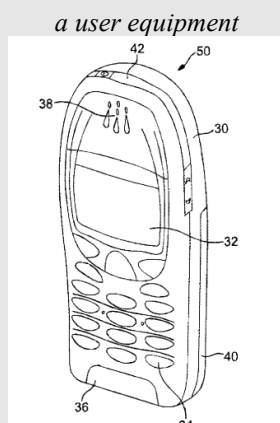


## UPC Court of Appeal, 24 March 2025, Amazon v Nokia



### PATENT LAW – PROCEDURAL LAW

#### Request for opportunity to comment on Statement of response denied

- the written procedure before the Court of Appeal is limited to the submission of a statement of grounds of appeal by the appellant and a statement of response by the respondent

- It is fundamentally inconsistent with this procedure to give Amazon the opportunity to submit a written statement merely a few days before the oral hearing in order to counter the respondent Nokia's legal arguments, as the oral hearing is specifically intended to serve that purpose. If the request were granted, Amazon would also gain the advantage of being able to submit written comments on two occasions prior to the oral hearing, while the respondent would have had only a single opportunity to do so in the statement of response. This would conflict with the principle of fair and equitable conduct of proceedings, particularly under the principle of equality of arms between the parties, as set out in [Article 42\(2\) of the UPCA](#) and paragraph 5 of the [Preamble to the Rules of Procedure](#).

Source: [Unified Patent Court](#)  
German language version: [UPC](#)

#### UPC Court of Appeal, 24 March 2025

(Grabinski, Blok, Gougé)

UPC\_CoA\_835/2024

APL\_67638/2024

App\_13834/2025

#### PROCEDURAL ORDER

of the Court of Appeal of the Unified Patent Court issued on 24 March 2025

#### APPLICANTS AND APPELLANTS (DEFENDANTS IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

**1. Amazon Europe Core S.à.r.l.**, (Société à responsabilité limitée), 38 avenue John F. Kennedy, L-

1855 Luxembourg, represented by Sanjay Balakrishnan, at the same address,

Appellant no. 1

**2. Amazon EU S.à r.l.**, (Société à responsabilité limitée), 38 avenue John F. Kennedy, L-1855 Luxembourg, represented by Jorrit van der Meulen, at the same address,

Appellant no. 2

**3. Amazon.com, Inc.**, 410 Terry Avenue North, Seattle Washington 98109-5210, United States of America, represented by the "Registered Agent": c/o Corporation Service Company, 300 Deschutes way SW STE MC-CSC1, Tumwater, WA, 98501, United States of America,

Appellant no. 3

(hereinafter jointly referred to as "Amazon")

represented by: Dr. Steffen Steininger, M.Jur., Attorney-at-law and registered representative before the Unified Patent Court and other registered representatives before the Unified Patent Court from the law firm Hogan Lovells International LLP,

#### RESPONDENT (CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

**Nokia Technologies Oy**, Karakaari 7, 02610 Espoo, Finland (hereinafter referred to as "Nokia"),

represented by Tim Smentkowski, Attorney-at-law and registered representative before the Unified Patent Court and other registered representatives before the Unified Patent Court from the law firm ARNOLD RUESS Rechtsanwälte PartmbB,

#### PATENT AT ISSUE

[EP 2 661 892](#)

#### PANEL AND DECIDING JUDGES

This decision was issued by panel 1a with the participation of:

Klaus Grabinski, President of the Court of Appeal,

Peter Blok, legally qualified judge,

Emmanuel Gougé, Judge-rapporteur and legally qualified judge.

#### LANGUAGE OF PROCEEDINGS

German

#### IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

□ Order of the Munich Local Division dated 16 December 2024

□ Reference nos.: ORD\_55998/2024, ACT\_584119/2023, UPC\_CFI\_399/2023

#### SUMMARY OF THE FACTS

1. Nokia initiated proceedings against Amazon before the Munich Local Division (LD) of the Unified Patent Court for infringement of [European Patent 2 661 892](#) (hereinafter "the patent at issue") (ACT\_584119/2023, UPC\_CFI\_399/2023). Amazon opposes the action, among other things, by invoking the antitrust compulsory licence defence.

2. On 29 July 2024, Amazon requested that Nokia be ordered to produce licence agreements in order to further substantiate the compulsory licence defence (App\_44089/2024).

3. In its reply of 3 June 2024, Nokia, by contrast, requested the production of certain licence agreements to which it is a party.

4. By order of 4 December 2024, the Munich Local Division directed the claimant to produce specifically identified licence agreements, which it classified as confidential in a further order dated 19 December. Nokia has since disclosed these licence agreements to Amazon.

5. By order of 16 December 2024, the Munich Local Division rejected Amazon's request for the production of additional licence agreements as well as royalty statements (hereinafter the "impugned order") (ORD\_55998/2024, ACT\_584119/2023, UPC\_CFI\_399/2023).

