Redacted Version

[Logo of the Unified Patent Court]

Local Division Mannheim

UPC_CFI_936/2025

Order
of the Court of First Instance of the Unified Patent Court
issued on September 30, 2025

APPLICANTS:

1. InterDigital VC Holdings, Inc., 200 Bellevue Parkway, Suite 300, Wilmington, Delaware 19809, USA, legally represented by the Board of Directors, ibid.

2. InterDigital Patent Holdings, Inc., 200 Bellevue Parkway, Suite 300, Wilmington, Delaware 19809, USA, legally represented by the Board of Directors, ibid.,

3. InterDigital Madison Patent Holdings, SAS, 20 rue Rouget de Lisle, 92130 Issy-les-Moulineaux, France, legally represented by Richard J. Brezski, ibid.

4. Interdigital CE Patent Holdings SAS, 20 rue Rouget de Lisle, 92130 Issy-les-Moulineaux, France, legally represented by Richard J. Brezski, ibid.,

All represented by Cordula Schumacher

RESPONDENTS:

1. Amazon.com, Inc., 410 Terry Avenue North Seattle, Washington, 98109, USA, represented by its Board of Directors, ibid., further represented for service of process by its agent Corporation Service Company, 251 Little Falls

Drive, Wilmington, DE 19808, USA

2. Amazon Digital UK Limited, 1 Principal Place, Worship Street, London, EC2A 2FA, United Kingdom, legally represented by the Board of Directors, ibid.

3. Amazon Europe Core S.à.r.l. (Société à responsabilité limitée), 38 Avenue John F. Kennedy, L-1855 Luxembourg, represented by the Board of Managers, ibid.,

4. Amazon EU S.à.r.l. (Société à responsabilité limitée), 38 Avenue John F. Kennedy, L1855 Luxembourg, represented by the Board of Managers, ibid.

5. Amazon Technologies, Inc., 410 Terry Avenue North Seattle, Washington 98109, USA, represented by the Board of Directors, ibid., further represented for the purpose of service of process by its agent CSC – Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Sacramento, CA 95833, USA,

EUROPEAN PATENTS: see Exhibit AR10

ADJUDICATION PANEL/CHAMBER:

Panel of the Local Division Mannheim

PARTICIPATING JUDGES:

This order was issued by the Presiding Judge and judge rapporteur Tochtermann, the legally qualified Judge Böttcher and legally qualified Judge Kupecz.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: R. 206 RoP – Application for provisional measures, here: Anti-interim-license-injunction

ORAL HEARING: ex parte

BRIEF DESCRIPTION OF THE FACTS:

1. The applicants are seeking a preliminary order against the respondents, which they refer to as an "anti-interim-license-injunction." The order is to be issued ex parte. The applications are reproduced below:

I. The respondents are prohibited by way of interim relief from initiating and/or pursuing proceedings for an anti-suit injunction and/or from applying for any other equivalent judicial or administrative measure, such as a temporary restraining order, which would effectively prevent and/or seek to prevent the applicants from pursuing or continuing patent infringement proceedings before the UPC under their European patents subject to the jurisdiction of the UPC within the scope of the UPCA, and/or enforcing any resulting judgments or measures,

whereby this injunction obligation also includes, in particular,

1. not to apply to the UK High Court for a preliminary order requiring the applicants to grant the respondents an interim license to the applicants' patents;

2. not to apply to the UK High Court for a preliminary order declaring that the applicants would be in breach of RAND obligations if they did not grant the respondents an interim license to the applicants' patents on the terms determined by the UK High Court;

3. the requirement to withdraw any applications under sections 1 and 2 or to take other procedural measures to revoke them definitively with effect for the scope of application of the UPCA;

4. an immediate prohibition on continuing any interim licensing proceedings with effect for the territory covered by the UPCA, except for the purpose of withdrawing the application;

5. the prohibition to have the applicants prohibited by a court or administrative order aimed at prohibiting the present proceedings from conducting patent infringement proceedings based on their patents before the competent chambers of the UPC and/or from enforcing any resulting judgments;

whereby the above orders and prohibitions also include exerting appropriate influence on affiliated companies by making full use of the possibilities offered by corporate law.

II. In the event of any violation of the order under section I, the respondents shall pay the court a (repeated, if necessary) penalty of up to EUR 250,000.00 for each day of the violation.

III. The order is immediately enforceable without security.

Alternatively:

The order is initially enforceable immediately without security. The enforceability of this order shall end if the applicants have not provided security in the form of a deposit or bank guarantee in favor of the respondents within 20 days, the amount of which we leave to the discretion of the court.

IV. Pursuant to R. 13.1 (q) RoP, it is ordered that English-language documents, in particular the Exhibits submitted with the application, do not need to be translated.

V. The application shall be served on the respondents without Exhibits.

VI. The respondents shall bear the costs of the proceedings.

VII. The interim measures ordered shall be lifted or otherwise set aside at the request of the respondents, without prejudice to any claims for damages, if the applicants do not, within a period of 31 calendar days or 20 working days – whichever is longer – from the conclusion of any appeals proceedings against this measure or the fruitless expiry of the corresponding appeal periods, initiate main proceedings with the UPC.

2.

3. On August 29, 2025, the respondents initiated rate-setting proceedings in the UK, which also include negative declaratory actions with regard to infringement, essentiality, and legal validity of four UK parts of EP bundle patents. According to their statements, the applicants became aware of this on September 1, 2025, through the public register of the UK courts.

4. In addition, the respondents filed 18 actions for a declaration of non-essentiality in Sao Polo, Brazil, and applied for an anti-suit injunction to prohibit the applicants from asserting patents in other courts in Brazil (Exhibit AR 7, p. 27, para. 60 (ii)).

5.

6. In the particulars of claim filed with the High Court, the respondents announce an application for an "adjustable license" for the entire portfolio (see AR 4 p. 28 para. 84 et seq., p. 30, para. 89, p. 31, para. 92 et seq., p. 32 et seq.) until the conclusion of the rate-setting proceedings (Exhibit AR 4 p. 32 para. 97 et seq. and p. 33 et seq. (4)-(6) and (15)).

7. The applicants argue that, as holders of patents falling within the jurisdiction of the UPC, they are entitled to file an application (Exhibit AR 10). It is to be feared that the respondents will file an application for an interim license, which would also prevent them from initiating patent infringement proceedings before the UPC. This fear is claimed to be well-founded in view of the conduct described above. The threat of a declaration seeking an interim license is to constitute an infringement of the applicants' patent rights, which must be prevented by the present application. Such an interim license would mean that, in line with the respondents' own argument, if the "specific performance" required under Swiss law were ordered, the applicants' claim would be rendered groundless because they could then raise the license objection. In this regard, it is claimed to be irrelevant whether the UK court orders "specific performance" under the law applicable there and stipulates that the applicants must make a corresponding offer and, if they fail to do so, judicial coercion in the form of coercive detention or fines

may be exercised, or whether the UK court would grant declaratory relief, because according to the express reasoning of the UK courts, this too would have a de facto coercive effect that would prevent the applicants from asserting their rights in other jurisdictions. The substantive content of the patent is to also include its procedural enforceability in the local forum, which is to be secured by the requested injunction. Furthermore, the application is urgent and the weighing of interests in favor of the applicants because the application does not involve any encroachment on foreign forums, but solely secures the conduct of proceedings in the local forum. Furthermore, it is claimed to be undisputed that the portfolio also contains non-standard essential patents, which is why the attacked interim license is all the more impactful. The Mannheim Local Division is claimed to have international, subject-matter and local jurisdiction. A prior hearing is claimed to be impracticable because otherwise there would be a risk of frustrating legal protection. A security deposit is claimed to not be required in the present context.

8. For further factual and legal arguments, reference is made to the application and its Exhibits.

REASONS FOR THE ORDER:

9. The Mannheim Local Division of the Unified Patent Court has jurisdiction over the application for provisional measures (see I.). The application is also well-founded (II.) and justifies the requested finding (see III.). This justifies the provisional measures to the extent ordered.

I. Jurisdiction

10. The jurisdiction of the Mannheim Local Division of the Unified Patent Court for the application for interim measures against the respondents is based on Art. 31, 32(1)(c) UPCA in conjunction with Art. 7(2), Art. 71b No. 2 of Regulation (EU) 1215/2012 and Art. 33(1)(a) UPCA. The place of success of the threatened infringement of the applicants' patent rights is within the jurisdiction of the UPC. The applicants would also be prevented from enforcing their patents, which fall within the jurisdiction of the UPC,

before the Local Divison in Mannheim in infringement proceedings for which the court has jurisdiction under Article 32(1)(a) UPCA.

11. A (threatened) infringement of a patent within the meaning of Article 32(1)(a) EPC is not only its unlawful use, but also the infringement of the patent holder's property rights by applying for an injunction against the assertion the patent right in the present common forum of the UPC contracting states, which may also be the subject of provisional legal measures under Art. 32(1)(c) UPCA (see LD Munich, CFI_112/2025 (Nokia/Sunmi), in particular sentences 2 and 3 of the operative part, CFI_755/2024 (Avago/Realtek), para. 30, and CFI_791/2024 (Huawei/Netgear), p. 10; Grabinski/W. Tilmann, in Tilmann/Plassmann, Einheitspatent, Einheitliches Patentgericht, 2nd ed., Art. 32 para. 61a). Therefore, jurisdiction arises from the perspective of ancillary jurisdiction in order to secure the right to access to justice with regard to infringement actions falling under Art. 32(1)(a) UPCA. Art. 33(1)(a) UPCA merely requires an actual or threatened infringement in the contracting member state in order to establish the local jurisdiction of one of the local divisions located in that state (see LD Munich, CFI_112/2025 (Nokia/Sunmi), para. 24). Whether the measures at issue here actually constitute such an infringement of property rights is a question of merit.

II. On the merits

12. The application is also well-founded. The applicants are entitled to assert their patent rights in legal proceedings in this forum. This also includes the enforcement of a claim for injunctive relief. This claim is inherent in the asserted patent because, in addition to its substantive content, the patent also has inherent procedural enforceability (Local Division Mannheim, judgment of November 22, 2024, UPC_CFI_210/2023, para. 172 (Panasonic/Oppo). The claim follows from the powers granted to the court for the enforcement of patent law in accordance with Art. 62 et seq. UPCA, as laid down in the Agreement, and thus from the Agreement itself, without it being necessary to resort to national law (deviating in the dogmatic derivation LD Munich – German law: LD Munich, CFI_112/2025 (Nokia/Sunmi), para. 29, and LD Munich, CFI_791/2024 (Huawei/Netgear), page 11 below, or national law with regard to further bundle patent parts or as a common legal principle with regard to unitary patents),

in conjunction with Article 47 of the EU Charter and Article 6 of the ECHR. The fact that the procedural enforceability of intellectual property rights is a central aspect of these rights is confirmed not least by Directive 2004/48/EC of the European Parliament and of the Council of April 29, 2004, on the enforcement of intellectual property rights (Enforcement Directive) in recitals 3 et seqq. and Articles 3, 4(a), 9(1)(a), 11. The procedural enforceability of substantive patent law is thus also guaranteed under European law. Enforcement in this sense is served by the powers of order in Art. 62 et seqq. UPCA. The application is therefore justified under Art. 62(1), (2) UPCA in conjunction with R. 211(1), (2), (3) RoP.

13. Also according to Article 47(1) of the EU Charter, everyone whose rights or freedoms guaranteed by Union law have been violated has the right to an effective remedy before a court. Article 47(2) of the EU Charter gives everyone the right to have their case heard by an independent, impartial court established by law in a fair trial, in public and within a reasonable time. Article 47 of the EU Charter therefore guarantees a general right to justice at European level, which also applies to the UPC under Article 20 UPCA. According to Article 17(2) of the EU Charter, intellectual property is in any case a property-like right which must be protected under the Charter. Consequently, Article 47(1) and (2) of the EU Charter also protect a person's access to the UPC for the purpose of asserting (alleged) unlawful use of a patent (see also LD Munich (CFI_112/2025 (Nokia/Sunmi) (Panel 2); CFI_755/2024 (Avago/Realtek) (Panel 2); CFI_791/2024 (Huawei/Netgear) (Panel 1); CoA UPC_CoA_22/2024 of May 28, 2024 (Carrier/Bitzer), 1st sentence of the operative part and para. 22).

14. This fundamental right to access to court proceedings and a final decision also follows from Article 6 of the ECHR (ECHR of February 18, 1999, NJW 1999, 1173 No. 50 – Waite and Kennedy v. Germany; ECHR of March 19, 1997, Coll. 97-II, p. 510 No. II40 = ÖJZ 1998, 236 – Hornsby v. Greece; ECtHR v. 1.3.2002, 48778/99 No. 25, Coll. 02-II – Kutiá v. Croatia).

15. These principles also form part of the acquis communautaire and are recognized by the Court of Justice of the European Union (hereinafter: "ECJ") (ECJ, judgment of April 27, 2004 – C-159/02 Turner/Grovit et al., EuZW 2004, 468, 469; see also ECJ (Grand Chamber), judgment of February 10, 2009 – Case C-185/07 Allianz SpA v West

Tankers Inc., SchiedsVZ 2009, 120, 121 et seq.) and are therefore binding on the UPC as the common court of the Member States.

16. It is highly probable that the applicants entered in the register as proprietors are entitled to initiate proceedings and that their rights under their patents are being infringed.

17. The applicants have also demonstrated with sufficient substance that there is a serious threat of infringement of their patent rights in the sense described above:

18. According to the intention of the courts in the United Kingdom as stated in the relevant decisions, the issuance of a declaratory judgment in the United Kingdom should in any case effectively result in a party submitting solely to the courts of the United Kingdom for the global determination of the appropriate FRAND rate. This follows from recent case law of the UK courts, which seek to persuade the parties to a dispute concerning an SEP to conclude a so-called "interim license" by at least effectively pointing out the negative consequences they would otherwise face before the UK courts. The stated purpose of this is to deter the SEP proprietor from initiating or continuing any other parallel pending litigation that also concerns SEPs, at least to some extent. This is evident from the following decisions:

On the relevant decisions of the UK Court of Appeal and the High Court

19. In the dispute between Panasonic and Xiaomi, [2024] EWCA Civ 1143, which is pending before both the UK courts and the UPC, Local Divisions Mannheim and Munich, the parties have already bowed to pressure from the UK court and concluded an "interim license." The decision of the Court of Appeal on October 3, 2024, led the parties in the dispute, which was scheduled for hearing before the Mannheim Local Chamber of the UPC a few days later, to decide to apply for a stay of proceedings on both sides, which the parties announced to the court a few minutes before the opening of the oral Hearin, making corresponding statements for the record of the court thereafter.

20. Accordingly, the UK CoA reports in its subsequent decision Lenovo v Ericsson [2025] EWCA Civ 182 para 40:

> After this Court gave its judgment, the parties agreed to enter into an interim licence on the terms indicated by the Court. Thus the Court's declaration did serve a useful purpose.

21. In that decision, a judge of the UK CoA considered it appropriate to issue an anti-suit-injunction in the dispute (Lord Justice Phillips, paras. 104 et seqq.), because he already considered the issuance of a declaratory judgment to be an encroachment on the decision-making authority of foreign courts:

> […] The purpose of granting the declaration is unclear to me. Panasonic, perhaps not surprisingly, states that it will not grant the proposed interim licence, and it cannot be compelled to do so. Even if it does grant the licence, its effect will be transitory given that Meade J proposes to give judgment determining FRAND on the evidence by the end of the year, which will apply to the period of the interim licence and supersede its terms, requiring recalculation and adjustment of any amounts payable (and amendment to the accompanying licence terms). The real purpose and effect can only be to influence the approach of foreign courts in relation to Panasonic's infringement proceedings. I have doubts as to the propriety of that aim, which smacks of jurisdictional imperialism. […]
>
> On the face of the matter, in my judgment, there is a more conventional interim remedy potentially available, which would directly address and prevent Panasonic's indefensible conduct. Given that, at Panasonic's instigation, the English courts will shortly determine the terms of a global FRAND licence, including with retrospective effect, which the parties will enter pursuant to their reciprocal undertakings to the court, the parallel proceedings Panasonic has brought in other jurisdictions for infringement would appear to be unconscionable, vexatious, and designed to be oppressive. That is a well-established basis on which the English courts would consider granting an ASI, as identified by Arnold LJ at [66], subject to issues of comity and discretion.
>
> As well recognised (see the Deutsche Bank case at [56]), such an order would be addressed solely to Panasonic, not to the foreign courts, and Panasonic would have to obey it or face contempt proceedings in this jurisdiction, where the FRAND licence is to be determined at Panasonic's instigation.

