

**UPC CFI, Local Division Munich, 24 January 2025,  
Headwater v Samsung**

*verifiable device assisted service  
policy implementation*

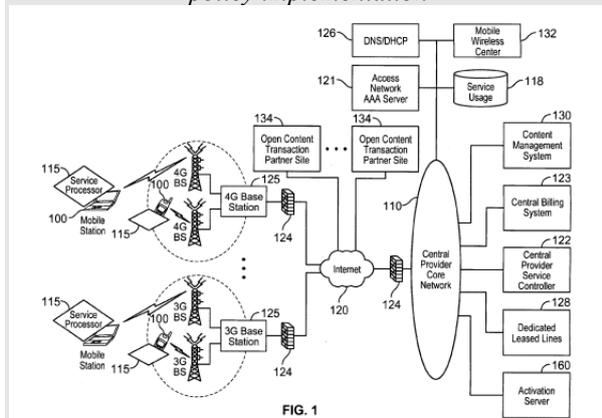


FIG. 1

**PATENT LAW – PROCEDURAL LAW**

**Superfluous request for confidentiality order**

- [as a confidentiality order is already in place \(R. 262A RoP\)](#)

All subsequent pleadings require only that the confidential information subject to a [262A](#) order be greyed out in the unredacted version of the pleading, that a redacted version be uploaded, and that the pleading be accompanied by a [Rule 262.2](#) application. The latter ensures that the CMS alerts CMS users to the confidential nature of the information.

**Leave to change claim of amend case granted (R. 263 RoP)**

- pending a further review of the reasons for Samsung to late file some invalidity arguments. If the late filed arguments are accepted Headwater has already been given a chance to comment and to amend pleadings. If the late filed arguments are rejected no harm has been caused by allowing the amendments. This issue will be further discussed in the Interim Conference scheduled for 28 February 2025.

Source: [Unified Patent Court](#)

**UPC Court of First Instance,  
Local Division Munich, 24 January 2025**  
(Zigann)

Local Division Munich  
UPC\_CFI\_54/2024  
UPC\_CFI\_396/2024

**Procedural Order**

of the Court of First Instance of the Unified Patent Court  
Local Division Munich  
issued on 24 January 2025

**CLAIMANT**

**Headwater Research LLC**, 110 North College Ave.,  
Suite 1116 - 75702 - Tyler, Texas - US

represented by: Representative Thomas Adam, 110  
North College Ave., Suite 1116 - 75702 - Tyler, Texas -  
US

**DEFENDANT**

**Samsung Electronics GmbH**, Am Kronberger Hang 6  
- 65824 - Schwalbach – DE

represented by: Representative Denise Benz,  
Maximilianstraße 35 - 80539 - Munich - DE

**Samsung Electronics France S.A.S**, 6 Rue Fructidor -  
93400 - Saint-Ouen-sur-Seine – FR

represented by: Representative Denise Benz,  
Maximilianstraße 35 - 80539 - Munich - DE

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

represented by: Representative Denise Benz,  
Maximilianstraße 35 - 80539 - Munich - DE

**PATENT AT ISSUE**

European patent [n° EP 2 391 947](#)

Local Division Munich

**PANEL/DIVISION**

Panel 1 of the Local Division Munich

**DECIDING JUDGE/S**

This order has been issued by the Presiding Judge  
Matthias Zigann acting as judge-rapporteur.

**LANGUAGE OF THE PROCEEDINGS**

English

**SUBJECT-MATTER OF THE PROCEEDINGS**

Generic Application by Samsung – [R 9 RoP](#)  
(App\_3398/2025 UPC\_CFI\_54/2024)

Application for confidentiality by Samsung – [R 262 A](#)  
(App\_3429/2025 UPC\_CFI\_54/2024)

Observations by Headwater – [R 36](#) (App\_1868/2025  
UPC\_CFI\_54/2024; App\_1866/2025  
UPC\_CFI\_396/2024)

Application for leave to change claim or amend  
case/pleading by Headwater - [R 263](#)  
(App\_66588/2024 UPC\_CFI\_54/2024;  
App\_66589/2024 UPC\_CFI\_396/2024)

**SUMMARY OF FACTS AND REQUESTS**

By order dated 13 January 2025, the Court granted  
Samsung leave to file comments on Headwater's  
standing and right and/or ownership of the patent to be  
filed by 21 January 2025.

