

UPC CFI, Local Division Munich, 3 March 2025, Headwater v Samsung

*verifiable device assisted service
policy implementation*

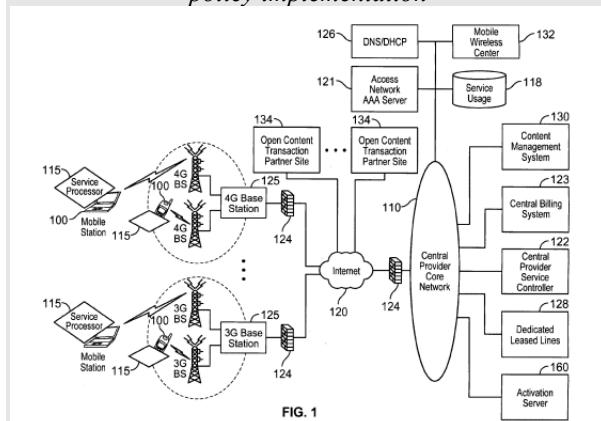


FIG. 1

PATENT LAW – PROCEDURAL LAW

Rule 105.5 Order following interim conference

- Value of claims, parallel proceedings, deficiencies in formal pleadings, inadmissibility of invalidity attack based on article 138(1)(e) EPC under applicable German and French law, no need to hear witnesses at this time, late filed documents, PowerPoint slides at oral hearing, hybrid hearing

Source: [Unified Patent Court](#)

**UPC Court of First Instance,
Local Division Munich, 3 March 2025**
(Zigann)

UPC_CFI_54/2024

UPC_CFI_396/2024

Local Division Munich

Procedural Order

of the Court of First Instance of the Unified Patent Court
Local Division Munich
issued on 3 March 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° 2 391 947

PANEL/DIVISION

Panel 1 of the Local Division Munich

DECIDING JUDGE/S

The order was made by Presiding Judge Dr. Matthias
Zigann, acting as Judge-Rapporteur.

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT-MATTER

Rule 105.5 Order following the Interim Conference of
28 February 2025.

SUMMARY OF THE INTERIM CONFERENCE

The Interim Conference was held by videoconference on
28 February 2025. The following people participated:

For the court:

Dr. Matthias Zigann, Presiding Judge and Judge-
Rapporteur

András Kupecz, Legally Qualified Judge, as observer

Eric Augarde, Technically Qualified Judge, as observer

For Headwater:

Dr Thomas Adam (Peterreins Schley)

Felix Glöckler (Peterreins Schley)

Dr. Claudia Feller (Peterreins Schley)

Dr. Christoph Horst (Peterreins Schley)

Dr. Michael Schneider (Eisenführ Speiser)

Jochen Ehlers (Eisenführ Speiser)

Dr. Désirée Heintz (Eisenführ Speiser)

Philipp Rastemborski (Eisenführ Speiser)

Dr. Karin Rosahl (Eisenführ Speiser)

Marc Fenster (Russ August & Kabat)

Reza Mirzaie (Russ August & Kabat)

Kris Davis (Russ August & Kabat)

Jason Wietholter (Russ August & Kabat)

For Samsung:

Dr. Jan Ebersohl (A&O Shearman)

Anna Nottingham (A&O Shearman)

Sophie van Asten (A&O Shearman)

Dr. Joel Nägerle (Zimmermann & Partner)

Dr. Christian Ginzler (Zimmermann & Partner)

Ulrich Graf (Zimmermann & Partner)



The following issues were discussed:

- Value of the claim and counterclaim

JR argued that the value of the counterclaim should be 3
million, as the guidelines suggest that, in the absence of
better information, the value should be set at 150% of
the value of the infringement claim. The parties did not
object.

- Parallel proceedings

The parties informed the Court of the ongoing parallel
proceedings. To date, Headwater has not been
successful. The Landgericht München I has scheduled a
hearing in EP 3 110 071 for 12 July 2025.

- Settlement, at least as far as reimbursable costs are
concerned

Headwater has confirmed that it is prepared to grant a licence to Samsung. Further details of the negotiations were not disclosed. JR encouraged the parties to reach an agreement on the amount of recoverable costs in any event before the Panel's decision.

- Deficiencies in the formal pleadings

The JR noted a number of deficiencies or ambiguities in the formal pleadings. As far as an interim award of damages or costs is concerned, the parties have to provide some figures. As to the wording of the injunction, Headwater should clarify what is meant by "... or claim 1 and/or 2 claim 10 and/or all preceding claim 35".

Both parties have been asked to respond to these questions in writing within 10 days.

- Security for Headwater's costs

JR informed the parties that Headwater had paid the security ordered in due time.