22. In contrast, the majority of the UK CoA considered the issuance of a final declaration to be sufficient, but also necessary, and ruled by way of a declaration that Panasonic is required, on the basis of its ETSI declaration, to conclude an "interim license" in order to comply with FRAND. It is noteworthy that this

determination was not preceded by a judicial FRAND ruling, but rather that the difference between the parties' competing offers was simply overcome by division without further examination. This means that it is not necessary from the outset, and certainly not guaranteed, that the "interim license" complies with FRAND conditions.

23. In In this case, the court also emphasized that both parties had made a so-called “undertaking to the court” to transfer the determination of a license rate deemed FRAND exclusively to the courts of the United Kingdom. Against this background, the UK CoA considered the initiation of several patent infringement proceedings abroad, including before national German courts and the Unified Patent Court, to be incompatible with the declaration made to the court. While the lower court ([2024] EWHC 1733 (Pat)) had rejected the issuance of a corresponding declaratory judgment as "jurisdictional imperialism" (quoted from UK CoA ibid. para. 29):

> "... as a matter of principle, it is wrong for an English court to make a declaration solely for the purpose of influencing a decision by a foreign court on an issue governed by the law of the foreign court. It is not the function of the courts of England and Wales to provide advisory opinions to foreign courts seised of issues which fall to be determined in accordance with their own laws. The English courts have no special competence to determine such issues. If anything, it is likely that they have less competence than the local courts. It makes no difference that the English court and the foreign court are applying the same basic law. Furthermore, comity requires restraint on the part of the English courts, not (to adopt Floyd LJ’s graphic phrase) jurisdictional imperialism. ..."

The UK CoA ruled to the contrary by a majority vote, basing its decision primarily on the "undertaking" that both parties to the dispute had given to the court (ibid. paras. 25 et seq.):

> I described the limited powers of a national court in the ordinary case to enforce its determination as to what terms are FRAND where negotiations between the parties have failed in Optis Cellular Technology LLC v Apple Retail UK Ltd [2022] EWCA Civ 1411, [2023] RPC 1 at [73]:
>
> "... it is preferable that SEP owners and implementers should negotiate licences. This is reflected in the ETSI IPR Policy and in paragraph 4.4 of ETSI’s Guide on Intellectual Property Rights (which states that both members and non-members should engage in a negotiation process for FRAND terms). … the importance of negotiation has been emphasised both by the CJEU in Huawei v ZTE and by the Supreme Court in UPSC. The present issue arises, however, when the parties

> cannot agree terms. In those circumstances the national court must resolve the dispute, as paragraph 4.3 of the ETSI Guide states and as both the CJEU and the Supreme Court recognised. As discussed above, the twin purposes of the ETSI IPR Policy are to avoid hold up and hold out. To achieve this it is necessary, in the absence of agreement between the parties, for the national court to be able to enforce its determination against both parties. The national court can only enforce its determination against the SEP owner by withholding an injunction from the SEP owner if it is unwilling to abide by its ETSI Undertaking by granting a licence on the terms determined to be FRAND. The national court can only enforce its determination against the implementer by granting an injunction against the implementer if it is unwilling to take a licence on the terms determined to be FRAND.
>
> As explained below, this case is different because of the undertakings which both parties have given.

24. The UK CoA then once again emphasizes the central importance of the “undertakings” given by both parties to the court and describes the effects of a breach of the “undertaking” for foreign jurisdictions as follows (ibid. paras. 36 et seq.):

> There was a case management hearing before Meade J on 3 and 8 November 2023. There were two very positive results of the hearing. The first was that both parties gave unconditional undertakings to the court, which were recorded in the judge’s order dated 8 November 2023, to enter into a licence of Panasonic’s portfolio on the terms determined by the Patents Court to be FRAND, with any necessary adjustments as a result of any appeals. Since these undertakings are central to the present appeal, I should set them out:
>
> “AND UPON the Claimant giving the following undertakings to the Court (the ‘**Panasonic Undertakings**’): 1. The Claimant, on behalf of itself and its affiliates, hereby unconditionally undertakes to the Court that: (a) it will (i) offer a licence agreement to the Xiaomi Defendants covering the Panasonic Portfolio (as defined in paragraph 2 of the Particulars of Claim) in the form that is determined to be FRAND by the High Court at the FRAND Trial (defined in paragraph 1 of this Order) in these proceedings (the ‘**Court-Determined Licence**’) (including for the avoidance of doubt such terms the Court considers it appropriate to make conditional pending any appeal), and (ii) upon acceptance by Xiaomi, enter into the Court-Determined Licence by expiry of the time period specified by the High Court within which the Xiaomi Defendants and Claimant must enter into the Court-Determined Licence; and (b) to the extent that there are any appeals of the judgment (including any consequentials judgments) affecting the form of the Court-Determined Licence, it will perform such steps as are required to (i) amend the form of the executed Court-Determined Licence to incorporate any amendments to the Court-Determined Licence that are finally determined to be FRAND on appeal in these proceedings, and (ii) incorporate any such amendments into the Court-Determined Licence by expiry of the time period specified by the relevant appeal court within which the Xiaomi Defendants and Claimant must incorporate such amendments.
>
> AND UPON the Xiaomi Defendants giving the following undertaking to the Court (the **‘Xiaomi** Undertakings’): The Xiaomi Defendants, on behalf of themselves

> and their affiliates, hereby unconditionally undertake to the Court that: 1. they will accept and enter into the licence agreement offered by the Claimant pursuant to the Claimant's undertaking 1(a) above by expiry of the time period specified by the High Court within which the Xiaomi Defendants and Claimant must enter into the Court-Determined Licence; and 2. to the extent that there are any appeals of the judgment (including any consequentials judgments) affecting the form of the Court-Determined Licence, they will perform such steps as are required to (i) amend the form of the executed Court-Determined Licence to incorporate any amendments to the Court-Determined Licence that are finally determined to be FRAND on appeal in these proceedings, and (ii) incorporate any such amendments into the Court-Determined Licence by expiry of the time period specified by the relevant appeal court within which the Xiaomi Defendants and Claimant must incorporate such amendments."
>
> For readers who are unfamiliar with undertakings to the court in English proceedings, I should explain that they are enforceable in the same way as injunctions ordered by the court. Breach of such an undertaking is a contempt of court, and severe sanctions can be imposed: the assets of a company can be sequestrated, an unlimited fine can be imposed and the company's directors can imprisoned for up to two years. It is common ground that this means that it is certain that the parties will enter into a global licence on the terms determined by the English courts to be FRAND unless there is an earlier negotiated settlement.

25. The court further elaborates on the practical implications of the findings in the case regarding the granting of an "interim license" (ibid., para. 90):

> In my judgment, making the declarations sought by Xiaomi would serve a useful purpose in forcing Panasonic to reconsider its position. It would not force Panasonic to change its mind, but in my judgment there is a realistic prospect that it will do so. Panasonic may not presently intend to change its position, but as counsel for Panasonic had to accept, parties' intentions can change. Panasonic's intentions have already changed in this very dispute, as demonstrated by its revised offer of 13 September 2024. Faced with a decision by this Court that Panasonic is in breach of its obligation of good faith and a formal declaration that a willing licensor would enter into an interim licence, would Panasonic really persist in conduct that this Court has unequivocally and publicly condemned? I not only hope that Panasonic will see the error of its ways, but consider that there is a real prospect of it doing so.

26. The UK CoA reports as follows that the courts in the United Kingdom actively influence the parties to persuade them to negotiate the FRAND aspect before any technical hearing (ibid., para. 14; see also Lenovo vs Ericsson [2025] EWCA Civ 182 para. 14, on which more below):

> The courts have therefore sought to persuade parties to agree to the FRAND trial being heard first, because experience to date shows that (subject to any appeals) the court's determination is usually accepted by both parties. Implementers have

> shown themselves increasingly ready to agree to this course. Furthermore, in one case, case management decisions have been made which resulted in the FRAND trial being scheduled before a technical trial. In that case, this solution was advocated by the implementer and opposed by the SEP holder.

27. The UK CoA did not see this as an encroachment on the judicial sovereignty of foreign states, but rather as a way of avoiding what it considered to be unnecessary work for foreign courts ([2024] EWCA Civ 1143, paras. 94 et seqq.):

> Xiaomi contend that the judge was wrong to conclude that the declarations should be refused in the interests of comity. Comity in this context means that the courts of this jurisdiction should respect the ability of courts such as the German national courts and the UPC to decide issues falling within their respective competencies, and should be cautious about granting any relief which might interfere with such courts' exercise of their own jurisdictions or which might be perceived as an attempt to do so (unless there are proper grounds for the grant of an ASI).
>
> The judge reasoned that the only useful purpose of making the declarations sought would be to influence the outcome of the German Proceedings and that was not a legitimate purpose because it would be contrary to comity. If the premise were correct, I would agree with the judge's conclusion for the reasons given in Teva v Novartis. For the reasons given above, however, I disagree with the premise.
>
> Furthermore, if the declarations do induce Panasonic to reconsider its position and to grant Xiaomi an interim licence, that would, as Xiaomi submit, promote comity because it would relieve the German courts and the UPC of a great deal of burden-some and wasteful litigation.
>
> If, on the other hand, Panasonic decides to ignore the declarations and to pursue the German Proceedings, it will be entirely for the German national courts and the UPC to make their own assessment of the parties' conduct, including their conduct in the English proceedings, and to decide what, if any, relief to grant Panasonic for any infringements they may find established in the absence of a licence. The same would be true of any other courts before whom Panasonic might choose to bring proceedings. Accordingly, I do not consider that comity is a reason not to grant the declarations sought by Xiaomi.

28. While the "undertaking" given by both parties to the court played a central role in the Panasonic v. Xiaomi decision, the UK CoA in the Lenovo v. Ericsson decision ([2025] EWCA Civ 182) – to which further reference is made in the Alcatel v. Amazon [2025] EWCA Civ 43 – the UK CoA distanced itself from this reasoning and considered it sufficient that the undertaking had been given by only

one side, whereas the other side had refused to give an undertaking (CoA ibid. paras. 72 et seqq.):

> In paragraph 67 of their Particulars of Claim in the E&W I Proceedings served in October 2023 Lenovo pleaded as follows:
>
> "… Lenovo hereby undertakes to this Court that it will enter into a licence agreement in the form that is determined to be FRAND at the FRAND trial in these proceedings or, to the extent that there any appeals of the judgment of the FRAND trial, a licence agreement that is finally determined to be FRAND on appeal."
>
> This undertaking is ambiguously drafted. As the judge explained at [61], however, Lenovo clarified during the hearing before him that their undertaking was to enter immediately into whatever cross-licence the Patents Court determines to be FRAND, with any adjustments that may be necessary as a result of any appeal(s) being made subsequently. It emerged during the course of the hearing before this Court that this undertaking had never formally been embodied in a court order. If only for the sake of good order, I consider that it should be. I will therefore proceed on the basis that the undertaking will be incorporated into this Court's order.
>
> Ericsson have not given an equivalent undertaking.

29. Again, the High Court (Richards J, [2024] EWHC 2941 (Pat)) had refused to make a declaration (see CoA ibid. paras. 1 and 99). The jurisdiction of the courts of England and Wales to determine a global FRAND rate is assumed as soon as at least one UK SEP is deemed to be legally valid and infringed (CoA ibid. para. 11).

30. In this case, the CoA now considers an undertaking on the part of Ericsson to be dispensable (paras. 126 et seqq.).

> On any view Ericsson's conduct is not as egregious as that of Panasonic in Panasonic v Xiaomi. Part of the reasoning which led to the conclusion that Panasonic's conduct was indefensible was that its pursuit of injunctions in other jurisdictions was inconsistent with Panasonic having invoked the jurisdiction of the English courts to determine terms FRAND terms on a global basis and with Panasonic having undertaken to the English courts to enter into a licence on the terms determined by the English courts to be FRAND. Ericsson have neither invoked the jurisdiction of the English courts nor given such an undertaking.
>
> Nevertheless, I accept Lenovo's submission that the core reason for the conclusion reached in Panasonic v Xiaomi is equally applicable here.
>
> In the present case Ericsson is also aiming to coerce Lenovo into accepting terms more favourable to Ericsson than the English courts would determine to be FRAND,

> or at the very least to avoid the risk that the English courts would determine that FRAND terms are less advantageous to Ericsson than those sought by Ericsson.

and describes the advantages of a decision by the UK courts alone as follows (ibid., paras. 107 et seqq.):

> Lenovo acknowledge that, unlike Panasonic in Panasonic v Xiaomi, Ericsson did not invoke the jurisdiction of the English courts to determine FRAND terms on a global basis and have not undertaken to enter into a cross-licence on the terms determined by the Patents Court to be FRAND. Lenovo argue that these factual differences from Panasonic v Xiaomi are not material, because what matters is that, like Xiaomi, Lenovo have undertaken to enter into a global cross-licence on the terms determined by the Patents Court to be FRAND (subject to any adjustment required on appeal). This undertaking will be enforceable by Ericsson with severe sanctions for non-compliance by Lenovo (see Panasonic v Xiaomi at [37]). It follows that Ericsson are guaranteed to receive payment in full of the royalty which the Patents Court determines to be FRAND (or as adjusted on appeal) in respect of the entire period since Lenovo started implementing any of the relevant standards, taking into account the fact that a range of rates may be FRAND, together with realistic interest in respect of past sales. Thus Ericsson will not need to rely upon the threat of an injunction in this jurisdiction in order to enforce the Patents Court's determination as to FRAND terms. The fact that Ericsson have not undertaken to enter into a cross-licence on the terms determined by the Patents Court to be FRAND does not affect this. It simply means that Ericsson will be free to decline to accept the terms determined by the Patents Court. (That would prevent Ericsson from enforcing any of their SEPs against Lenovo in this jurisdiction, but Ericsson do not seek to do so.)
>
> In those circumstances, Lenovo contend that the central question posed by this Court in Panasonic v Xiaomi at [82] also arises here: what is the point of Ericsson pursuing the Brazilian, Colombian and US proceedings, and attempting to exclude Lenovo's products from those commercially important markets, with all the massive attendant effort and expense for both parties? Lenovo argue that, just as in Panasonic v Xiaomi, there can only be one answer to that question: Ericsson wish to coerce Lenovo into accepting terms more favourable to Ericsson than the English courts will determine to be FRAND.
>
> […] But the position now is that Lenovo have undertaken to enter into a cross-licence on the terms determined by the English courts to be FRAND. Thus Ericsson are guaranteed to receive full payment of whatever net amount is found to be FRAND in respect of Lenovo's exploitation of Ericsson's SEPs from day one until 31 December 2028 with realistic interest on past sales. Lenovo will not be rewarded by the English courts for having held out in the past. Ericsson do not suggest that there is any doubt about the willingness or ability of Lenovo to pay whatever sum the English courts order. Thus Lenovo cannot be accused of holding out now.

31. Regarding the consequences of Ericsson's refusal to comply with the court's order concerning an "interim license," the CoA states (para. 142):

> In my judgment, making the declaration sought by Lenovo would serve a useful purpose in forcing Ericsson to reconsider its position. It would not force Ericsson to change their mind, but in my judgment there is a realistic prospect that they will do so. Ericsson may not presently intend to change their position, but parties' intentions can change, as the example of Panasonic shows. Faced with a decision by this Court that Ericsson are in breach of their obligation of good faith and a formal declaration that a willing licensor would enter into an interim licence, would Ericsson really persist in conduct that this Court has unequivocally and publicly condemned? I not only hope that Ericsson will see the error of their ways, but consider that there is a real prospect of them doing so.

32. The same principles were reiterated by the CoA in Tesla v. Interdigital, Avanci et al. [2025] EWCA Vic 193, although in this case, contrary to the opinion of the reporting judge Arnold LJ, a declaration was refused on the grounds that in the present case the party was not contractually bound by the patent holders' ETSI declaration. This is a consequence of the English courts' approach, which is based solely on contract law and does not give priority to EU antitrust law in this context (ibid. para. 222):

> The jurisdiction of the courts of England and Wales to determine a FRAND licence of a portfolio of SEPs which includes foreign patents is based entirely upon the contractual undertaking of the owner of those patents to grant such licences. […]
>
> and paras. 228/229:
>
> What the owners have not agreed to do, on any sensible interpretation of the contractual arrangements with ETSI, is to license their SEPs on a collective basis with other SEP owners, whether on "FRAND terms" or on any terms. The undertaking clearly and distinctly creates an obligation on individual owners to license the Patent Family of their declared SEPs, but it cannot be interpreted as extending to include licensing a portfolio which includes many SEPs owned by other organisations altogether. […]
>
> Does the fact that the owners have voluntarily placed their SEPs on the Avanci 5G Platform change the contractual analysis? I cannot see how it does. The fact that the owners have given undertakings to ETSI, derogating from their rights under the general law to that extent, in no way limits their freedom to exploit their rights in any legitimate way, whether on their own or jointly with others. Placing their SEPs on the Avanci 5G Platform is a convenient and highly beneficial way for a vast number of SEPs to be offered collectively to the car industry, avoiding the "licensing debacle" which has arisen in other sectors when multiple implementers have sought licences from multiple owners. Such an arrangement is in addition to (and may well, for an implementer, be preferable to relying on)

> the ETSI undertaking given by each owner. In my judgment the owners who have joined the Platform have not somehow extended the scope of their undertaking to ETSI or entered any other binding agreement to license their SEPs on a collective basis.