On 21 January 2025, Samsung filed a brief accordingly  
in App\_3398/2025 UPC\_CFI\_54/2024. In  
App\_3429/2025 UPC\_CFI\_54/2024, Samsung  
requested a confidentiality order in this regard.

Headwater submitted observations in App\_1868/2025  
UPC\_CFI\_54/2024 and App\_1866/2025  
UPC\_CFI\_396/2024.

Headwater requests

*the Court to revoke its orders ORD\_1989/2025 and  
ORD\_1986/2025 of 13 January 2024 and, given that  
Defendants will be filing their additional submissions  
pertaining to the above on the same day the present  
observations are filed, declare that any of their  
additional submissions on the topic are to be  
disregarded.*

*Auxiliary, in case the order stands, in full or in limited  
form, we request the Court to hold that any new  
arguments or facts brought in the Defendants' further*

written pleading that concern or are based on clauses 1.1. and/or 1.4. of the patent transfer agreement are to be disregarded,  
and

to allow Claimant to file a further written pleading (**R. 36 RoP**) in response to the matters raised in the additional pleading of the Defendants within two weeks of the respective order.

In the latter case, for case of precaution, we ask the Court for clarification that the written proceedings are prolonged, accordingly.

On 16 December 2024 Headwater filed applications for leave to change claim or amend case/pleading.

In App\_66588/2024 UPC\_CFI\_54/2024 headwater requests:

Regarding the infringement action Headwater applies for leave to amend the requests/claims as stated in the statement of claim and in the reply to the statement of defense in order to take account of the auxiliary requests submitted in the defense to the counterclaim for revocation/application to amend the patent and the rejoinder to the reply to the defence to the counterclaim for revocation/application to amend the patent. Headwater submitted "in particular" requests in the infringement prong based on those auxiliary requests as follows:

They concern merely the request to cease and desist (i.e., no. I. 1.), all other requests in the infringement prong are maintained:

The requests are added as "in particular"-requests mirroring the auxiliary requests ("AR") filed in the rejoinder to the defence to the counterclaim. Changes vis-a-vis the requests as stated in the reply to the statement of defense are highlighted.

The structure of the requests, as far as the subject-matter of injunctive relief is concerned, is now

- claim 1 as granted

- claim 1 as per the ARs 1-3, 6-12 and 16-24

- "in particular" ("insbesondere") requests as per the SoC (starting with in particular request t).

Requests based on AR 4, 5, 13, 14 and 15 were deleted.

Requests based on AR 1 and AR 6 were maintained. The

requests based on AR 2, 3, 7, 8, 9, 11 and 12 were adopted to mirror the amendments made in the respective auxiliary requests. The additional requests are based on AR 16-24, which in turn are straightforward combinations as listed below.

Auxiliary Request 18 = Auxiliary Requests 1 + 2 + 7 + 16

Auxiliary Request 19 = Auxiliary Requests 1 + 3 + 7 + 16

Auxiliary Request 20 = Auxiliary Requests 1 + 2 + 7 + 8 + 17

Auxiliary Request 21 = Auxiliary Requests 1 + 3 + 7 + 8 + 17

Auxiliary Request 22 = Auxiliary Requests 1 + 2 + 7 + 16 + 17

Auxiliary Request 23 = Auxiliary Requests 1 + 3 + 7 + 16 + 17

Auxiliary Request 24 = Auxiliary Requests 1 + 16 + 17

The amended and additional requests are necessary to adopt to the auxiliary requests, which are in turn a reaction to newly submitted documents and arguments of the defendants in the revocation counteraction, namely in the reply to the defense to the counterclaim for revocation

For the reasons mentioned they are necessary for an effective defense against the counterclaim for revocation, are caused by the reply to the defence to the counterclaim for revocation and are therefore in good time. Since caused by counterclaimants attacks in that reply, it is out of the question that the changes could unreasonably hinder them in their conduct of their action.

