



Mannheim Local Division
UPC_CFI_847/2024
(CCfR: UPC_CFI_442/2025)

Order
of the Court of First Instance of the Unified Patent Court
issued on 21 October 2026
concerning EP 3 577 874
(preparation oral hearing)

Claimant

ZTE Corporation

ZTE Plaze, Keji Road South - 518057 - Hi-Tech Industrial Park, Nanshan District, Shenzhen, Guangong – CN

represented by: Georg Rauh

Defendants

- 1) **Samsung Electronics Co, Ltd**
129, Samsung-ro, 16677, Yeongtong-gu, Suwon-si, Gyeonggi-do , KR

- 2) **Samsung Electronics GmbH**
Frankfurter Straße 2, 65760, Eschborn, DE

- 3) **Samsung Electronics Nordic AB**
Torshamnsgatan 27, 164 40, Kista, SE

- 4) **Samsung Electronics France**
6 rue Fructidor, 93484, CS 2003, Saint-Ouen Cedex, FR
- 5) **Samsung Electronics Italia S.p.A.**
via Mike Bongiorno n. 9 - 20124 - Milano - IT
- 6) **Samsung Electronics Benelux B.V.**
Evert van de Beekstraat 310 - 1118 - CX Schiphol - NL
- 7) **Samsung-Electrónica Portuguesa, Unipessoal, Lda**
Lagoas Park, Edifício 5B – Piso 4, 2740-245, Porto Salvo, PT
- 8) **Samsung Electronics Romania S.R.L.**
Platinum Business and Convention Center, sos. București-Ploiești, nr. 172-176, 013686, Clădirea A, etaj 5, sector 1, București, RO

represented by: Jan Ebersohl

PATENT AT ISSUE:

European patent EP 3 577 874

PANEL/DIVISION:

Panel of the Local Division in Mannheim

DECIDING JUDGE:

This order is issued by the legally qualified judge Sender acting as judge-rapporteur after consultation with the Presiding Judge and the technically qualified Judge (TQJ).

LANGUAGE OF PROCEEDINGS: English

SUBJECT OF THE PROCEEDINGS: Patent infringement action and Counterclaim for revocation – preparation of the oral hearing

To ensure an efficient exchange of arguments during the oral hearing, the following preliminary remarks and questions are submitted. They highlight several key points, which, in the preliminary opinion of the Judge-rapporteur (JR), after consultation with the Presiding Judge and the TQJ, could be relevant in the oral hearing (without any prejudice to whether underlying written submissions of the parties are to be admitted to the proceedings). The following preliminary remarks and questions are open for further discussion, do not claim to be exhaustive and are not intended to prevent the parties from raising other points and questions that they consider relevant.

Nevertheless, the parties are informed that, having considered the technical aspects of the dispute at hand and following consultation with the Presiding Judge and the TQJ, the patent-in-suit is likely to be infringed and valid. This preliminary assessment is communicated at this stage of the proceedings so that the parties can take it into account so as to arrive at an amicable solution of their dispute and to avoid further escalation of their dispute, which is already pending in different jurisdictions since a considerable time – even though multiple courts in the meantime rendered decisions, include FRAND-rate setting, and/or settlement proposals.

Regarding the remarks and questions listed in sections III-VI below, and any other points they wish to discuss, the parties are requested to provide a brief summary of their main arguments during the oral hearing. The oral hearing does not serve as an opportunity to comprehensively repeat the content of the written submissions.

In addition, this order serves the purpose of concluding the interim procedure. In the case at hand, an interim conference is not held.

I. Confirmation of the oral hearing dates/Attendance/Video conference

First, the oral hearing dates already set in the order of 17 July 2026 are confirmed again and the parties are summoned again:

Wednesday, 18 November 2026, and Thursday, 19 November 2026, starting at 09.00 CET each day, Courtroom III, Local Division Mannheim, Schubertstraße 11, 68165 Mannheim.

On these days, the infringement action and the counterclaim for revocation will be heard. The first day will be dedicated to the technical aspects of the dispute and the second day, if needed, will be dedicated to the FRAND-Defence.

Should the parties wish the arrangement of a video link for participants who are not present on site, they are requested to contact the clerks of the Local Division Mannheim by email (contact_mannheim.loc@unifiedpatentcourt.org, opposite side copied in cc) by **30 October 2026** for technical details.

In order to facilitate the verification of attendance at the oral hearing, the parties' representatives are requested to inform the presiding judge, the judge-rapporteur and the clerks of the Local Division Mannheim by a comprehensive email (opposite side copied in cc) by **9 November 2026** of the name and function of the persons who will be attending the oral hearing on behalf of their parties, thereby distinguishing between attendance on site and attendance via video link (if any).