33. Most recently, the UK High Court ruled on the complex issue at hand in the case of Samsung v. ZTE ([2025] EWHC 1432 (Pat) (Mellor J). In this case, Samsung, as the plaintiff, had offered an undertaking to the court, whereas ZTE had offered Samsung to have such a global FRAND provision to be made in a Chinese court, which Samsung did not agree to. ZTE then brought further patent infringement actions before the UPC, among others (ibid. paras. 33 et seqq.). Samsung then applied to the High Court for a declaration to conclude an interim license. Subsequently, Samsung again brought patent infringement actions against ZTE before the UPC, among others (ibid. paras. 52 et seqq.). Again, only one party, in this case Samsung, had given an undertaking to the court, while ZTE had not (ibid. para. 12).

34. Regarding the relationship between injunctive relief and actions solely for damages in the UK, the judgment states (para. 21):

> In this regard, it may be noted that in a FRAND action in the UK, it would be highly unusual for a SEP licensor to seek interim injunctive relief because in the vast majority of cases, damages would be an adequate (if not complete) remedy. This is why in the SEP licensors' playbook, injunctive relief is sought elsewhere.

35. Regarding the possible consequences of refusing to accept the FRAND rate determined by the court, the court states (paras. 28, 29):

> As far as I am aware, there has not yet been a case where a SEP licensor has declined to accept Court-determined FRAND terms but the consequences would appear to include the following:
>
> i) First, the court in question would be highly likely to declare the licensor to be unwilling.
> ii) Second, it would be highly likely that the unwilling licensor would have to pay the costs of the FRAND trial, which experience shows can be substantial.
> iii) Third, the effect of the declaration of unwillingness on proceedings in the courts of other jurisdictions would be a matter for those courts to determine.
> iv) Fourth, there is a possibility that the reason why the licensor declined to accept FRAND terms determined by the UK Court was because it wished to hold out for FRAND terms determined by a different court. It would then be interesting to compare the FRAND ranges or rate determined by each Court and the reasoning which led to each result. There remains the

possibility that each court might be persuaded to take account of specific points in the other (e.g., a rate determined for the territory corresponding to the jurisdiction of the other court), although sensible limits would have to be applied to avoid going round in circles.

In a case involving a cross-licence, like the present one, if the defendant, in its capacity as SEP licensee, refuses to accept the FRAND terms determined by the Court, the normal consequence would be the grant of injunctive relief.

36. Regarding ZTE's intentions to bring legal action in other jurisdictions, the High Court states (paras. 99, 105):

> In these circumstances, a now familiar and obvious question arises: what is the point of ZTE pursuing the Brazilian, German, UPC, and Hangzhou proceedings and attempting to exclude Samsung's products from those commercially important markets, with all the massive attendant effort and expense for both parties? cf. the judgment of Arnold LJ in Lenovo CA:
>
> ‘108. In those circumstances, Lenovo contend that the central question posed by this Court in Panasonic v Xiaomi at [82] also arises here: what is the point of Ericsson pursuing the Brazilian, Colombian and US proceedings, and attempting to exclude Lenovo’s products from those commercially important markets, with all the massive attendant effort and expense for both parties? Lenovo argues that, just as in Panasonic v Xiaomi, there can only be one answer to that question: Ericsson wishes to coerce Lenovo into accepting terms more favorable to Ericsson than the English courts will determine to be FRAND.’
>
> [...] However, that aim gives rise to a slightly different but equally obvious question: why is ZTE spending so much effort and money on insisting that the global FRAND terms are determined in Chongqing? As I have indicated, I proceed on this application without taking into account Samsung's criticisms of the Chinese approach to FRAND or of the Chinese courts. But the answer can only be that ZTE perceives an advantage, an advantage which must be a substantial one in view of the cost and effort devoted to achieving this aim.

37. Regarding the UK courts' reasons for issuing a declaration, the High Court states (ibid. paras. 120 et seqq.):

> The other point explained by Arnold LJ in [155] in particular is that, whilst accusations of ‘jurisdictional imperialism’ are easy to make, the complaint, if there is one, is really about the decision of the UKSC in Unwired Planet. Now that, in this case, Samsung has invoked the jurisdiction of this Court (and that jurisdiction has been accepted by ZTE), there are two aspects to consider:
>
> i) The first is the determination of global FRAND terms at the trial of this action. As already indicated, a trial date has been set and directions given to enable the parties to be ready for that trial. It is not an act of jurisdictional imperialism for a court of first instance to exercise the jurisdiction conferred by the UKSC, as we are obliged to do in an appropriate case.

ii) The second is whether this Court should decide on what terms would be FRAND for an interim cross-licence, pending the final determination. As Arnold LJ indicates in [155], this is less intrusive into the jurisdictions of foreign courts and tribunals than a global FRAND determination.

One particular reason why the interim declaratory relief sought here is less intrusive is because it is entirely up to the courts in other jurisdictions to decide what should happen in the proceedings before them.

Notwithstanding these accusations of jurisdictional imperialism, what lies behind all the developments in the procedures of the Patents Court in FRAND proceedings is a desire to promote the resolution of these FRAND disputes as efficiently as possible. The UKSC decision and the development of the interim declaratory licence jurisdiction are designed to put an end to wasteful, essentially duplicative litigation in many countries, when there is really only one dispute: the terms of a global FRAND licence.

38. In regard to the presumed motives of ZTE, to obtain an injunction in other jurisdictions, the court notes (paras. 127 and 130):

> In my judgment, a willing licensor in the position of ZTE would have engaged with this action and proceeded as speedily as possible to the FRAND trial, in the absence of earlier agreement between the parties. In my view, a willing licensor would not commence a wave of injunctive proceedings, whatever the aim of the pressure which those proceedings would exert on the SEP licensee. The wave of injunctive proceedings commenced by ZTE were completely unnecessary since Samsung were and are actively seeking fresh global FRAND cross-licensing terms, to replace the previous global cross-licensing terms which the parties abided by for several years. There is no suggestion that Samsung were operating other than as a willing licensee (and as a willing licensor).
>
> […] ZTE has acted in bad faith with its wave of unnecessary injunctive proceedings, and by using the continuing threat imposed by them to seek to sideline or displace the jurisdiction of this Court and in seeking to secure their preference for a determination in Chongqing.

39. The High Court ultimately describes the effects of the declaration concerning an "interim license" on the proceedings as follows (para. 136):

> […] In my judgment, making the declaration sought by Samsung will serve a useful purpose in forcing ZTE to reconsider their position. It will not force ZTE to change their mind, but there must be a prospect that they will do so. Parties' intentions can change. I add that it is one thing for ZTE to take their implacable stance in an attempt to defeat this application, but it will be quite another thing if they maintain that stance following the grant of the declaratory relief sought. Again, adapting the rhetorical question posed by Arnold LJ: Faced with a

> decision by this Court that ZTE are in breach of their obligation of good faith and a formal declaration that a willing licensor would enter into the interim licence proposed by Samsung, would ZTE really persist in conduct that the Court has unequivocally and publicly condemned? I not only hope that ZTE will see the error of their ways but consider there is a prospect of them doing so.

And further (para. 152):

> With those points out of the way, I can return to my assessment of comity. The reasoning in Panasonic CA at [96]-[97] and Lenovo CA at [149] is equally applicable here. If the declaration does induce ZTE to reconsider their position and grant Samsung an interim licence on the terms Samsung seeks, that would promote comity because it would relieve the courts and tribunals of Brazil, Germany, the UPC, and Hangzhou of a great deal of burdensome and wasteful litigation commenced by ZTE, but also the retaliatory litigation in those jurisdictions plus the USA commenced by Samsung.

Risk of first infringement

40. [redacted], after already referring to a possible interim license in the UK proceedings and raising this issue in their written submissions, [redacted] constitute concrete indications that the infringement in the form of an application (also) for the scope of the UPCA is imminent, which in its effects is equivalent to a prohibition on litigation. In addition, the respondents have already applied for an ASI in Brazil, albeit only with effect within Brazil. [redacted]

Urgency and balancing of interests

41. The issuance of the interim measure is objectively urgent. The impending application for an interim license declaration referred to above can be decided within a short period

of time, meaning that the applicants cannot be referred to main proceedings on the merits.

42. The applicants did not delay in applying for interim measures in a manner detrimental to urgency within the meaning of R. 211(4) RoP.

43. Furthermore, the weighing of interests to be carried out in accordance with Art. 62(2) UPCA, R. 211.3 RoP is in favor of the applicants. When weighing up the interests, the interests of the parties must be weighed against each other, taking into account the circumstances of the individual case. In particular, the damage that could arise for one of the parties from the issuance of the order or the rejection of the application must be taken into account (see Court of Appeal, order of September 25, 2024, UPC_CoA_182/2024, GRUR-RS 2024, 25707, para. 225). Based on the circumstances of the case, this weighing of interests is in favor of the applicants:

Assessment of interim license case law as a de facto prohibition on litigation

44. Against the background of the aforementioned and now established case law of the UK courts, the effects of a declaratory judgment stating that the party concerned is not acting in accordance with FRAND if it does not conclude an interim license are specifically aimed at preventing the pursuit of injunctive relief in other jurisdictions and thus also before the UPC. It is considered justified to use specific court orders to persuade the parties to litigate their global patent dispute over a FRAND license exclusively before UK courts. While this intervention was initially justified primarily by the fact that both parties had mutually agreed to an "undertaking to the court," the consent of both parties is now considered dispensable. This means that, even against its declared will, a party is effectively compelled by the declaration to have its global legal dispute decided solely by UK courts in accordance with the rules applicable there and to refrain from enforcing injunctive relief in other territories in particular, so as not

to jeopardize the UK proceedings. The justification given is that UK courts would thereby save other courts around the world a lot of unnecessary work. Therefore, UK courts would not be violating the principle of comity. However, this argument is not tenable.

45. For the classification of the "interim license" discussed as a de facto prohibition on litigation, it is not decisive whether its conclusion or compliance can be enforced by judicial coercive measures. What is decisive is rather that the patent proprietor who does not grant an interim license must seriously expect negative consequences for that reason alone, especially if he instead brings patent infringement actions before the UPC because he believes that he is not obliged to conclude an interim license. These negative consequences may deter him from seeking judicial enforcement before the UPC, which is protected by fundamental rights.

46. In the present context of the case, in deviation from the cases previously decided by the UK courts concerning the ETSI standard, which is subject to French law, there is even the threat of a ruling based on the continental European concept of specific performance, going beyond the mere issuance of a declaration. Such an order would thus be directly enforceable in the UK by means of fines and coercive detention. In their particulars of claim, the respondents emphasize that the relevant industry standard in the rate-setting procedure is subject to Swiss law and that, unlike the ETSI standard, an order for "specific performance" is even required in order to enforce the applicants' obligations under Swiss law arising from the declaration of conformity (see Exhibit AR4, p. 4, application 3 (b) (iii) and (c) (iii), reasoning in paras. 80, 87, 91 et seqq.).

47. Given that the Unified Patent Court is bound by EU law, the case law of the ECJ, and the resulting obligation to enforce EU antitrust law within its jurisdiction, such an encroachment is unacceptable. On the one hand, the encroachment affects the patent rights of rights proprietors, which are constitutionally guaranteed in EU Member States, and on the other hand, it encroaches on the judicial sovereignty of other states, as

Phillips LJ correctly recognizes in his dissenting opinion in the Panasonic v. Xiaomi case (see above, para. 21).

48. Of particular relevance in the present case is that, pursuant to Article 20 EPCU, the UPC must give priority to the enforcement of European law. This is only possible if the proceedings concerning a standard-essential patent are conducted in compliance with the EU antitrust law applicable in the present case within the meaning of Articles 101 and 102 TFEU and any questions requiring clarification can be referred to the ECJ pursuant to Article 267 TFEU. These questions also include the question of whether the enforcement of prohibition rights under SEP is in conformity with EU antitrust law. This addresses a central area of regulation of patent law applicable to the EU internal market. One of the questions to be decided is whether, in negotiations for a FRAND license and in calculating its amount and the factors to be applied for this purpose, which are used in a comparison with third-party licenses in order to establish comparability, the SEP proprietor applies criteria that comply with antitrust law. Conversely, the Declaration may result in the SEP proprietor being de facto forced to accept an offer (at least for the time being) that is at the lower end of the FRAND corridor or, depending on the amount of the implementer's offer, even outside it. This question must also be answered in the context of EU antitrust law. If an EU court, in this case the UPC, were prevented from conducting this review, this could result in courts not bound by EU law making determinations on (F)RAND licenses that cannot be legally upheld in the European single market and may even be contrary to public policy. This is particularly to be feared in the present case because the granting of an interim license is not preceded by an examination of whether the competing offers are FRAND-compliant or not. If, therefore, the appropriate interim license rate is simply set at the midpoint between the competing offers, this may result in the determination falling outside the corridor of EU law. It is true that the actual FRAND compliance can be determined subsequently. However, the UK courts do not aim to do this, but consider it desirable for the parties to reach a settlement under the pressure of the interim license. In this case, the amount specified in the interim license may become a reference point in further negotiations that is contrary to EU antitrust law. Incidentally, it also seems doubtful whether this approach will encourage the parties to negotiate more rationally in the future.

Rather, it could lead to the exact opposite, with both parties making even more difficult-to-bridge maximum demands in order to have the most favorable starting point possible for further negotiations when overcoming their differences.

49. It may be that UK courts will continue to have a similar or even identical set of antitrust laws after Brexit, but this remains to be seen. In any case, they will not be able to refer any of the issues relating to EU antitrust law to the ECJ for final clarification. It is unacceptable to prevent clarification of issues that are crucial to the functioning of the internal market by means of a de facto prohibition. Nor can this be justified on the grounds that it saves other courts effort and the parties costs. It is solely up to the parties to decide what costs they wish to incur in conducting litigation, and it is the task of the courts of the European Union to decide on the cases brought before them. The initiation of such proceedings, which serve to enforce patent rights before the UPC, must not be prevented by outside judicial intervention.

50. In addition, it must be taken into account that the present application is intended solely to provide security in the international context of multinational disputes, which in any case – in the absence of relevant legislation on procedural coordination – is in accordance with international law: respect for the foreign forum, within the framework of the jurisdiction conferred on it, without interference from foreign courts that have no jurisdiction in the matter, to assert property rights of constitutional rank and to exercise judicial powers without interference. This principle is recognized by the case law of the ECJ (ECJ judgment of February 25, 2025 – BSH/Electrolux, paras. 71, 73).

51. It is irrelevant that no infringement action is currently pending before the UPC. The claim for judicial protection is directed precisely against measures that are intended to (effectively) prevent future legal action.

52. Finally, when weighing up the interests involved, it had to be taken into account that the present order is exclusively defensive in nature and is intended to shield the proceedings before the UPC. Neither are the respondents themselves prohibited from

pursuing their patent rights in foreign forums, nor is the jurisdiction of foreign courts interfered with. The UK courts are therefore free to decide in the proceedings pending before them how the FRAND rate is to be calculated and what consequences it has in the national territory if a party fails to comply with the court orders. Should this lead to parallel determination of FRAND licenses in different jurisdictions, this must be accepted as a decision of the litigating parties. However, there is no room for economic considerations by the court in the best interests of the parties without mutual consent.

53. This balancing of interests also supports an order without prior hearing of the opposing party (R. 206.3, 209.(c), 212.1 RoP), as it has been credibly demonstrated that, without the issuance of an ex parte order, the applicants would suffer irreparable harm due to the delay associated with the involvement of the opposing party, in that the latter would apply for an "interim license," an ASI, or a similar measure in the foreign forum.

III. Legal consequences

54. The circumstances justify the interim measures to the extent ordered.

Injunction

55. The order for a preliminary injunction is justified to the extent requested.

56. There are no objections to the wording of the application in this respect, as it extends to equivalent judicial or administrative measures, since it is not the formal designation of the judicial or administrative order as an "anti-suit injunction" or "interim license", but on whether it has the same legal effect, even if the order is given a different name or is made in a different procedural form.