For further details reference is made to the brief dated 16 December 2024 filed in App\_66588/2024 UPC\_CFI\_54/2024.

In App\_66589/2024 UPC\_CFI\_396/2024 Headwater requests:

I. The Counterclaim for Revocation is rejected.

II. Alternatively, the claims of European Patent EP 2 391 947 B1 are upheld with effect for the Federal Republic of Germany and the French Republic in form of the claims of one of Auxiliary Requests 1-3, 6-12, 16-24 (in ascending order).

III. The Counterclaimants bear the costs of the proceedings.

## GROUND FOR THE ORDER

### Samsungs brief on the standing to sue

Reference is made to the grounds of the order dated 13 January 2025. Headwater has not submitted any grounds for revocation of this order. The request for an opportunity to be heard is granted. To date, no further submissions have been filed by Samsung. Therefore, no assessment can be made as to whether they contain information that should be disregarded due to late filing. Samsungs confidentiality application is superfluous as a confidentiality order is already in place. The application is therefore to be dismissed.

### Headwaters allocation for leave to amend

These applications are granted pending a further review of the reasons for Samsung to late file some invalidity arguments. If the late filed arguments are accepted Headwater has already been given a chance to comment and to amend pleadings. If the late filed arguments are rejected no harm has been caused by allowing the amendments. This issue will be further discussed in the Interim Conference scheduled for 28 February 2025.

### Closure of the written procedure

The written procedure will be closed on 6 February 2025.

## ORDER

1. Headwaters is invited to comment on Samsungs submission of 21 January 2025 by 6 February 2025.
2. Headwaters requests for leave to amend are granted.
3. All other requests by Headwater are dismissed.
4. Samsungs 262A-application is dismissed.
5. The written procedure will be closed on 6 February 2025.
6. Parties are invited to submit by 21 February 2025 in ORD\_3940/2025 suggestions for topics to be addressed

during the Interim Conference, an estimation of costs and a list of participants.

#### **INSTRUCTIONS TO THE PARTIES**

One confidentiality order is sufficient. All subsequent pleadings require only that the confidential information subject to a [262A](#) order be greyed out in the unredacted version of the pleading, that a redacted version be uploaded, and that the pleading be accompanied by a [Rule 262.2](#) application. The latter ensures that the CMS alerts CMS users to the confidential nature of the information.

One application per proceeding is sufficient. There is no legal or CMS requirement outside a confidentiality regime to make multiple applications, e.g. for extensions of time, [R 36](#) or [R. 263](#).

#### **DETAILS OF THE ORDER**

Order no. ORD\_3940/2025 in ACTION NUMBER:  
ACT\_7603/2024

UPC number: UPC\_CFI\_54/2024

Action type: Infringement Action

Order no. ORD\_3943/2025 in ACTION NUMBER:  
ACT\_7603/2024

UPC number: UPC\_CFI\_54/2024

Action type: Infringement Action

Related proceeding no. Application No.: 3398/2025

Application Type: Generic procedural Application

Order no. ORD\_3941/2025 in ACTION NUMBER:  
ACT\_7603/2024

UPC number: UPC\_CFI\_54/2024

Action type: Infringement Action

Related proceeding no. Application No.: 3429/2025

Application Type: APPLICATION\_ROP262A

Order no. ORD\_68686/2024 in ACTION NUMBER:  
ACT\_7603/2024

UPC number: UPC\_CFI\_54/2024

Action type: Infringement Action

Related proceeding no. Application No.: 66588/2024

Application Type: Application for leave to change claim or amend case/pleading

(RoP263)

Order no. ORD\_68687/2024 in ACTION NUMBER:  
ACT\_7603/2024

UPC number: UPC\_CFI\_396/2024

Action type: Infringement Action

Related proceeding no. Application No.: 66589/2024

Application Type: Generic procedural Application

Dr. Zigann

Presiding Judge

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