- Action for revocation based on Art. 138(1)(e) EPC

The JR informed the parties that Samsung's invalidity attack based on Art. 138(1)(e) EPC was inadmissible under the applicable German and French law.

- Standing to sue

The JR informed the parties that the Court did not see the need to hear live witnesses at this time.

Samsung pointed out that Exhibit "*K Witness Raleigh*" did not qualify as a written witness statement as it lacked some of the requirements set out in [Rule 175 RoP](#).

Headwater countered that the details of the relationship between the witness and Headwater had already been extensively pleaded.

- Late filed documents ZP8 to ZP9

JR informed the parties that the late submission of these documents appeared to be justified in response to AR 1-15 and that Headwater's further amendments (AR1-24) had already been admitted App_66588/2024, APP_66589/2024.

Headwater responds that it is not concerned with the production of these documents as such, to the extent that they are used to argue against the auxiliary request. Headwater is concerned that Samsung is also using these documents to attack the patent claims as granted or as amended with previously filed auxiliary requests.

The JR pointed out that admitting these documents and arguments in relation to the latest auxiliary requests, but not for other purposes, could put the court in an awkward position.

Consequently, Samsung's arguments are not refused. Headwater will have until 20 March 2025 to respond to Samsung's latest validity arguments as requested in the auxiliary application. This does not mean that the Court will automatically grant leave to file new auxiliary requests.

Samsung is not permitted to file a response to this brief. If this issue is crucial, Samsung will be given the opportunity to comment during the Oral Hearing.

- PowerPoint slides at the Oral Hearing

The JR has explained that and how PowerPoint slides can be used during the Oral Hearing. The slides shall be made available to the Court and the opponent by e-mail by 15 May 2025.

- Hybrid Hearing

Headwater has indicated that a hybrid hearing may be necessary.

Either party may submit a request for a hybrid hearing, including the names of the participants in person and remotely by email, by 15 May 2025.

ORDER

1. The date for the oral hearing on 20 May 2025, 9:00 a.m., Courtroom 212 and Overflow Room 220b, Denisstr. 3 in Munich, is confirmed.

2. The parties are summoned to the hearing.

3. The parties have 10 days to remedy any formal defects and to submit amounts for damages/costs.

4. Headwater has until 20 March 2025 to respond to Samsung's latest arguments for revocation. The written procedure will be closed on 20 March 2025.

5. Both parties may comment on the questions by e-mail until 15 May 2025:

- Names of participants in the oral hearing

- the need for a hybrid videoconference

- Possible agreement on the amount of costs to be reimbursed.

6. There is no need to translate the original English or German annexes.

7. The parties may use PowerPoint slides to support their arguments at the hearing. These must be sent in advance by e-mail to the other party and to the Court by 15 May 2025 at the latest. The content must be limited to a reproduction of the content already submitted in the written pleadings.

8. The value of the claim is set at €2 million and the value of the counterclaim at €3 million. The value of the case is therefore €5 million.

9. The Court does not call witnesses or experts but reserves the right to do so at a later date.

10. All other requests are dismissed.

INFORMATION ABOUT REVIEW BY PANEL

Any party may request that this Order be referred to the panel for a review pursuant to [R. 333 RoP](#). Pending review, the Order shall be effective ([R. 102.2 RoP](#)).

INFORMATION ABOUT ORAL HEARING HELD IN COURT

The oral hearing shall be open to the public unless the Court decides to make it, to the extent necessary, confidential in the interests of one or both parties or third parties or in the general interest of justice or public order ([R. 115 RoP](#)).

INFORMATION ABOUT AUDIO RECORDING

The oral hearing shall be audio recorded. The recording shall be made available at the premises of the Court to the parties or their representatives after the oral hearing ([R. 115 RoP](#)).

INFORMATION ABOUT ABSENCE OR DELAY OF A REPRESENTATIVE

A decision by default may be given, upon request, against a party that was duly summoned but fails to appear at the oral hearing ([R. 355.1 \(b\) RoP](#)).

INFORMATION ABOUT DECISION BY DEFAULT

Should a party fail to comply with the present Order within the time period specified, a decision by default

may be given in accordance with [R. 355 RoP \(R. 103.1, last subparagraph and .2 RoP\)](#).

Details of the Order

Order no. ORD_69051/2024 in ACTION NUMBER:

ACT_7603/2024

UPC number: UPC_CFI_54/2024

Action type: Infringement Action

Order no. ORD_69052/2024 in ACTION NUMBER:

ACT_7603/2024

UPC number: UPC_CFI_396/2024

Action type: Counterclaim for revocation

Dr. Zigann Presiding Judge