57. Finally, the requirement to immediately withdraw any applications for a (de facto) prohibition on litigation or to take other appropriate procedural measures to definitively revoke such an application with effect for the scope of the UPCA also constitutes a provisional measure and protective measure within the meaning of Article 32 (1)(c) UPCA, because they must be adopted for reasons of urgency in order to provisionally

maintain the existing factual and legal situation until the conclusion of the main proceedings, the recognition of which can also be requested from the UPC in the main proceedings (cf. on the corresponding provision on the nature of provisional measures within the meaning of Article 35 of the Brussels Ia Regulation: ECJ EuZW 1992, 447 para. 34 – Reichert II; EuZW 1999, 413 para. 37 – van Uden; EuZW 2005, 401 para. 13 – St. Paul Dairy).

Threat of penalty payments

58. The threat of penalty payments is based on R. 354.3 of the Rules of Procedure. This amount appears to be appropriate and sufficient as a deterrent in the context of the present economically very extensive dispute.

Security

59. The court does not refrain from ordering the provision of security, which is generally at its discretion.

60. Pursuant to Art. 62(5) in conjunction with Art. 60(7) UPCA, R. 211.5 RoP, the court may order the applicant to provide adequate security for any reasonable compensation that may be payable by the applicant to the respondent for the damage that the respondent is likely to suffer in the event that the court revokes the provisional measures. In the case of an ex parte order, security shall normally be provided unless there are special circumstances that militate against it, R. 211.5, second sentence, RoP. The effectiveness of the order for provisional measures depends on the proper provision of security (R. 211.5, fourth sentence, RPD). The security takes into account the fact that, in a typical case of alleged patent infringement, the order for provisional measures only involves a preliminary assessment of the patent infringement in particular in terms of the use of the protected inventive teaching, and is compensation for the fact that the legal sphere of the respondent is already being interfered with on the basis of a preliminary assessment, which is therefore regularly reduced in terms of its substantive accuracy (see Local Division Düsseldorf, Order of October 31, 2024, UPC_CFI_368/2024, V.4 (p. 38)).

61. Unlike in the case before the Local Division Munich in UPC_CFI_112/2025 (para. 64), which concerned service during an ongoing trade fair, there are no special circumstances in the present case that would make it unnecessary to order security to

be provided. However, the respondents cannot suffer any significant damage as a result of the order for provisional measures in the present context (see also LD Munich, order of February 19, 2025, CFI_112/2025, para. 64), which would exceed the legal costs of the present case, which are insignificant in relation to the economic substance of the overall dispute, which is why a low security deposit, which certainly covers the cost risk for the stated amount in dispute of , is sufficient. The security amount must initially only cover the costs of the present proceedings, but not those of the main proceedings or an appeal, because further orders can then be made there if necessary. After weighing up the interests involved, the applicants were granted immediate enforceability due to the particular urgency of preventing a measure directed against them abroad, which, however, will lapse if security is not provided within 20 days (see also LD Munich, order of December 11, 2024, UPC_CFI_791/2024, p. 15).

Decision on costs

62. In the present case, a decision on the costs of the proceedings had to be made in accordance with the recent case law of the Court of Appeal of the UPC on provisional measures (Court of Appeal, order of September 16, 2024 – ICPillar v. SVF Holdco, UPC CoA 301/2024, par. 41).

Subsequent main proceedings

63. Furthermore, pursuant to R. 213.1 RoP, a deadline had to be set for initiating proceedings on the merits. This is not at the discretion of the court (Local Division Munich, order of December 9, 2024, CFI_755/2024, para. 73 – Avago/Realtek; Local Division Munich, order of February 19, 2025, CFI_112/2025, para. 66). In this respect, a period of 31 calendar days or 20 working days, whichever is longer, from the date of service of the order on the respective respondent appears to be appropriate. The applicants have not commented on such a time limit and have not included it in their applications.

ORDER:

I. The respondents are prohibited by way of a provisional measure from initiating and/or pursuing proceedings for the issuance of an anti-suit-injunction or from applying for any other equivalent judicial or administrative measure, such as a temporary restraining order, which would effectively prevent and/or is intended to prevent the applicants from pursuing or continuing patent infringement proceedings before the UPC under their European patents falling within the jurisdiction of the UPC within the scope of the UPCA, and/or enforcing any resulting judgments or measures.

II. whereby this obligation to refrain from patent infringement proceedings concerning European patents falling within the jurisdiction of the UPC before the UPC within the scope of the UPCA, in particular also includes

1. not to apply to the UK High Court for a preliminary order requiring the applicants to grant the respondents an interim license to the applicants' patents;

2. not to apply to the UK High Court for a preliminary order declaring that the applicants would be in breach of RAND obligations if they did not grant the respondents an interim license to the applicants' patents on the terms determined by the UK High Court;

3. an order to withdraw any applications under paragraphs 1 and 2 or to take other procedural measures to revoke them definitively with effect for the territory covered by the UPCA;

4. an immediate prohibition on continuing any interim licensing proceedings with effect for the territory covered by the UPCA, except for the purpose of withdrawing the application;

5. an injunction prohibiting the applicants from conducting patent infringement proceedings based on their patents before the competent chambers of the UPC and/or enforcing any resulting judgments by means of a court or administrative order aimed at prohibiting the present proceedings;

whereby the above obligations and prohibitions also include exerting a corresponding influence on affiliated companies by making full use of the possibilities offered by corporate law.

III. In the event of any violation of the order under Section I, the respondents shall pay the court a (repeated, if necessary) penalty of up to €250,000.00 for each day of the violation.

IV. The order is initially enforceable without security. However, enforceability shall end if the applicants have not provided security in the form of a deposit or bank guarantee in the amount of [redacted] in favor of the respondents within 20 days.

V. The interim measures ordered shall be lifted or otherwise rendered ineffective at the request of the respondents, without prejudice to any claims for damages, if the applicants do not, within a period of 31 calendar days or 20 working days – whichever is longer – from the date of the issuance of present order, initiate main proceedings on the merits before the Unified Patent Court.

V. The application is dismissed in all other respects.

VI. The respondents shall bear the costs of the proceedings.

VII. The amount in dispute is set at [redacted]

<u>NOTICE TO THE RESPONDENTS</u>

The respondents may request a review of the order within 30 days of its execution (Art. 62 (5), 60 (6) UPCA, R. 212.3, 197.3 RoP).

Issued in Mannheim on September 30, 2025

NAMES AND SIGNATURES

Presiding Judge Tochtermann	Peter Michael Dr. Tochtermann Digitally signed by Peter Michael Dr. Tochtermann Date: 2025.09.30 18:04:36 +02'00'
Legally qualified Judge Böttcher	Dirk Andreas Böttcher Digitally signed by Dirk Andreas Böttcher Date: 2025.09.30 17:21:35 +02'00'
Legally qualified Judge Kupecz	András Ferenc Kupecz Digitally signed by András Ferenc Kupecz Date: 2025.09.30 17:11:08 +02'00'
For the Assistant Registrar: Kranz, Clerk LD Mannheim	ANDREAS MICHAEL Kranz Digitally signed by ANDREAS MICHAEL KRANZ Date: 2025.09.30 17:39:33 +02'00'

[End of the translation]

Lokalkammer Mannheim
UPC_CFI_936/2025

Anordnung

des Gerichts erster Instanz des Einheitlichen Patentgerichts
erlassen am 30. September 2025

ANTRAGSSTELLERINNEN:

1. InterDigital VC Holdings, Inc., 200 Bellevue Parkway, Suite 300, Wilmington, Delaware 19809, USA, gesetzlich vertreten durch den Vorstand, ebenda,

2. InterDigital Patent Holdings, Inc., 200 Bellevue Parkway, Suite 300, Wilmington, Delaware 19809, USA, gesetzlich vertreten durch den Vorstand, ebenda,

3. InterDigital Madison Patent Holdings, SAS, 20 rue Rouget de Lisle, 92130 Issy-les-Moulineaux, Frankreich, gesetzlich vertreten durch Richard J. Brezski, ebenda

4. Interdigital CE Patent Holdings SAS, 20 rue Rouget de Lisle, 92130 Issy-les-Moulineaux, Frankreich, gesetzlich vertreten durch Richard J. Brezski, ebenda,

Alle vertreten durch Cordula Schumacher

ANTRAGSGEGNERINNEN:

1. Amazon.com, Inc., 410 Terry Avenue North Seattle, Washington, 98109, USA, vertreten durch den Vorstand, ebenda, weiter vertreten zum Zwecke der Zustellung durch ihren Agenten Corporation Service Company, 251 Little Falls

Drive, Wilmington, DE
19808, USA

2. Amazon Digital UK Limited, 1 Principal Place, Worship Street, London, EC2A 2FA, Vereinigtes Königreich, gesetzlich vertreten durch den Vorstand, ebenda,

3. Amazon Europe Core S.à.r.l. (Société à responsabilité limitée), 38 Avenue John F. Kennedy, L-1855 Luxemburg, vertreten durch den Vorstand, ebenda,

4. Amazon EU S.à.r.l. (Société à responsabilité limitée), 38 Avenue John F. Kennedy, L1855 Luxemburg, vertreten durch den Vorstand, ebenda

5. Amazon Technologies, Inc., 410 Terry Avenue North Seattle, Washington 98109, USA, vertreten durch den Vorstand, ebenda, weiter vertreten zum Zwecke der Zustellung durch ihren Agenten CSC – Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Sacramento, CA 95833, USA,

EUROPÄISCHE PATENTE: vgl. Anlage AR10

SPRUCHKÖRPER/KAMMER:

Spruchkörper der Lokalkammer Mannheim

MITWIRKENDE RICHTER:

Diese Anordnung wurde durch den Vorsitzenden Richter und Berichterstatter Tochtermann, den rechtlich qualifizierten Richter Böttcher und den rechtlich qualifizierten Richter Kupecz erlassen.

VERFAHRENSSPRACHE: Deutsch

GEGENSTAND: R. 206 VerfO – Antrag auf einstweilige Maßnahmen, hier: Anti-interim-licence-injunction

MÜNDLICHE VERHANDLUNG: ex parte

KURZE DARSTELLUNG DES SACHVERHALTS:

1. Die Antragstellerinnen beantragen gegen die Antragsgegnerinnen eine einstweilige Verfügung, die sie als „Anti-interim-licence-injunction" bezeichnen. Die Anordnung soll ex parte erlassen werden. Die Anträge werden nachfolgend wiedergegeben:

I. Den Antragsgegnerinnen wird im Wege der einstweiligen Maßnahme untersagt, ein Verfahren auf Erlass einer Anti-Suit-Injunction einzuleiten und/oder weiter zu verfolgen oder eine andere gleichwertige gerichtliche oder behördliche Maßnahme wie eine Temporary Restraining Order zu beantragen, aufgrund derer die Antragstellerinnen effektiv daran gehindert werden und/oder werden sollen, Patentverletzungsverfahren aus ihren der Zuständigkeit des EPG unterliegenden Europäischen Patenten vor dem EPG im Geltungsbereich des EPGÜ zu betreiben oder fortzusetzen, und/oder daraus resultierende Urteile oder Maßnahmen zu vollstrecken,

wobei diese Unterlassungsverpflichtung insbesondere auch umfasst

1. beim UK High Court keine vorläufige Anordnung zu beantragen, die den Antragstellerinnen aufgibt, den Antragsgegnerinnen eine Interimslizenz an Patenten der Antragstellerinnen, zu gewähren;

2. beim UK High Court keine vorläufige Anordnung zu beantragen, festzustellen, dass die Antragstellerinnen gegen RAND-Verpflichtungen verstoßen, wenn sie den Antragsgegnerinnen keine Interimslizenz an Patenten der Antragstellerinnen, zu den von dem UK High Court festgelegten Konditionen gewähren würde;

3. das Gebot etwaige Anträge nach Ziff. 1. und 2. zurückzunehmen oder andere prozessuale Mittel zu ergreifen, um sie mit Wirkung für den Geltungsbereich des EPGÜ endgültig zu widerrufen;

4. das sofortige Verbot, ein etwaiges Interimslizenz-Verfahren mit Wirkung für den Geltungsbereich des EPGÜ außer zum Zweck der Antragsrücknahme weiter zu betreiben;

5. das Verbot, den Antragstellerinnen durch eine gerichtliche oder behördliche Anordnung gerichtet auf Untersagung des vorliegenden Verfahrens verbieten zu lassen, Patentverletzungsverfahren aus ihren Patenten vor den zuständigen Kammern des EPG zu führen und/oder daraus resultierende Urteil zu vollstrecken;

wobei die vorstehenden Ge- und Verbote auch umfassen, auf konzernverbundene Gesellschaften unter Ausschöpfung konzernrechtlicher Möglichkeiten entsprechend einzuwirken.

II. Im Falle jeder Zuwiderhandlung gegen die Anordnung nach Ziffer I. haben die Antragsgegnerinnen an das Gericht jeweils ein (ggf. wiederholtes) Zwangsgeld in Höhe von bis zu EUR 250.000,00 für jeden Tag der Zuwiderhandlung zu zahlen.

III. Die Anordnung ist ohne Sicherheitsleistung sofort vollstreckbar.

Hilfsweise:

Die Anordnung ist zunächst ohne Sicherheitsleistung sofort vollstreckbar. Die Vollstreckbarkeit dieser Anordnung endet, wenn die Antragstellerinnen zugunsten der Antragsgegnerinnen nicht innerhalb von 20 Tagen eine Sicherheit in Form einer Hinterlegung oder Bankbürgschaft geleistet haben, deren Höhe wir in das Ermessen des Gerichts stellen.

IV. Es wird gemäß R. 13.1 (q) VerfO angeordnet, dass englischsprachige Unterlagen, insbesondere die mit der Antragsschrift eingereichten Anlagen, nicht übersetzt zu werden brauchen.

V. Die Antragsschrift wird ohne Anlagen an die Antragsgegnerinnen zugestellt.

VI. Die Antragsgegnerinnen tragen die Kosten des Verfahrens.

VII. Die angeordneten einstweiligen Maßnahmen werden auf Antrag der Antragsgegnerinnen, unbeschadet etwaiger Schadensersatzforderungen, aufgehoben oder auf andere Weise außer Kraft gesetzt werden, wenn die Antragsstellerinnen nicht innerhalb einer Frist von 31 Kalendertagen oder 20 Werktagen – je nachdem, welcher Zeitraum länger ist – ab Abschluss etwaiger Rechtmittelverfahren gegen diese Maßnahmen oder fruchtlosem Verstreichen entsprechender Rechtsmittelfristen gerechnet beim EPG das Verfahren in der Hauptsache einleiten.

2.

3. Am 29. August 2025 leiteten die Antragsgegnerinnen ein Ratenfestsetzungsverfahren in UK ein, das zudem negative Feststellungsklagen mit Blick auf Verletzung, Essentialität und Rechtsbeständigkeit von vier UK-Teilen von EP-Bündelpatenten umfasst. Hiervon erhielten die Antragstellerinnen nach ihren Angaben am 1. September 2025 durch das öffentliche Register der UK Gerichte Kenntnis.

4. Überdies haben die Antragsgegnerinnen in Sao Polo, Brasilien, 18 Klagen auf Feststellung der Nichtessentialität eingereicht und eine Anti-suit-injunction beantragt, die es den Antragstellerinnen untersagen soll, Patente bei anderen Gerichten in Brasilien durchzusetzen (Anlage AR 7, S. 27, Rn. 60 (ii)).

5.

6. In der Klageschrift der vor dem High Court anhängig gemachten Klage kündigen die Antragsgegnerinnen einen Antrag auf eine „Adjustable Licence“ am gesamten Portfolio (vgl. AR 4 S. 28 Rn. 84 f., S. 30 Rn. 89, S. 31 Rn. 92 f., S. 32 f.) bis zum Abschluss des dortigen Ratenfeststzungsverfahren an (Anlage AR 4 S. 32 para 97 f. sowie S. 33 f. (4)-(6) und (15)).