II. Requests

Infringement action (“IA”)

- **Request No. IV.2:** Preliminarily, the JR does not consider Claimant’s request No. IV.2 to be a request under Art. 68 UPCA in conjunction with R. 131.1 (c), R. 141 RoP. Rather, the JR understands it as a request for the production of accounts/information with supporting documents under Art. 67 UPCA and Art. 68 (3) (a) (b) UPCA (in conjunction with R. 191 sentence 1 alternative 2 RoP) respectively (cf. LD Mannheim, decision of 22 November 2024, UPC_CFI_210/2023, Panasonic v Oppo, para. 179; LD Düsseldorf, decision of 3 July 2024, UPC_CFI_7/2023, Kaldewei v. Bette, GRUR-RS 2024, 17732 paras. 136 et seqq.; LD Mannheim, decision of 11 March 2025, Hurom v NUC, para. 103), additionally with the right to have the accounts verified and confirmed by a sworn auditor (as evidence of Defendants’ compliance, cf. CoA, order of 14 October 2025, UPC_CoA_699/2024, Kodak v Fujifilm, para. 44).

Counterclaim for revocation (“CCfR”)

- The territorial scope of CCfR is not explicitly specified in the wording of the respective request. Nevertheless, in the absence of any pointer to the opposite, the JR preliminarily assumes that the territorial scope of the CCfR corresponds to that of the IA (Finland, France, Germany, Italy, the Netherlands, Portugal, Romania and Sweden). Defendants motivate the value in dispute by referring to the IA and do not elaborate on the patent situation in other EPC/UPCA member states. Otherwise, for reasons of specificity, Defendants would be obliged to specifically name possible further member states concerned and provide relevant excerpts from the respective national registries demonstrating that the Claimant is the registered proprietor and that the respective national part is or was in force in further EPC/UPCA member states. Should the CCfR, contrary to the JR’s preliminary view, even be directed against national parts in relation to non-UPCA but EPC member states, the principles set out by the ECJ in *BSH Hausgeräte* would lead to international jurisdiction being rejected insofar.

III. Claim construction

Regarding claim construction, the following points are worth discussing. Since there appears to be no relevant difference between claim 1 and 11 concerning the interpretation of the relevant features, the features cited below refer to the feature breakdown of claim 1 as used by both parties.

Feature 1.3 – Intermediate TBS

- Feature 1.3 (in conjunction with features 1.2 and 1.5) does not appear to be limited to calculating a single intermediate TBS (and determining a single final TBS) for multiple transport blocks, i.e. at least two. Accordingly, the claimed subject matter could also encompass calculating one intermediate TBS for a single transport block to be transmitted.
- There seems to be no basis in claim 1 for the assumption that the intermediate TBS must be an integer number.

Feature 1.4 – Modified TBS

- According to feature 1.4, the modification step is performed if the calculated intermediate TBS is smaller than a given threshold. Therefore, the wireless communication device must “know” the given threshold, compare the calculated intermediate TBS to it and modify the intermediate TBS if it is smaller than the given threshold.
- However, claim 1 – at least – does not seem to exclude the possibility of modifying an intermediate TBS in different ways in other scenarios. For instance, an intermediate TBS that is equal to or greater than the given threshold may be modified differently to one that lies below it.
- Would claim 1 also encompass embodiments in which all intermediate TBSs (smaller than, equal to or greater than the given threshold) are modified in exactly the same (technical) way?
- Is quantisation excluded when performing the modification step according to feature 1.4?

Feature 1.5 – Final TBS

- Feature 1.5 appears to relate to a “table-based” determination of the suitable final TBS. This could presuppose that the quantized set of TBSs is predefined and – *at least* – accessible for the wireless communication device, e.g. provided as a table which is stored in a UE.

IV. Validity

The focus of the discussion shall be on novelty and inventive step, and particularly on features 1.4 and 1.5.

Novelty

ZP1

- ZP1 does not appear to disclose feature 1.4, since applying the scaling factor β does not seem to be related to comparing an intermediate TBS with a given threshold. Rather, it seems to be triggered by a change in the modulation order.
- The same seems to be true for feature 1.5, since the step defined by this feature only relates to a modified TBS, as defined by feature 1.4 (which is most likely not disclosed). Furthermore, ZP1 does not appear to disclose how to determine a final TBS based on a quantized set of TBSs, but rather suggests a formula-based calculation.

Inventive step

ZP2 alone

- ZP2 alone – at least – does not to disclose feature 1.5. Firstly, as Defendants correctly acknowledge, the disclosed formula

$$TBS_{\text{final}} = 8 \times \left\lceil \frac{TBS_{\text{quantized}}}{8} \right\rceil - L_{\text{TB}}$$

does not guarantee that TBS_{final} is always greater than or equal to the modified $TBS_{\text{quantized}}$. Moreover, ZP2 does not suggest using a table-based approach to determine the final TBS as an alternative to the disclosed formula-based approach, let alone one that corresponds with the requirements of feature 1.5. Against this background, ZP2 alone is unlikely to render the claimed solution obvious.

ZP3 alone

- The same seems to be true for ZP3, which does not disclose features 1.4 and 1.5. Also in this regard, Defendants did not conclusively demonstrate why it should have been obvious to implement the teaching of features 1.4 and 1.5 of the patent-in-suit into the teaching of ZP3. ZP3 neither discloses any comparison to a threshold for the quantization from X to Y nor a determination of a final TBS from a quantized set; rather, it uses a formula-based approach to calculate a final TBS.

