].

The order to produce the aforementioned licence agreement is subject to the condition that Samsung does not declare, by a written brief, until **27 January 2026** that they are withdrawing their request to issue a production order against themselves in this regard.

- V. The agreement identified in paragraph I. (if submitted) and any (not publicly known) information included or derived from it (Confidential Information) including the information contained in Samsung's production request of 30 December 2025 in this regard (highlighted – as a working aid – in blue), shall be treated as strictly confidential (R. 262A RoP) and access thereto shall be restricted exclusively to:
  - a) ZTE's authorized UPC representatives and ZTE's appointed legal representatives in the parallel proceedings between the parties and their group companies before the UPC and German national courts, namely those of the law firms Taliens and Commeo, as far as they are registered UPC representatives, and their internal assistants;
  - b) the following individuals on the side of ZTE  
[...]
  - c) ZTE's external economic expert [...] from the economic expert firm [...] and his internal economic consultants and assistants.
- VI. The confidential information referred to in paragraph V. shall be treated as such by ZTE's representatives and their internal assistants and ZTE's employees and economic experts referred to in paragraph V. Such information shall not be used or disclosed outside of these court proceedings, except to the extent that it has come to the knowledge of the receiving party outside of these proceedings, provided that it has been obtained by the receiving

party on a non-confidential basis from a source other than Samsung or their affiliates, provided that such source is not bound by a confidentiality agreement with or other obligation of secrecy with Samsung or their affiliates.

This obligation shall also apply to ZTE.

The foregoing persons shall also be under an obligation to ZTE to maintain the confidentiality of the said information contained in the unredacted and strictly confidential version of the foregoing documents.

This obligation of confidentiality shall continue to apply after the termination of these proceedings.

- VII. In the event of a culpable breach of this order, the court may impose a periodic penalty payment for each violation which will be determined having regard to the circumstances of the individual breach.
- VIII. To the extent that it is not already covered by earlier confidentiality orders pursuant to R. 262A RoP, the information regarding the FRAND discussion in Samsungs' brief dated 30 December 2025 containing the production request and the request pursuant to R. 36 RoP (as highlighted – as working aid – in grey) shall be treated as confidential (R. 262A RoP) by the parties.
- IX. For avoidance of doubt, for the period from its issuance, the aforementioned confidentiality order supersedes the preliminary confidentiality order of 30 December 2025.
- X. In all other respects, the requests of the parties are dismissed.
- XI. The written procedure is hereby closed. As already announced and explained (cf. order of 23 December 2025), there will be no oral interim conference.

Issued in Mannheim on 13 January 2026

NAME AND SIGNATURE

Böttcher  
Judge-rapporteur