7. Die Antragstellerinnen argumentieren, sie seien als Inhaberinnen von Patenten, die der Zuständigkeit des EPG unterliegen, antragsberechtigt (Anlage AR 10). Es stehe unmittelbar zu befürchten, dass die Antragsgegnerinnen einen auf eine Interim Licence gerichteten Antrag stellten, der ihnen damit auch die Einleitung von Patentverletzungsverfahren vor dem EPG unmöglich machen würde. Diese Befürchtung sei aufgrund des vorstehend geschilderten Verhaltens wohlbegründet. Der drohende Erlass einer auf eine Interim Licence gerichteten Declaration stelle einen durch den vorliegenden Antrag abzuwehrenden Eingriff in die Patentrechte der Antragstellerinnen dar. Eine solche Interim Licence habe zur Folge, dass damit bereits nach der eigenen Argumentation der Antragsgegnerinnen bei Anordnung der nach Schweizer Recht gebotenen „specific performance“ einer Klage der Antragstellerinnen der Boden entzogen sei, weil sie sodann den Lizenzeinwand führen könnten. Hierbei sei es unerheblich, ob das UK-Gericht nach dem dort anwendbaren Recht eine „specific performance“ anordne und festsetze, dass die Antragstellerinnen ein entsprechendes Angebot machen müssten und widrigenfalls

gerichtlicher Zwang durch Zwangshaft oder Strafgeldern ausgeübt werden könne, oder ob das UK-Gericht einen declaratory relief erlasse, weil auch dieser nach der ausdrücklichen Begründung der UK Gerichte eine faktische Zwangswirkung ausübe, die die Antragstellerinnen daran hindern würde, ihre Rechte in anderen Jurisdiktionen gerichtlich geltend zu machen. Zum Zuweisungsgehalt des Patents zähle auch seine prozessuale Durchsetzbarkeit im hiesigen Forum, die durch den begehrten Unterlassungsausspruch abzusichern sei. Der Antrag sei überdies dringlich und die Interessenabwägung falle zugunsten der Antragstellerinnen aus, weil der Antrag keinen Übergriff in fremde Foren mit sich bringe, sondern allein die Prozessführung im hiesigen Forum absichere. Ferner seien im Portfolio unstreitig auch nicht standard-essentielle Patente enthalten, weshalb die abzuwehrende Interim Licence um so schwerer wiege. Die Lokalkammer Mannheim sei international, sachlich und örtlich zuständig. Eine vorherige Anhörung sei untunlich, weil sonst eine Vereitelung des Rechtsschutzes zu befürchten stehe. Einer Sicherheitsleistung bedürfe es im vorliegenden Kontext nicht.

8. Wegen des weiteren tatsächlichen und rechtlichen Vortrags wird auf die Antragsschrift nebst Anlagen verwiesen.

GRÜNDE DER ANORDNUNG:

9. Die Lokalkammer Mannheim des Einheitlichen Patentgerichts ist für den Antrag auf einstweilige Maßnahmen zuständig (dazu I.). Der Antrag ist auch begründet (II.) und rechtfertigt den beantragten Ausspruch (dazu III.). Hieraus rechtfertigen sich die einstweiligen Maßnahmen im angeordneten Umfang.

I. Zuständigkeit

10. Die Zuständigkeit der Lokalkammer Mannheim des Einheitlichen Patentgerichts für den Antrag auf einstweilige Maßnahmen gegen die Antragsgegnerinnen ergibt sich aus Art. 31, 32(1)(c) EPGÜ i.V.m. Art. 7(2), Art. 71b Nr. 2 VO (EU) 1215/2012 und Art. 33(1)(a) EPGÜ. Der Erfolgsort des drohenden Eingriffs in die Patentrechte der Antragstellerinnen liegt im Zuständigkeitsgebiet des EPG. Die Antragstellerinnen würden auch gehindert, ihre Patente, die der Zuständigkeit des EPG unterliegen, vor der Lokalkammer Mannheim im Rahmen

von Verletzungsverfahren, für die das Gericht nach Art. 32(1)(a) EPGÜ zuständig ist, durchzusetzen.

11. Eine (drohende) Verletzung eines Patents iSv Art. 32(1)(a) EPGÜ ist nicht nur dessen rechtswidrige Benutzung, sondern auch der Eingriff in das Eigentumsrecht des Patentinhabers durch die Beantragung einer Untersagungsanordnung, das Patentrecht im vorliegenden gemeinsamen Forum der EPGÜ-Vertragsstaaten geltend zu machen, der auch Gegenstand des Eilrechtsschutzes nach Art. 32(1)(c) EPGÜ sein kann (vgl. LK München, CFI_112/2025 (Nokia/Sunmi), insb. Leitsätze 2 und 3, CFI_755/2024 (Avago/Realtek), Rn. 30 und CFI_791/2024 (Huawei/Netgear), S. 10; Grabinski/W.Tilmann, in Tilmann/Plassmann, Einheitspatent, Einheitliches Patentgericht, 2. Aufl., Art. 32 Rn. 61a). Daher ergibt sich die Zuständigkeit unter dem Gesichtspunkt der Annexkompetenz, um den Justizgewährungsanspruch mit Blick auf die unter Art. 32(1)(a) EPGÜ fallende Verletzungsklage abzusichern. Art. 33 Abs. 1 lit. a) EPGÜ setzt lediglich eine tatsächliche oder drohende Verletzung in dem Vertragsmitgliedstaat voraus, um die örtliche Zuständigkeit einer der in diesem Staat ansässigen Lokalkammer zu begründen (vgl. LK München, CFI_112/2025 (Nokia/Sunmi), Rn. 24). Ob die hier in Rede stehenden Maßnahmen tatsächlich einen solchen Eingriff in das Eigentumsrecht darstellen, ist eine Frage der Begründetheit.

<u>II. Begründetheit</u>

12. Der Antrag ist auch begründet. Die Antragstellerinnen haben einen Anspruch darauf, im hiesigen Forum ihre Patentrechte in einem gerichtlichen Verfahren geltend machen zu können. Hierzu zählt auch die Durchsetzung eines Unterlassungsanspruchs. Dieser Anspruch ist dem geltend gemachten Patent immanent, weil dem Patent neben seinem materiellen Zuweisungsgehalt auch seine prozessuale Durchsetzbarkeit inhärent ist (Lokalkammer Mannheim, Urteil v. 22.11.2024, UPC_CFI_210/2023 Rn. 172 (Panasonic/Oppo). Der Anspruch folgt dabei aus den im Übereinkommen festgelegten und dem Gericht zur Durchsetzung des Patentrechts eingeräumten Befugnissen gem. Art. 62 ff. EPGÜ und damit aus dem Übereinkommen selbst, ohne dass ein Rückgriff auf das nationale Recht notwendig wäre (abweichend in der dogmatischen Herleitung LK München – deutsches Recht: LK München, CFI_112/2025 (Nokia/Sunmi), Rn. 29 sowie LK München, CFI_791/2024 (Huawei/Netgear), Seite 11 unten bzw. nationales Recht hinsichtlich weiterer Bündelpatentteile oder als gemeinsamer Rechtsgrundsatz bzgl. Einheitspatenten)

iVm Art 47 EU-Charter und Art. 6 EMRK. Dass die prozessuale Durchsetzbarkeit der Schutzrechte des geistigen Eigentums ein zentraler Aspekt derselben ist, bestätigt nicht zuletzt die Richtlinie 2004/48/EG des Europäischen Parlaments und des Rates vom 29. April 2004 zur Durchsetzung der Rechte des geistigen Eigentums (Durchsetzungsrichtlinie) in Erwägungsgründen 3 ff. und deren Art. 3, 4(a), 9(1)(a), 11. Die prozessuale Durchsetzbarkeit des materiellen Patentrechts ist damit zugleich europarechtlich abgesichert. Der Durchsetzung in diesem Sinne dienen die Anordnungsbefugnisse in Art. 62 ff. EPGÜ. Der Antrag ist mithin nach Art. 62 Abs. 1, 2 EPGÜ i.V.m. Regel 211 Abs. 1, 2, 3 VerfO begründet.

13. Auch nach Art. 47 Abs. 1 EU-Charta hat jede Person, deren durch das Recht der Union garantierte Rechte oder Freiheiten verletzt worden sind, das Recht bei einem Gericht einen wirksamen Rechtsbehelf einzulegen. Art. 47 Abs. 2 EU-Charta gibt jeder Person das Recht, dass ihre Sache von einem unabhängigen, unparteiischen und zuvor durch Gesetz errichteten Gericht in einem fairen Verfahren, öffentlich und innerhalb angemessener Frist verhandelt wird. Art. 47 EU-Charta verbürgt folglich auf europäischer Ebene einen allgemeinen Justizgewährungsanspruch, der nach Art. 20 EPGÜ auch für das EPG Anwendung findet. Gemäß Art. 17 Abs. 2 EU-Charta handelt es sich bei geistigem Eigentum um jedenfalls eigentumsähnliche Rechte, welche nach der Charta zu schützen sind. Folglich schützen Art. 47 Abs. 1 und 2 EU-Charta ebenfalls den Zugang einer Person zum EPG zwecks Geltendmachung einer (behaupteten) rechtswidrigen Benutzung eines Patents (ebenso LK München (CFI_112/2025 (Nokia/Sunmi) (Panel 2); CFI_755/2024 (Avago/Realtek) (Panel 2); CFI_791/2024 (Huawei/Netgear) (Panel 1); CoA UPC_CoA_22/2024 vom 28. Mai 2024 (Carrier/Bitzer), 1. LS und Rn. 22).

14. Dieses fundamentale Recht auf Zugang zum gerichtlichen Verfahren und eine abschließende Entscheidung folgt ferner aus Art. 6 EMRK (EGMR v. 18.2.1999, NJW 1999, 1173 Nr. 50 – Waite u. Kennedy/Deutschland; EGMR v. 19.3.1997, Slg. 97-II, S. 510 Nr. II40 = ÖJZ 1998, 236 – Hornsby/Griechenland; EGMR v. 1.3.2002, 48778/99 Nr. 25, Slg. 02-II – Kutiá/Kroatien).

15. Diese Grundsätze rechnen auch zum Grundbestand des acquis communautaire und sind vom Gerichtshof der Europäischen Union (fortan: „EuGH“) anerkannt (EuGH, Urteil vom 27. April 2004 - C-159/02 Turner/Grovit u.a., EuZW 2004, 468, 469; s. auch EuGH (Große Kammer), Urteil vom 10. Februar 2009 - Rs. C-185/07 Allianz SpA gegen West Tankers Inc.,

SchiedsVZ 2009, 120, 121 f.) und binden damit das EPG als gemeinsames Gericht der Mitgliedstaaten.

16. Es ist überwiegend wahrscheinlich, dass die im Register als Inhaber eingetragenen Antragstellerinnen zur Einleitung des Verfahrens berechtigt sind und ihre Rechte aus ihren Patenten verletzt werden.

17. Die Antragstellerinnen haben auch mit hinreichender Substanz dargetan, dass eine Verletzung ihrer Patentrechte im zuvor beschriebenen Sinne ernsthaft droht:

18. Der Erlass eines declaratory judgement im Vereinigten Königreich soll nach der in den einschlägigen Entscheidungen erklärten Absicht der dortigen Gerichte jedenfalls faktisch dazu führen, dass eine Partei sich zur globalen Festlegung der angemessenen FRAND-Rate allein den Gerichten des Vereinigten Königreichs unterwirft. Dies ergibt sich aus der jüngeren Rechtsprechung der Gerichte des Vereinigten Königreichs, die die Parteien eines Streitfalls, der ein SEP betrifft, mindestens faktisch durch unzweideutiges Aufzeigen der ihnen andernfalls vor den dortigen Gerichten drohenden negativen Folgen dazu bewegen wollen, eine sog. „Interim Licence" abzuschließen. Dies hat erklärtermaßen zum Zweck, den SEP-Inhabervon der Einleitung oder Fortsetzung jedweder anderer parallel anhängiger Streitverfahren, die zumindest auch SEPs betreffen, abzuhalten. Dies ergibt sich aus den nachfolgend wiedergegebenen Entscheidungen:

<u>Zu den einschlägigen Entscheidungen des UK Court of Appeal und des High Courts</u>

19. Bereits in dem sowohl vor den Gerichten des Vereinigten Königreichs als auch dem UPC, Lokalkammern Mannheim und München, anhängigen Streitfall zwischen Panasonic und Xiaomi, [2024] EWCA Civ 1143, haben sich die Parteien dem Druck des Gerichts des Vereinigten Königreichs gebeugt und eine „Interim Licence" abgeschlossen. Die Entscheidung des Court of Appeal vom 3. Oktober 2024 führte dazu, dass sich die Parteien in dem wenige Tage später zur Verhandlung vor der Lokalkammer Mannheim des UPC anberaumten Streitfall dazu entschlossen haben, beiderseitig ein Ruhen des Verfahrens zu beantragen, was die Parteien dem Gericht wenige Minuten vor Eröffnung der mündlichen

Verhandlung am Verhandlungstag mitgeteilt und sodann entsprechende Erklärungen zu Protokoll abgegeben haben.

20. Entsprechend berichtet der UK CoA in der Folgeentscheidung Lenovo vs Ericsson [2025] EWCA Civ 182 para 40:

> After this Court gave its judgment, the parties agreed to enter into an interim licence on the terms indicated by the Court. Thus the Court's declaration did serve a useful purpose.

21. In jener Entscheidung erachtete ein Richter des Spruchkörpers des UK CoA im Streitfall den Erlass einer Anti-suit-injunction für angezeigt (Lord Justice Phillips, paras. 104 et seqq.), weil er bereits den Erlass eines declaratory judgement für einen Übergriff in die Entscheidungshoheit fremder Gerichte erachtete:

> […] The purpose of granting the declaration is unclear to me. Panasonic, perhaps not surprisingly, states that it will not grant the proposed interim licence, and it cannot be compelled to do so. Even if it does grant the licence, its effect will be transitory given that Meade J proposes to give judgment determining FRAND on the evidence by the end of the year, which will apply to the period of the interim licence and supersede its terms, requiring recalculation and adjustment of any amounts payable (and amendment to the accompanying licence terms). The real purpose and effect can only be to influence the approach of foreign courts in relation to Panasonic's infringement proceedings. I have doubts as to the propriety of that aim, which smacks of jurisdictional imperialism. […]
>
> On the face of the matter, in my judgment, there is a more conventional interim remedy potentially available, which would directly address and prevent Panasonic's indefensible conduct. Given that, at Panasonic's instigation, the English courts will shortly determine the terms of a global FRAND licence, including with retrospective effect, which the parties will enter pursuant to their reciprocal undertakings to the court, the parallel proceedings Panasonic has brought in other jurisdictions for infringement would appear to be unconscionable, vexatious and designed to be oppressive. That is a well-established basis on which the English courts would consider granting an ASI, as identified by Arnold LJ at [66], subject to issues of comity and discretion.
>
> As well recognised (see the Deutsche Bank case at [56]), such an order would be addressed solely to Panasonic, not to the foreign courts, and Panasonic would have to obey it or face contempt proceedings in this jurisdiction, where the FRAND licence is to be determined at Panasonic's instigation.

22. Dagegen erachtete die Stimmmehrheit des UK CoA den Erlass einer final declaration für ausreichend, aber auch notwendig und entschied im Wege einer Declaration, dass Panasonic aufgrund seiner ETSI-Declaration gehalten ist, eine „Interim Licence“ abzuschließen, um sich FRAND-gemäß zu verhalten. Bemerkenswert ist, dass dieser

Festlegung keine gerichtliche FRAND-Bestimmung vorhergegangen ist, sondern die Differenz zwischen den sich gegenüberstehenden Angeboten der Parteien ohne nähere Prüfung schlicht durch Teilung überwunden wird. Damit ist von vornherein nicht erforderlich und erst Recht nicht sichergestellt, dass die „interim license" FRAND-Bedingungen entspricht.

23. Das Gericht hob in diesem Fall noch zentral darauf ab, dass beide Parteien ein sog. „undertaking to the court" abgegeben hatten, die Bestimmung einer für FRAND erachteten Lizenzrate ausschließlich den Gerichten des Vereinigten Königreichs zu übertragen. Vor diesem Hintergrund erachtete der UK CoA die Einleitung mehrerer im Ausland belegener Patentverletzungsverfahren, u.a. vor nationalen deutschen Gerichten und dem Einheitlichen Patentgericht, für unvereinbar mit der gegenüber dem Gericht abgegebenen Erklärung. Während die Vorinstanz ([2024] EWHC 1733 (Pat)) den Erlass eines entsprechenden declatory judgement noch als „jurisdictional imperialism" abgelehnt hatte (zitiert nach UK CoA ebenda para. 29):

> "… as a matter of principle, it is wrong for an English court to make a declaration solely for the purpose of influencing a decision by a foreign court on an issue governed by the law of the foreign court. It is not the function of the courts of England and Wales to provide advisory opinions to foreign courts seised of issues which fall to be determined in accordance with their own laws. The English courts have no special competence to determine such issues. If anything, it is likely that they have less competence than the local courts. It makes no difference that the English court and the foreign court are applying the same basic law. Furthermore, comity requires restraint on the part of the English courts, not (to adopt Floyd LJ's graphic phrase) jurisdictional imperialism. …"

entschied der UK CoA in der Mehrheit der Stimmen im gegenteiligen Sinne und begründete dies in dieser Entscheidung noch zentral mit dem „undertaking", das beide Streitparteien gegenüber dem Gericht abgegeben hatten (ebenda paras. 25 et seq.):

> I described the limited powers of a national court in the ordinary case to enforce its determination as to what terms are FRAND where negotiations between the parties have failed in Optis Cellular Technology LLC v Apple Retail UK Ltd [2022] EWCA Civ 1411, [2023] RPC 1 at [73]:
>
> "… it is preferable that SEP owners and implementers should negotiate licences. This is reflected in the ETSI IPR Policy and in paragraph 4.4 of ETSI's Guide on Intellectual Property Rights (which states that both members and non-members should engage in a negotiation process for FRAND terms). … the importance of negotiation has been emphasised both by the CJEU in Huawei v ZTE and by the Supreme Court in UPSC. The present issue arises, however, when the parties cannot

agree terms. In those circumstances the national court must resolve the dispute, as paragraph 4.3 of the ETSI Guide states and as both the CJEU and the Supreme Court recognised. As discussed above, the twin purposes of the ETSI IPR Policy are to avoid hold up and hold out. To achieve this it is necessary, in the absence of agreement between the parties, for the national court to be able to enforce its determination against both parties. The national court can only enforce its determination against the SEP owner by withholding an injunction from the SEP owner if it is unwilling to abide by its ETSI Undertaking by granting a licence on the terms determined to be FRAND. The national court can only enforce its determination against the implementer by granting an injunction against the implementer if it is unwilling to take a licence on the terms determined to be FRAND."