Admissibility of the combinations invoked in the Reply CCfR

- In the present case, Defendants may not be permitted under R. 263 RoP to base their validity attacks regarding inventive step on the combinations that they asserted in their Reply CCfR for the first time. Since the question of whether a prior art document renders a claimed solution obvious in itself, in principle, differs materially from the question of whether a skilled person would be incentivised to combine a certain document with another/other prior art document(s), introducing such combinations for the first time in the Reply CCfR may constitute an amendment (extension) of the case in comparison to the subject matter of the CCfR, in which attacks on inventive step were solely based on single documents.
- Claimant argued from the outset that feature 1.5 required a predefined quantized set of TBSs, for instance in the form of a table stored in a UE. Accordingly, Defendants could reasonably have been expected to conclusively demonstrate already in their CCfR that implementing such a predefined set was obvious starting from ZP2 or ZP3 in the light of further prior art documents.

V. Infringement

- The question of infringement seems to be, in principle, a question of claim construction. The patent-in-suit is most likely infringed under Claimant's preferred claim construction.
- Request No. II.2 (injunction regarding indirect infringement) seems to contain a general ban. Does this require a special justification in the case of an indirect infringement?
- Does a declaration pursuant request No. I require a legitimate interest?

VI. FRAND-Defence

The parties have already extensively discussed the FRAND related aspects of this dispute during the oral hearing before the LD Mannheim in case UPC_CFI_850/2024. During this hearing the court expressed its preliminary views namely on [...]. Thereafter, the LD Mannheim made a settlement proposal, which did not lead to a solution of the conflict. In the additional briefs, allowed in these proceedings to update the panel on if and how the negotiations continued and which other events of importance took place, both parties analyse foreign court decisions, namely the FRAND rate setting decision of the UK High Court [2026] EWHC 2235 (Pat), which Defendants defend and which is criticised by Claimant. Even though the parties and the UK High Court accepts that Defendants will be the net payer in a future cross-licence scenario (cf [2026] EWHC 999 (Pat) para 161 : “First, Samsung points to the fact that it is common ground between the parties that it is the value of ZTE’s portfolio to Samsung that will largely drive the lump sum under the CDL, as Samsung will be the net payer due to its sales of mobile phones being much higher than those of ZTE.”), it is publicly known that Defendants meanwhile continued their active litigation campaign in the UK and had one of the asserted patents found valid without essentiality being contested ([2026] EWHC 2235 (Pat)).

Against this background it may be held against Defendants that they, according to Claimant, apparently still [...], even though they defend this decision. Instead, it is the understanding of the Court that Defendant [...]. It appears to be questionable and will have to be discussed in the oral hearing, if such behaviour can be assumed to be compliant with the conduct of a willing licensee working constructively towards the conclusion of a FRAND license agreement.

VII. Value in dispute

The value in dispute for the infringement action and the counterclaim for revocation is set to 8 million Euro in each case. Given the territorial scope of both the infringement action and counterclaim for revocation (see above under II) concerning the eight UPCA member states France, Finland, Germany, Italy, the Netherlands, Portugal, Romania, and Sweden the amount of 4 million Euro indicated by the parties for the infringement action and the counterclaim for revocation respectively seems to be too low, taking into account the size of the market concerned and the products in question. An amount of 8 million Euro seems more appropriate.

The parties may comment on the value in dispute during the oral hearing. As always, the panel will decide finally on the value in dispute in the decision on the merits.

VIII. Upload of documents

If the party representatives intend to present diagrams, figures, overviews or other graphic aids in the course of their statements regarding the technical part and/or the FRAND part of the proceedings at the oral hearing for the purpose of explanation, they are required to upload these in the CMS in advance. The content of such presentations must be strictly limited to the content of the exchanged written pleadings and exhibits. This does not imply approval of any submission that goes beyond the regular written pleadings and their permissible content, if any. In particular, this does not approve any previous written submissions whose admissibility has not yet been decided or whose late submission has been objected to.

The person(s) presenting the slides must have access to the video conference and share the presentation via it (if set up; cf. section I).

IX. Estimate of costs

Currently, there is no need for an estimate of costs as the parties have agreed upon a lumpsum for the recoverable costs of the proceedings (IA and CCfR). However, the parties may indicate whether their agreement is to be amended in the light of the raised value in dispute (section VII) until 9 November 2026.

X. Time periods/Closure Interim procedure

The parties may respond to section II by making amendments or stating clarifications to the requests concerned **until 9 November 2026**. The panel will decide on the permissibility of any amendment/clarification in the decision on the merits.

Within the same time limit, Defendants may comment on Claimant's application of 16 October 2026 for leave to amend the case, i.e. on its admissibility and on the substance of the new auxiliary request regarding the amount of any enforcement security. The panel will decide whether Claimant's request constitutes an amendment of the case and, if so, whether it is admissible, in the decision on the merits.

Furthermore, the parties are given the opportunity until **9 November 2026** to upload presentations in accordance with section VIII.

The interim procedure will be closed immediately after **9 November 2026**.

Issued in Mannheim on 21 October 2026

NAME AND SIGNATURE

signed by Sender

Judge-rapporteur