As explained below, this case is different because of the undertakings which both parties have given.

24. Der UK CoA stellt die zentrale Bedeutung des „undertakings“ beider Parteien gegenüber dem Gericht sodann nochmals heraus und schildert für fremde Rechtskreise auch die Wirkungen eines Verstoßes gegen das „undertaking“ wie folgt (ebenda paras. 36 et seq.):

There was a case management hearing before Meade J on 3 and 8 November 2023. There were two very positive results of the hearing. The first was that both parties gave unconditional undertakings to the court, which were recorded in the judge's order dated 8 November 2023, to enter into a licence of Panasonic's portfolio on the terms determined by the Patents Court to be FRAND, with any necessary adjustments as a result of any appeals. Since these undertakings are central to the present appeal, I should set them out:

"AND UPON the Claimant giving the following undertakings to the Court (the '**Panasonic Undertakings**'): 1. The Claimant, on behalf of itself and its affiliates, hereby unconditionally undertakes to the Court that: (a) it will (i) offer a licence agreement to the Xiaomi Defendants covering the Panasonic Portfolio (as defined in paragraph 2 of the Particulars of Claim) in the form that is determined to be FRAND by the High Court at the FRAND Trial (defined in paragraph 1 of this Order) in these proceedings (the '**Court-Determined Licence**') (including for the avoidance of doubt such terms the Court considers it appropriate to make conditional pending any appeal), and (ii) upon acceptance by Xiaomi, enter into the Court-Determined Licence by expiry of the time period specified by the High Court within which the Xiaomi Defendants and Claimant must enter into the Court-Determined Licence; and (b) to the extent that there are any appeals of the judgment (including any consequentials judgments) affecting the form of the Court-Determined Licence, it will perform such steps as are required to (i) amend the form of the executed Court-Determined Licence to incorporate any amendments to the Court-Determined Licence that are finally determined to be FRAND on appeal in these proceedings, and (ii) incorporate any such amendments into the Court-Determined Licence by expiry of the time period specified by the relevant appeal court within which the Xiaomi Defendants and Claimant must incorporate such amendments.

AND UPON the Xiaomi Defendants giving the following undertaking to the Court (the '**Xiaomi Undertakings**'): The Xiaomi Defendants, on behalf of themselves and

> their affiliates, hereby unconditionally undertake to the Court that: 1. they will accept and enter into the licence agreement offered by the Claimant pursuant to the Claimant's undertaking 1(a) above by expiry of the time period specified by the High Court within which the Xiaomi Defendants and Claimant must enter into the Court-Determined Licence; and 2. to the extent that there are any appeals of the judgment (including any consequentials judgments) affecting the form of the Court-Determined Licence, they will perform such steps as are required to (i) amend the form of the executed Court-Determined Licence to incorporate any amendments to the Court-Determined Licence that are finally determined to be FRAND on appeal in these proceedings, and (ii) incorporate any such amendments into the Court-Determined Licence by expiry of the time period specified by the relevant appeal court within which the Xiaomi Defendants and Claimant must incorporate such amendments."
>
> For readers who are unfamiliar with undertakings to the court in English proceedings, I should explain that they are enforceable in the same way as injunctions ordered by the court. Breach of such an undertaking is a contempt of court, and severe sanctions can be imposed: the assets of a company can be sequestrated, an unlimited fine can be imposed and the company's directors can imprisoned for up to two years. It is common ground that this means that it is certain that the parties will enter into a global licence on the terms determined by the English courts to be FRAND unless there is an earlier negotiated settlement.

25. Zu den faktischen Auswirkungen der im Fall ausgesprochenen Feststellungen betreffend die Gewährung einer „Interim License" führt das Gericht weiter aus (ebenda, para. 90):

> In my judgment, making the declarations sought by Xiaomi would serve a useful purpose in forcing Panasonic to reconsider its position. It would not force Panasonic to change its mind, but in my judgment there is a realistic prospect that it will do so. Panasonic may not presently intend to change its position, but as counsel for Panasonic had to accept, parties' intentions can change. Panasonic's intentions have already changed in this very dispute, as demonstrated by its revised offer of 13 September 2024. Faced with a decision by this Court that Panasonic is in breach of its obligation of good faith and a formal declaration that a willing licensor would enter into an interim licence, would Panasonic really persist in conduct that this Court has unequivocally and publicly condemned? I not only hope that Panasonic will see the error of its ways, but consider that there is a real prospect of it doing so.

26. Dass die Gerichte des Vereinigten Königreichs aktiv Einfluss auf die Parteien nehmen, um sie dazu zu überreden, den FRAND-Aspekt vor einer etwaigen technischen Anhörung zu verhandeln, berichtet der UK CoA wie folgt (ebenda, para. 14; ebenso Lenovo vs Ericsson [2025] EWCA Civ 182 para. 14, dazu sogleich):

> The courts have therefore sought to persuade parties to agree to the FRAND trial being heard first, because experience to date shows that (subject to any appeals) the court's determination is usually accepted by both parties. Implementers have

> shown themselves increasingly ready to agree to this course. Furthermore, in one case, case management decisions have been made which resulted in the FRAND trial being scheduled before a technical trial. In that case, this solution was advocated by the implementer and opposed by the SEP holder.

27. Einen Übergriff in die Justizhoheit fremder Staate sah der UK CoA hierin nicht, vielmehr werde allein die seiner Auffassung nach unnötige Arbeit ausländischer Gerichte vermieden ([2024] EWCA Civ 1143, paras. 94 et seqq.):

> Xiaomi contend that the judge was wrong to conclude that the declarations should be refused in the interests of comity. Comity in this context means that the courts of this jurisdiction should respect the ability of courts such as the German national courts and the UPC to decide issues falling within their respective competencies, and should be cautious about granting any relief which might interfere with such courts' exercise of their own jurisdictions or which might be perceived as an attempt to do so (unless there are proper grounds for the grant of an ASI).
>
> The judge reasoned that the only useful purpose of making the declarations sought would be to influence the outcome of the German Proceedings and that was not a legitimate purpose because it would be contrary to comity. If the premise were correct, I would agree with the judge's conclusion for the reasons given in Teva v Novartis. For the reasons given above, however, I disagree with the premise.
>
> Furthermore, if the declarations do induce Panasonic to reconsider its position and to grant Xiaomi an interim licence, that would, as Xiaomi submit, promote comity because it would relieve the German courts and the UPC of a great deal of burdensome and wasteful litigation.
>
> If, on the other hand, Panasonic decides to ignore the declarations and to pursue the German Proceedings, it will be entirely for the German national courts and the UPC to make their own assessment of the parties' conduct, including their conduct in the English proceedings, and to decide what, if any, relief to grant Panasonic for any infringements they may find established in the absence of a licence. The same would be true of any other courts before whom Panasonic might choose to bring proceedings. Accordingly, I do not consider that comity is a reason not to grant the declarations sought by Xiaomi.

28. Während mithin in der Entscheidung Panasonic vs Xiaomi das von beiden Parteien gegenüber dem Gericht abgegebene „undertaking" eine zentrale Rolle spielte, nahm der UK CoA in der Entscheidung Lenovo vs. Ericsson ([2025] EWCA Civ 182) – auf die weitere Entscheidung Alcatel vs Amazon [2025] EWCA Civ 43 sei gleichfallls verwiesen – von diesem Begründungsansatz Abstand und hielt es für ausreichend, dass das undertaking nur von

einer Seite abgeben worden war, wohingegen sich die Gegenseite geweigert hatte, ein undertaking abzugeben (CoA ebenda paras. 72 et seqq.):

> In paragraph 67 of their Particulars of Claim in the E&W I Proceedings served in October 2023 Lenovo pleaded as follows:
>
> "… Lenovo hereby undertakes to this Court that it will enter into a licence agreement in the form that is determined to be FRAND at the FRAND trial in these proceedings or, to the extent that there any appeals of the judgment of the FRAND trial, a licence agreement that is finally determined to be FRAND on appeal."
>
> This undertaking is ambiguously drafted. As the judge explained at [61], however, Lenovo clarified during the hearing before him that their undertaking was to enter immediately into whatever cross-licence the Patents Court determines to be FRAND, with any adjustments that may be necessary as a result of any appeal(s) being made subsequently. It emerged during the course of the hearing before this Court that this undertaking had never formally been embodied in a court order. If only for the sake of good order, I consider that it should be. I will therefore proceed on the basis that the undertaking will be incorporated into this Court's order.
>
> Ericsson have not given an equivalent undertaking.

29. Wiederum hatte der High Court (Richards J, [2024] EWHC 2941 (Pat)), den Erlass einer declaration abgelehnt (siehe CoA ebenda para 1 und 99). Die Kompetenz der Gerichte von England and Wales, eine globale FRAND-Rate festzulegen, wird dabei angenommen, sobald mindestens ein UK SEP für rechtsbeständig und verletzt erachtet wird (CoA ebenda para. 11).

30. Der CoA erachtet in diesem Fall ein undertaking von Seiten Ericssons nunmehr für entbehrlich (paras. 126 et seqq.)

> On any view Ericsson's conduct is not as egregious as that of Panasonic in Panasonic v Xiaomi. Part of the reasoning which led to the conclusion that Panasonic's conduct was indefensible was that its pursuit of injunctions in other jurisdictions was inconsistent with Panasonic having invoked the jurisdiction of the English courts to determine terms FRAND terms on a global basis and with Panasonic having undertaken to the English courts to enter into a licence on the terms determined by the English courts to be FRAND. Ericsson have neither invoked the jurisdiction of the English courts nor given such an undertaking.
>
> Nevertheless, I accept Lenovo's submission that the core reason for the conclusion reached in Panasonic v Xiaomi is equally applicable here.
>
> In the present case Ericsson is also aiming to coerce Lenovo into accepting terms more favourable to Ericsson than the English courts would determine to be FRAND,

> or at the very least to avoid the risk that the English courts would determine that FRAND terms are less advantageous to Ericsson than those sought by Ericsson.

und beschreibt die Vorteile einer alleinigen Entscheidung der UK Gerichte wie folgt (ebenda, paras. 107 et seqq.):

> Lenovo acknowledge that, unlike Panasonic in Panasonic v Xiaomi, Ericsson did not invoke the jurisdiction of the English courts to determine FRAND terms on a global basis and have not undertaken to enter into a cross-licence on the terms determined by the Patents Court to be FRAND. Lenovo argue that these factual differences from Panasonic v Xiaomi are not material, because what matters is that, like Xiaomi, Lenovo have undertaken to enter into a global cross-licence on the terms determined by the Patents Court to be FRAND (subject to any adjustment required on appeal). This undertaking will be enforceable by Ericsson with severe sanctions for non-compliance by Lenovo (see Panasonic v Xiaomi at [37]). It follows that Ericsson are guaranteed to receive payment in full of the royalty which the Patents Court determines to be FRAND (or as adjusted on appeal) in respect of the entire period since Lenovo started implementing any of the relevant standards, taking into account the fact that a range of rates may be FRAND, together with realistic interest in respect of past sales. Thus Ericsson will not need to rely upon the threat of an injunction in this jurisdiction in order to enforce the Patents Court's determination as to FRAND terms. The fact that Ericsson have not undertaken to enter into a cross-licence on the terms determined by the Patents Court to be FRAND does not affect this. It simply means that Ericsson will be free to decline to accept the terms determined by the Patents Court. (That would prevent Ericsson from enforcing any of their SEPs against Lenovo in this jurisdiction, but Ericsson do not seek to do so.)
>
> In those circumstances, Lenovo contend that the central question posed by this Court in Panasonic v Xiaomi at [82] also arises here: what is the point of Ericsson pursuing the Brazilian, Colombian and US proceedings, and attempting to exclude Lenovo's products from those commercially important markets, with all the massive attendant effort and expense for both parties? Lenovo argue that, just as in Panasonic v Xiaomi, there can only be one answer to that question: Ericsson wish to coerce Lenovo into accepting terms more favourable to Ericsson than the English courts will determine to be FRAND.
>
> […] But the position now is that Lenovo have undertaken to enter into a cross-licence on the terms determined by the English courts to be FRAND. Thus Ericsson are guaranteed to receive full payment of whatever net amount is found to be FRAND in respect of Lenovo's exploitation of Ericsson's SEPs from day one until 31 December 2028 with realistic interest on past sales. Lenovo will not be rewarded by the English courts for having held out in the past. Ericsson do not suggest that there is any doubt about the willingness or ability of Lenovo to pay whatever sum the English courts order. Thus Lenovo cannot be accused of holding out now.

31. Zu den Konsequenzen einer Weigerung Ericssons, sich der Anordnung des Gerichts betreffend eine „Interim License" zu beugen, führt der CoA aus (para. 142):

> In my judgment, making the declaration sought by Lenovo would serve a useful purpose in forcing Ericsson to reconsider its position. It would not force Ericsson to change their mind, but in my judgment there is a realistic prospect that they will do so. Ericsson may not presently intend to change their position, but parties' intentions can change, as the example of Panasonic shows. Faced with a decision by this Court that Ericsson are in breach of their obligation of good faith and a formal declaration that a willing licensor would enter into an interim licence, would Ericsson really persist in conduct that this Court has unequivocally and publicly condemned? I not only hope that Ericsson will see the error of their ways, but consider that there is a real prospect of them doing so.

32. Dieselben Prinzipien wurden vom CoA in der Entscheidung Tesla vs. Interdigital, Avanci et al. [2025] EWCA Vic 193 wiederholt, wobei in diesem Fall entgegen der Ansicht des Berichterstatters Arnold LJ eine declaration mit der Begründung abgelehnt wurde, dass im vorliegenden Fall die Partei vertraglich nicht an die ETSI-Declaration der Patentinhaber gebunden sei. Dies ist eine Folge der allein auf Vertragsrecht fußenden Betrachtung englischer Gerichte, die das EU-Kartellrecht in diesem Zusammenhang nicht in den Vordergrund stellt (ebenda para. 222):

> The jurisdiction of the courts of England and Wales to determine a FRAND licence of a portfolio of SEPs which includes foreign patents is based entirely upon the contractual undertaking of the owner of those patents to grant such licences. […]
>
> Und paras. 228/229:
>
> What the owners have not agreed to do, on any sensible interpretation of the contractual arrangements with ETSI, is to license their SEPs on a collective basis with other SEP owners, whether on "FRAND terms" or on any terms. The undertaking clearly and distinctly creates an obligation on individual owners to license the Patent Family of their declared SEPs, but it cannot be interpreted as extending to include licensing a portfolio which includes many SEPs owned by other organisations altogether. […]
>
> Does the fact that the owners have voluntarily placed their SEPs on the Avanci 5G Platform change the contractual analysis? I cannot see how it does. The fact that the owners have given undertakings to ETSI, derogating from their rights under the general law to that extent, in no way limits their freedom to exploit their rights in any legitimate way, whether on their own or jointly with others. Placing their SEPs on the Avanci 5G Platform is a convenient and highly beneficial way for a vast number of SEPs to be offered collectively to the car industry, avoiding the "licensing debacle" which has arisen in other sectors when multiple implementers have sought licences from multiple owners. Such an arrangement is in addition to (and may well, for an implementer, be preferable to relying on) the ETSI undertaking

> given by each owner. In my judgment the owners who have joined the Platform have not somehow extended the scope of their undertaking to ETSI or entered any other binding agreement to license their SEPs on a collective basis.

33. Zuletzt hat der UK High Court sich in der Sache Samsung vs ZTE zu dem hier entschiedenden Komplex geäußert ([2025] EWHC 1432 (Pat) (Mellor J). In diesem Fall hatte Samsung als Klägerin ein undertaking gegenüber dem Gericht angeboten, wohingegen ZTE Samsung angeboten hatte, eine solche weltweite FRAND-Bestimmung in einem chinesischen Gericht vornehmen zu lassen, worauf Samsung sich nicht eingelassen hat. ZTE hat sodann weitere Patentverletzungsklagen u.a. vor dem UPC erhoben (ebenda paras. 33 et seqq.). Samsung beantragte sodann eine declaration vor dem High Court, eine Interim Licence abzuschließen. In der Folgezeit erhob wiederum Samsung Patentverletzunsgklagen gegen ZTE u.a. vor dem UPC (ebenda paras. 52 et seqq.). Wiederum hatte nur eine Partei, hier Samsung, ein undertaking gegenüber dem Gericht abgegeben, ZTE hingegen nicht (ebenda para. 12)

34. Zu dem Verhältnis zwischen Unterlassungsanträgen und allein auf Schadensersatz bezogenen Klagen in UK führt das Urteil aus (para. 21):

> In this regard, it may be noted that in a FRAND action in the UK, it would be highly unusual for a SEP licensor to seek interim injunctive relief because in the vast majority of cases, damages would be an adequate (if not complete) remedy. This is why in the SEP licensors' playbook, injunctive relief is sought elsewhere.

35. Zu den möglichen Folgen einer Weigerung, die vom Gericht bestimmte FRAND-Rate anzunehmen, führt das Gericht aus (paras. 28, 29):

> As far as I am aware, there has not yet been a case where a SEP licensor has declined to accept Court-determined FRAND terms but the consequences would appear to include the following:
>
> i) First, the Court in question would be highly likely to declare the licensor to be unwilling.
> ii) Second, it would be highly likely that the unwilling licensor would have to pay the costs of the FRAND trial, which experience shows can be substantial.
> iii) Third, the effect of the declaration of unwillingness on proceedings in the Courts of other jurisdictions would be a matter for those Courts to determine.
> iv) Fourth, there is a possibility that the reason why the licensor declined to accept FRAND terms determined by the UK Court was because it wished to hold out for FRAND terms determined by a different court. It would then be interesting to compare the FRAND ranges or rate determined by each Court and the reasoning which led to each result. There remains the possibility

that each Court might be persuaded to take account of specific points in the other (e.g. a rate determined for the territory corresponding to the jurisdiction of the other Court) although sensible limits would have to be applied, to avoid going round in circles.

In a case involving a cross-licence, like the present, if the defendant, in its capacity as SEP licensee, refuses to accept the FRAND terms determined by the Court, the normal consequence would be the grant of injunctive relief.

36. Zu den Intentionen ZTEs, in anderen Jurisdiktionen Klagen zu erheben, führt der High Court aus (paras. 99, 105):

> In these circumstances, a now familiar and obvious question arises: what is the point of ZTE pursuing the Brazilian, German, UPC and Hangzhou proceedings and attempting to exclude Samsung's products from those commercially important markets, with all the massive attendant effort and expense for both parties? cf. the judgment of Arnold LJ in Lenovo CA:
>
> '108. In those circumstances, Lenovo contend that the central question posed by this Court in Panasonic v Xiaomi at [82] also arises here: what is the point of Ericsson pursuing the Brazilian, Colombian and US proceedings, and attempting to exclude Lenovo'sproducts from those commercially important markets, with all the massive attendant effort and expense for both parties? Lenovo argue that, just as in Panasonic v Xiaomi, there can only be one answer to that question: Ericsson wish to coerce Lenovo into accepting terms more favourable to Ericsson than the English courts will determine to be FRAND.'
>
> [...] However, that aim gives rise to a slightly different but equally obvious question: why are ZTE spending so much effort and cost on insisting that the global FRAND terms are determined in Chongqing? As I have indicated, I proceed on this application without taking into account Samsung's criticisms of the Chinese approach to FRAND or of the Chinese courts. But the answer can only be that ZTE perceive an advantage, an advantage which must be a substantial one in view of the cost and effort devoted to achieving this aim.

37. Zu den Beweggründen der UK Gerichte, eine Declaration zu erlassen, führt der High Court aus (ebenda paras. 120 et seqq.):

> The other point explained by Arnold LJ in [155] in particular is that, whilst accusations of 'jurisdictional imperialism' are easy to make, the complaint, if there is one, is really about the decision of the UKSC in Unwired Planet. Now that, in this case, Samsung has invoked the jurisdiction of this Court (and that jurisdiction has been accepted by ZTE), there are two aspects to consider:
>
> i)The first is the determination of global FRAND terms at the trial of this action. As already indicated, a trial date has been set and directions given to enable the parties to be ready for that trial. It is not an act of jurisdictional imperialism for a first instance court to exercise the jurisdiction conferred by the UKSC, as we are obliged to do in an appropriate case.

> ii)The second is whether this Court should decide on what terms would be FRAND for an interim cross-licence, pending the final determination. As Arnold LJ indicates in [155] this is less intrusive into the jurisdictions of foreign courts and tribunals than a global FRAND determination.
>
> One particular reason why the interim declaratory relief sought here is less intrusive is because it is entirely up to the courts in other jurisdictions to decide what should happen in the proceedings before them.
>
> Notwithstanding these accusations of jurisdictional imperialism, what lies behind all the developments in the procedures of the Patents Court in FRAND proceedings is a desire to promote the resolution of these FRAND disputes as efficiently as possible. The UKSC decision and the development of the interim declaratory licence jurisdiction are designed to put an end to wasteful, essentially duplicative litigation in many countries, when there is really only one dispute: the terms of a global FRAND licence.

38. Zu den vermuteten Beweggründen von ZTE, in anderen Jurisdiktionen einen Unterlassungstitel zu erstreiten, bemerkt das Gericht (paras. 127 und 130):

> In my judgment, a willing licensor in the position of ZTE would have engaged with this action and proceeded as speedily as possible to the FRAND trial, in the absence of earlier agreement between the parties. In my view, a willing licensor would not commence a wave of injunctive proceedings, whatever the aim of the pressure which those proceedings would exert on the SEP licensee. The wave of injunctive proceedings commenced by ZTE were completely unnecessary since Samsung were and are actively seeking fresh global FRAND cross-licence terms, to replace the previous global cross-licensing terms which the parties abided by for several years. There is no suggestion that Samsung were operating other than as a willing licensee (and as a willing licensor).
>
> […] ZTE have acted in bad faith with their wave of unnecessary injunctive proceedings, and by using the continuing threat imposed by them to seek to sideline or displace the jurisdiction of this Court and in seeking to secure their preference for a determination in Chongqing.

39. Die Auswirkungen der ausgesprochenen declaration betreffend eine „Interim License“ auf das Prozessverhältnis schildert der High Court schließlich wie folgt (para. 136):

> […] In my judgment, making the declaration sought by Samsung will serve a useful purpose in forcing ZTE to reconsider their position. It will not force ZTE to change their mind, but there must be a prospect that they will do so. Parties’ intentions can change. I add that it is one thing for ZTE to take their implacable stance in an attempt to defeat this application, but it will be quite another thing if they maintain that stance following the grant of the declaratory relief sought. Again, adapting the rhetorical question posed by Arnold LJ: Faced with a decision by this Court that ZTE

> are in breach of their obligation of good faith and a formal declaration that a willing licensor would enter into the interim licence proposed by Samsung, would ZTE really persist in conduct that the Court has unequivocally and publicly condemned? I not only hope that ZTE will see the error of their ways but consider there is a prospect of them doing so.

Sowie weiter (para. 152):

> With those points out of the way, I can return to my assessment of comity. The reasoning in Panasonic CA at [96]-[97] and Lenovo CA at [149] is equally applicable here. If the declaration does induce ZTE to reconsider their position and grant Samsung an interim licence on the terms Samsung seek, that would promote comity because it would relieve the courts and tribunals of Brazil, Germany, the UPC and Hangzhou of a great deal of burdensome and wasteful litigation commenced by ZTE, but also the retaliatory litigation in those jurisdictions plus the USA commenced by Samsung.

Erstbegehungsgefahr

40. [redacted] nachdem bereits in den Schriftsätzen im UK Verfahren auf eine mögliche Interim Licence abgehoben und diese in den Raum gestellt wird, begründen [redacted] konkrete Anhaltspunkte, dass die Verletzungshandlung in Form eines Antrags (auch) für den Geltungsbereich des EPGÜ unmittelbar droht, der in seinen Wirkungen einem Prozessführungsverbot gleichkommt. Hinzu kommt, dass die Antragsgegnerinnen in Brasilien bereits eine ASI – wenngleich nur mit Wirkung innerhalb Brasiliens – beantragt haben. [redacted]

Eilbedürftigkeit und Interessensabwägung

41. Der Erlass der einstweiligen Maßnahme ist objektiv dringlich. Der nach dem Vorstehenden drohende Antrag auf Erlass einer Interim Licence declaration kann innerhalb kurzer Frist

beschieden werden, so dass die Antragstellerinnen nicht auf ein Hauptsacheverfahren verwiesen werden können.

42. Die Antragstellerinnen haben mit dem Antrag auf einstweilige Maßnahmen nicht dringlichkeitsschädlich iSv R. 211.4 VerfO zugewartet. [redacted]

43. Auch im Übrigen fällt die gem. Art. 62(2) EPGÜ, R. 211.3 VerfO anzustellende Interessensabwägung zugunsten der Antragstellerinnen aus. Bei der Interessensabwägung sind die Interessen der Parteien unter Berücksichtigung der Umstände des Einzelfalls gegeneinander abzuwägen. Dabei ist insbesondere der Schaden zu berücksichtigen, der einer der Parteien aus dem Erlass der Verfügung oder der Abweisung des Antrags erwachsen könnte (vgl. Berufungsgericht, Anordnung vom 25.09.2024, UPC_CoA_182/2024, GRUR-RS 2024, 25707 Rn. 225). Diese Interessensabwägung fällt aufgrund der Umstände des Streitfalls zugunsten der Antragstellerinnen aus:

Bewertung der Interim Licence Rechtsprechung als faktisches Prozessführungsverbot

44. Vor dem Hintergrund der zuvor geschilderten und mittlerweile verfestigten Rechtsprechung der UK Gerichte sind die Wirkungen eines declaratory judgement, das die Feststellung ausspricht, der Betroffene verhalte sich nicht FRAND-gemäß, wenn er nicht eine Interim Licence abschließe, gezielt darauf gerichtet, die Verfolgung von Unterlassungsansprüchen in anderen Jurisdiktion und damit auch vor dem EPG zu unterbinden. Es wird als gerechtfertigt erachtet, die Parteien durch gezielte Anordnungen des Gerichts dazu bewegen, ihren globalen Patentstreit um eine FRAND-Lizenz ausschließlich vor UK Gerichten auszutragen. Während diese Intervention zunächst noch zentral damit begründet wurde, dass beide Parteien einvernehmlich ein „undertaking to the court", abgegeben haben, wird eine Zustimmung beider Parteien nunmehr für entbehrlich erachtet. Damit soll eine Partei auch gegen ihren erklärten Willen durch die declaration mindestens faktisch dazu gezwungen werden, ihren globalen Rechtsstreit allein von UK Gerichten nach den dort anwendbaren Regeln entscheiden zu lassen und es zu unterlassen, insbesondere Unterlassungsansprüche in anderen Territorien durchzusetzen,

um hierdurch das UK-Verfahren nicht zu gefährden. Zur Rechtfertigung wird angeführt, die UK Gerichte würden anderen Gerichten weltweit damit viel unnötige Arbeit ersparen. Deshalb würden die UK Gerichte auch nicht gegen den Grundsatz der comity verstoßen. Diese Argumentation ist indes nicht tragfähig.

45. Für die Einordnung der erörterten „Interim License“ als faktisches Prozessführungsverbot kommt es nicht entscheidend darauf an, ob ihr Abschluss oder ihre Einhaltung durch gerichtliche Zwangsmaßnahmen durchgesetzt werden kann. Entscheidend ist vielmehr, dass der Patentinhaber, der keine Interim License gewährt, allein deshalb ernsthaft mit negativen Konserquenzen rechnen muss, insbesondere wenn er stattdessen Patentverletzungsklagen vor dem EPG erhebt, weil er der Auffassung ist, nicht zum Abschluss einer Interim License verpflichtet zu sein. Diese negativen Konsequenzen können ihn von der grundrechtlich geschützten gerichtlichen Rechtsdurchsetzung vor dem EPG abhalten.

46. Im vorliegenden Kontext des Falles kann zudem in Abweichung von den bisher durch die UK Gerichte entschiedenen Fällen, die den ETSI-Standard betrafen, der französischem Recht unterliegt, sogar über den Erlass einer bloßen Declaration hinaus der Erlass einer nach kontinentaleuropäischem Verständnis auf Leistung gerichteten Ausspruchs im Wege der „specific performance“ drohen. Ein solcher Ausspruch wäre damit in UK unmittelbar durch Strafgelder und Beugehaft durchsetzbar. Die Antragsgegnerinnen heben in der Klageschrift darauf ab, dass der im Rahmen des Ratenfestsetzungsverfahrens einschlägige Industriestandard dem Schweizer Recht unterliege und hier anders als beim ETSI-Standard sogar die Anordnung einer „specific performance“ geboten sei, um die aus der Konformitätserklärung nach Schweizer Recht folgenden Pflichten der Antragstellerinnen durchzusetzen (vgl. Anlage AR4, S. 4 Antrag 3 (b) (iii) und (c) (iii), Begründung bei paras. 80, 87, 91 ff.).

47. Bereits vor dem Hintergrund der Bindung des Einheitlichen Patentgerichts an das Unionsrecht, die Rechtsprechung des EuGH und die daraus resultierende Verpflichtung, dem EU-Kartellrecht in seinem Zuständigkeitsbereich zur Durchsetzung zu verhelfen, ist eine solcher Übergriff nicht hinnehmbar. Der Übergriff erfolgt zum einen in die in den EU-Mitgliedstaaten verfassungsrechtlich gesicherten Patentrechte der Rechteinhaber, zum anderen erfolgt ein Übergriff in die Rechtsprechungshoheit anderer Staaten, wie Phillips LJ

in seiner dissenting opinion im Fall Panasonic vs Xiaomi (vgl. oben Rn. 21) zutreffend erkennt.

48. Von besonderer Relevanz ist im vorliegenden Fall, dass das EPG nach Art. 20 EPGÜ den Vorrang des europäischen Rechts zur Durchsetzung zu verhelfen hat. Dies ist nur dann möglich, wenn das Verfahren betreffend ein standard-essentielles Patent unter Beachtung des im vorliegenden Streitfall maßgeblichen EU-Kartellrechts iSv. Art. 101, 102 AEUV geführt und etwaige klärungsbedürftige Fragen dem EuGH nach Art. 267 AEUV vorgelegt werden können. Zu diesen Fragen zählt auch die Frage, ob die Durchsetzung der Verbietungsrechte aus dem SEP EU-kartellrechtskonform ist. Damit ist ein zentraler Regelungsbereich des für den EU-Binnenmarkt gültigen Patentrechts angesprochen. Zu diesen zu entscheidenden Fragen zählt etwa, ob bei den Verhandlungen um eine FRAND-Lizenz und bei der Berechnung von deren Höhe und den hierzu anzuwendenden Faktoren, die bei einem Vergleich mit Drittlizenzen herangezogen werden, um eine Vergleichbarkeit herzustellen, vom SEP-Inhaber kartellrechtskonforme Kriterien angewendet werden. Umgekehrt kann die Declaration dazu führen, dass der SEP-Inhaber de facto dazu gezwungen wird, ein Angebot (mindestens einstweilen) zu akzeptieren, das am unteren Rand oder je nach der Höhe des Angebots des Implementierers sogar außerhalb des FRAND-Korridors liegt. Auch diese Frage ist vor dem Hintergrund des EU-Kartellrechts zu beantworten. Wäre ein Gericht der EU Gericht, hier das EPG, an dieser Prüfung gehindert, könnte dies zur Folge haben, dass nicht an EU-Recht gebundene Gerichte Festsetzungen zu (F)RAND-Lizenzen treffen, die jedenfalls im Rechtsraum des Europäischen Binnenmarkt rechtlich keinen Bestand haben können und unter Umständen sogar ordre-public-widrig sind. Dies steht vorliegend besonders deshalb zu befürchten, weil dem Ausspruch einer Interim Licence keine Prüfung vorausgeht, ob die sich gegenüberstehenden Angebote FRAND-gemäß sind oder nicht. Wenn daher als angemessener einstweiliger Lizenzsatz schlicht die Mitte zwischen den sich gegenüberstehenden Angeboten festgesetzt wird, kann dies zur Folge haben, dass die Festsetzung insgesamt außerhalb des EU-rechtskonformen Korridors liegt. Zwar kann die Bestimmung der tatsächlichen FRAND-Gemäßheit nachfolgen. Indes zielen die UK Gerichte hierauf gerade nicht ab, sondern erachten es für begrüßenswert, wenn sich die Parteien unter dem Druck der Interim Licence vergleichen. Hierbei kann der Betrag, der in der Interim Licence angesprochen ist, zum EU-kartellrechtswidrigen Referenzpunkt in den weiteren Verhandlungen werden. Im Übrigen erscheint auch zweifelhaft, ob dieser Ansatz künftig die Parteien zu einem

rationaleren Verhandungsverhalten anhalten wird. Vielmehr könnte es genau umgekehrt dazu führen, dass beide Parteien noch schwerer überbrückbare Maximalforderungen erheben, um beim Überwinden der Differenz einen möglichst günstigen Ausgangspunkt für die weiteren Verhandlungen zu haben.

49. Zwar mögen die UK-Gerichte derzeit auch nach dem Brexit noch einen angenäherten oder sogar identischen kartellrechtlichen Rechtekanon aufweisen, was offenbleiben kann. Jedenfalls aber können sie keine der zu entscheidenden Fragen, die das EU-Kartellrecht betreffen, dem EuGH zur abschließenden Klärung vorlegen. Eine Klärung der für das Funktionieren des Binnenmarktes entscheidenden Fragen durch ein faktisches Verbot zu unterbinden, ist nicht hinnehmbar. Hierfür kann auch nicht als Rechtfertigung angeführt werden, dass den anderen Gerichten Aufwand und den Parteien Kosten erspart werden. Es ist Entscheidung allein der Parteien, welche Kosten sie für die Prozessführung aufwenden möchten, und Aufgabe der Gerichte der Europäischen Union, über die ihnen angetragenen Fälle zu entscheiden. Die Einleitung solcher Verfahren, die der Durchsetzung von Patentrechten vor dem EPG dienen, darf nicht durch fremde gerichtliche Intervention unterbunden werden.

50. Zudem ist maßgeblich zu berücksichtigen, dass der vorliegende Antrag allein im internationalen Kontext multinationaler Streitigkeiten absichern soll, was ohnedies – in Abwesenheit einschlägiger Rechtsvorschriften zur Verfahrenskoordination – einem völkerrechtlichen Gebot entspricht: den Respekt vor dem ausländischen Forum, im Rahmen der auf selbiges übertragenen Rechtsprechungsgewalt unbeeinflusst durch ausländische Gerichte, die keine Zuständigkeit in der Sache besitzen, Eigentumsrechte von Verfassungsrang geltend machen und Rechtsprechungsbefugnisse ungestört ausüben zu können. Dieser Grundsatz ist durch die Rechtsprechung des EuGH anerkannt (EuGH Urteil vom 25. Februar 2025 – BSH/Electrolux Rn. 71, 73).

51. Ohne Bedeutung ist dabei, dass vorliegend noch keine Verletzungsklage vor dem EPG anhängig ist. Der Justizgewährleistungsanspruch richtet sich gerade auch gegen Maßnahmen, die die künftige Erhebung von Klagen (faktisch) unterbinden sollen.

52. Schließlich war bei der Interessenabwägung einzustellen, dass die vorliegende Anordnung ausschließlich defensiven Charakter hat und die vor dem EPG zu führenden Verfahren abschirmen soll. Weder wird den Antragsgegnerinnen selbst die Verfolgung ihrer

Patentrechte in ausländischen Foren untersagt, noch wird in die Zuständigkeitshoheit ausländischer Gerichte eingegriffen. Die UK Gerichte können daher insbesondere ungehindert in den bei ihnen anhängigen Verfahren entscheiden, wie die FRAND-Rate zu bemessen ist und welche Konsequenzen es im nationalen Hoheitsgebiet hat, wenn eine Partei den gerichtlichen Anordnungen keine Folge leistet. Sollte dies zu einer parallelen Bestimmung von FRAND-Lizenzen in verschiedenen Jurisdiktionen führen, ist dies als Entscheidung der prozessführenden Parteien hinzunehmen. Für wirtschaftliche Erwägungen des Gerichts im besten Interesse der Parteien ohne beiderseitige Zustimmung ist hingegen kein Raum.

53. Diese Interessenabwägung trägt zugleich eine Anordnung ohne vorherige Anhörung der Gegenseite (R. 206.3, 209.(c), 212.1 VerfO), da glaubhaft gemacht ist, dass den Antragstellerinnen ohne den Erlass einer ex-parte-Anordnung aufgrund der mit der Einbeziehung der Gegenseite verbundenen Verzögerung ein nicht wiedergutzumachender Schaden droht, indem jene im ausländischen Forum eine „Interim License“, eine ASI oder eine gleichartige Maßnahme beantragen wird.

III. Rechtsfolgen

54. Die Umstände rechtfertigen die einstweiligen Maßnahmen im angeordneten Umfang.

Unterlassung

55. Die Anordnung der einstweiligen Unterlassung ist im beantragten Umfang begründet.

56. Der Antragsfassung stehen auch insoweit kein Bedenken entgegen, als sie sich auf gleichwertige gerichtliche oder behördliche Maßnahme erstreckt, da es insoweit nicht auf die formelle Bezeichnung der gerichtlichen oder behördlichen Anordnung als „Anti-suit-injunction“ oder „Interim Licence“ ankommt, sondern darauf, ob sie dieselbe rechtstatsächliche Wirkung hat, mag die Anordnung auch unter einer anderen Bezeichnung stehen oder in anderer prozessualer Einkleidung getroffen sein.

57. Schließlich stellt auch das Gebot, etwaige Anträge auf Erlass eines (faktischen) Prozessführungsverbots unverzüglich zurückzunehmen oder andere prozessual geeignete Mittel zu ergreifen, um eine solche Antragstellung mit Wirkung für den Geltungsbereich des EPGÜ endgültig zu widerrufen, im vorliegenden Kontext eine einstweilige Maßnahme und Sicherungsmaßnahme iSv Art32(1)(c) EPGÜ dar, weil sie aus Gründen der Dringlichkeit

zu erlassen sind, um bis zum Abschluss des Hauptsachverfahrens die bestehende Sach- und Rechtslage vorläufig aufrechtzuerhalten, deren Anerkennung auch im Übrigen beim EPG in der Hauptsache beantragt werden kann (vgl. zur entsprechenden Bestimmung des Charakters vorläufiger Maßnahmen iSv Art 35 Brüssel Ia-VO: EuGH EuZW 1992, 447 Rn. 34 – Reichert II; EuZW 1999, 413 Rn. 37 – van Uden; EuZW 2005, 401 Rn. 13 – St. Paul Dairy).

<u>Zwangsgeldandrohung</u>

58. Die Androhung der Zwangsgeldzahlungen hat ihre Grundlage in R. 354.3 VerfO. Dieser Betrag erscheint für eine Abschreckung vor dem Hintergrund der vorliegenden wirtschaftlich sehr umfänglichen Auseinandersetzung allein angemessen und ausreichend.

<u>Sicherheitsleistung</u>

59. Von der grundsätzlich im Ermessen des Gerichts liegenden Anordnung einer Sicherheitsleistung wird vorliegend nicht abgesehen.

60. Nach Art. 62(5) i.V.m. Art. 60(7) EPGÜ, R. 211.5 VerfO kann das Gericht anordnen, dass der Antragsteller für die im Falle der Aufhebung einstweiliger Maßnahmen durch das Gericht eventuell von ihm zu leistende angemessene Entschädigung des Antragsgegners für den Schaden, den dieser wahrscheinlich erleiden wird, angemessene Sicherheit zu leisten hat. Im Fall einer Anordnung ex parte soll regelmäßig eine Sicherheitsleistung erfolgen, es sei denn besondere Umstände sprechen dagegen, R. 211.5 Satz 2 VerfO. Von der ordnungsgemäßen Erbringung der Sicherheit hängt die Wirksamkeit der Anordnung der einstweiligen Maßnahmen ab (R. 211.5 Satz 4 VerfO). Die Sicherheitsleistung trägt dem Umstand Rechnung, dass im typischen Fall einer geltend gemachten Patentverletzung bei der Anordnung der einstweiligen Maßnahmen lediglich eine vorläufige Bewertung insbesondere der Patentverletzung im Sinne einer Benutzung der geschützten erfinderischen Lehre stattfindet, und ist ein Ausgleich dafür, dass bereits auf der Grundlage einer vorläufigen und damit in der materiellen Richtigkeitsgewähr regelmäßig herabgesetzten Bewertung in den Rechtskreis des Antragsgegners eingegriffen wird (vgl. Lokalkammer Düsseldorf, Order vom 31.10.2024, UPC_CFI_368/2024, V.4 (S. 38)).

61. Vorliegend sind – anders als in dem Fall, der der LK München in UPC_CFI_112/2025 (Rn. 64) zur Entscheidung vorlag und der eine Zustellung während einer unmittelbar andauernden Messe betraf – keine besonderen Umstände gegeben, die die Anordnung

einer Sicherheitsleistung entbehrlich machen würden. Den Antragsgegnerinnen kann infolge der Anordnung der einstweiligen Maßnahmen im vorliegenden Kontext allerdings kein erheblicher Schaden entstehen (so auch LK München, Anordnung vom 19. Februar 2025, CFI_112/2025, Rn. 64), der über die im Verhältnis zum wirtschaftlichen Gehalt der Gesamtauseinandersetzung nicht ins Gewicht fallenden Prozesskosten des vorliegenden Falles hinausgehen würde, weshalb eine niedrige Sicherheitsleistung, die sicher das Kostenrisiko beim angegebenen Streitwert von [redacted] abdeckt, ausreichend ist. Dabei muss der Sicherheitsbetrag zunächst nur die Kosten des vorliegenden Verfahrens abdecken, nicht aber einer Hauptsache oder Berufung, weil dort sodann erforderlichenfalls weitergehende Anordnungen getroffen werden können. In Abwägung der Interessenlage war den Antragstellerinnen aufgrund der besonderen Eilbedürftigkeit, eine gegen sie gerichtete Maßnahme im Ausland zu verhindern, indes eine unmittelbare Vollstreckbarkeit einzuräumen, die jedoch entfällt, wenn Sicherheit nicht binnen 20 Tagen geleistet wird (so auch LK München, Anordnung vom 11. Dezember 2024, UPC_CFI_791/2024, S. 15).

Kostengrundentscheidung

62. Eine Kostengrundentscheidung über die Kosten des Verfahrens war vorliegend nach der neueren Rechtsprechung des Court of Apeal des EPG zu einstweiligen Maßnahmen zu erlassen (Court of Appeal, Anordnung vom 16. September 2024 – ICPillar v. SVF Holdco, UPC CoA 301/2024, par. 41).

Nachfolgende Hauptsache

63. Weiterhin war gemäß Regel 213.1 VerfO eine Frist zur Einleitung eines Hauptsacheverfahrens zu setzen. Dies steht nicht im Ermessen des Gerichts (Lokalkammer München, Anordnung v. 09.12.2024, CFI_755/2024, Rn. 73 – Avago/Realtek; Lokalkammer München, Anordnung vom 19. Februar 2025, CFI_112/2025, Rn. 66). Insofern erscheint eine Frist von 31 Kalendertagen oder 20 Arbeitstagen, je nachdem, welcher Zeitraum länger ist, ab der Zustellung der Anordnung an die jeweilige Antragsgegnerin für angemessen. Die Antragstellerinnen haben sich zu einer solche Fristsetzung nicht geäußert und sie auch nicht in ihre Anträge aufgenommen.

ANORDNUNG:

I. Den Antragsgegnerinnen wird im Wege der einstweiligen Maßnahme untersagt, ein Verfahren auf Erlass einer Anti-Suit-Injunction einzuleiten und/oder weiter zu verfolgen oder eine andere gleichwertige gerichtliche oder behördliche Maßnahme wie eine Temporary Restraining Order zu beantragen, aufgrund derer die Antragstellerinnen effektiv daran gehindert werden und/oder werden sollen, Patentverletzungsverfahren aus ihren der Zuständigkeit des EPG unterliegenden Europäischen Patenten vor dem EPG im Geltungsbereich des EPGÜ zu betreiben oder fortzusetzen, und/oder daraus resultierende Urteile oder Maßnahmen zu vollstrecken,

II. wobei diese Unterlassungsverpflichtung, betreffend Patentverletzungsverfahren aus der Zuständigkeit des EPG unterliegenden Europäischen Patenten vor dem EPG im Geltungsbereich des EPGÜ, insbesondere auch umfasst

1. beim UK High Court keine vorläufige Anordnung zu beantragen, die den Antragstellerinnen aufgibt, den Antragsgegnerinnen eine Interimslizenz an Patenten der Antragstellerinnen, zu gewähren;

2. beim UK High Court keine vorläufige Anordnung zu beantragen, festzustellen, dass die Antragstellerinnen gegen RAND-Verpflichtungen verstoßen, wenn sie den Antragsgegnerinnen keine Interimslizenz an Patenten der Antragstellerinnen, zu den von dem UK High Court festgelegten Konditionen gewähren würde;

3. das Gebot, etwaige Anträge nach Ziff. 1. und 2. zurückzunehmen oder andere prozessuale Mittel zu ergreifen, um sie mit Wirkung für den Geltungsbereich des EPGÜ endgültig zu widerrufen;

4. das sofortige Verbot, ein etwaiges Interimslizenz-Verfahren mit Wirkung für den Geltungsbereich des EPGÜ außer zum Zweck der Antragsrücknahme weiter zu betreiben;

5. das Verbot, den Antragstellerinnen durch eine gerichtliche oder behördliche Anordnung gerichtet auf Untersagung des vorliegenden Verfahrens verbieten zu lassen, Patentverletzungsverfahren aus ihren Patenten vor den zuständigen Kammern des EPG zu führen und/oder daraus resultierende Urteil zu vollstrecken;

wobei die vorstehenden Ge- und Verbote auch umfassen, auf konzernverbundene Gesellschaften unter Ausschöpfung konzernrechtlicher Möglichkeiten entsprechend einzuwirken.

III. Im Falle jeder Zuwiderhandlung gegen die Anordnung nach Ziffer I. haben die Antragsgegnerinnen an das Gericht jeweils ein (ggf. wiederholtes) Zwangsgeld in Höhe von bis zu 250.000,00 € für jeden Tag der Zuwiderhandlung zu zahlen.

IV. Die Anordnung ist zunächst ohne Sicherheitsleistung vollstreckbar. Die Vollstreckbarkeit endet jedoch, wenn die Antragstellerinnen zugunsten der Antragsgegner nicht innerhalb von 20 Tagen eine Sicherheit in Form einer Hinterlegung oder Bankbürgschaft in Höhe von [redacted] geleistet haben.

V. Die angeordneten einstweiligen Maßnahmen werden auf Antrag der Antragsgegnerinnen, unbeschadet etwaiger Schadenersatzforderungen, aufgehoben oder auf andere Weise außer Kraft gesetzt werden, wenn die Antragstellerinnen nicht innerhalb einer Frist von 31 Kalendertagen oder 20 Werktagen – je nachdem, welcher Zeitraum länger ist – ab dem Tag des Erlasses der vorliegenden Anordnung gerechnet beim Einheitlichen Patentgericht das Verfahren in der Hauptsache einleiten.

V. Im Übrigen wird der Antrag zurückgewiesen.

VI. Die Antragsgegnerinnen tragen die Kosten des Verfahrens.

VII. Der Streitwert wird auf [redacted] festgesetzt.

HINWEIS AN DIE ANTRAGSGEGNERINNEN

Die Antragsgegnerinnen können innerhalb von 30 Tagen nach Vollziehung der Maßnahme eine Überprüfung der Anordnung beantragen (Art. 62 (5), 60 (6) EPGÜ, Regel 212.3, 197.3 VerfO).

Erlassen in Mannheim am 30. September 2025

NAMEN UND UNTERSCHRIFTEN

Vorsitzender Richter Tochtermann	Peter Michael Dr. Tochtermann Digital unterschrieben von Peter Michael Dr. Tochtermann Datum: 2025.09.30 18:04:36 +02'00'
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Für den Hilfskanzler: Kranz, Clerk LK Mannheim	ANDREAS MICHAEL Kranz Digital unterschrieben von ANDREAS MICHAEL Kranz Datum: 2025.09.30 17:39:33 +02'00'