6. By written submission of 30 December 2024, Amazon filed an appeal against the impugned order and set out its grounds. By written submission of 11 February 2025, Nokia filed its statement of response.

7. By procedural order of 20 February 2025, the Court of Appeal scheduled the oral hearing for 26 March 2025.

8. By written submission of 20 March 2025, Amazon requested an opportunity to comment on the statement of response dated 11 February 2025, and, in case the request was granted, attached the comment to its application.

#### GROUND FOR THE ORDER

9. Amazon's request is to be rejected.

10. According to the Rules of Procedure of the Unified Patent Court (Part 4, "Procedures before the Court of Appeal"), the written procedure before the Court of Appeal is limited to the submission of a statement of grounds of appeal by the appellant and a statement of response by the respondent.

11. Additional grounds of appeal that are not submitted within the time limit prescribed for the statement of grounds of appeal under [Rule 224.2 RoP](#) are inadmissible, pursuant to [Rule 233.3 RoP](#).

12. It follows that any further exchange of written submissions is not provided for under the Rules of Procedure of the UPC, unless a statement of cross-appeal has been filed in accordance with [Rules 237 and 238 RoP](#) (see [Court of Appeal, 1 November 2024, ORD 58165/2024, App 57474/2024, Scandit AG v. Hand Held Products, Inc.](#)).

13. Before the conclusion of the written procedure by the judge-rapporteur, a further exchange of written submissions may be permitted upon a reasoned request by a party, under the conditions set out in [Rule 36 RoP](#), which apply mutatis mutandis to the appeal proceedings.

14. After the conclusion of the written procedure, neither the UPCA nor the Rules of Procedure provide for any further exchange of written submissions or comments.

15. However, the court may, at any stage of the proceedings, of its own motion or on a reasoned request by a party, issue a procedural order such as to direct a party to take a specific step, answer a question, or provide clarification or evidence within time limits to be set in accordance with [Rule 9 RoP](#) (see also [Rule 332 RoP](#)).

16. In its request, Amazon specifically refers to a licence agreement that it received from Nokia no later than 22

December 2024, that is prior to the date of submission of the statement of grounds of appeal, as well as to an expert opinion commissioned by Amazon, dated 28 January 2025. Amazon asserts that it was unable to present arguments on either matter within the time limit prescribed for submitting the statement of grounds of appeal pursuant to [Rule 224.2\(b\)](#) in conjunction with [Rule 220.1\(c\) of the Rules of Procedure](#). In addition, it wishes to respond to many of the claimant's arguments from a legal perspective, which, in its view, would assist in preparing for the oral hearing.

17. The reasons put forward by Amazon do not justify granting it the opportunity to submit written comments prior to the oral hearing scheduled for 26 March 2025.

18. The procedure before the Court of Appeal of the Unified Patent Court is, in principle, structured such that the appellant must state the grounds of appeal within the time limit provided in [Rule 224.2 RoP](#), and the respondent must reply within the time limit provided in [Rule 235 RoP](#). If the court does not order the submission of additional written statements by the parties during the written or interim procedure, the oral hearing shall proceed on the basis of the existing submissions. At the hearing, both parties will have the opportunity to further comment on each other's positions from a legal perspective.

19. It is fundamentally inconsistent with this procedure to give Amazon the opportunity to submit a written statement merely a few days before the oral hearing in order to counter the respondent Nokia's legal arguments, as the oral hearing is specifically intended to serve that purpose. If the request were granted, Amazon would also gain the advantage of being able to submit written comments on two occasions prior to the oral hearing, while the respondent would have had only a single opportunity to do so in the statement of response. This would conflict with the principle of fair and equitable conduct of proceedings, particularly under the principle of equality of arms between the parties, as set out in [Article 42\(2\) of the UPCA](#) and paragraph 5 of the [Preamble to the Rules of Procedure](#).

20. However, Amazon should also not be given the opportunity to make further written submissions concerning the licence agreement and the opinion of the expert it commissioned.

21. It is correct that Amazon would have had merely a few days to address the licence agreement within the time limit for the statement of grounds of appeal pursuant to [Rule 224.2\(b\)](#) in conjunction with [Rule 220.1\(c\) RoP](#), as the agreement, according to its submission, was not made available to it before 22 December 2024 at the earliest. It is also correct that the opinion of Amazon's expert, on the one hand, addresses arguments made by the respondent in its statement of response dated 11 February 2025 and, on the other hand, is itself dated 28 January 2025, thereby making it impossible for the appellant to have submitted the expert opinion together with the statement of grounds of appeal.

22. Nevertheless, in this case as well, the principle of fair and equitable conduct of proceedings— particularly in

light of the principle of equality of arms, as set out in [Article 42\(2\) of the UPCA](#) and paragraph 5 of the Preamble to the Rules of Procedure—in conjunction with the principle of efficient conduct of proceedings, as set out in [Article 41\(3\) of the UPCA](#) and paragraph 4 of the [Preamble to the Rules of Procedure](#), requires that Amazon’s request to submit an additional written statement be rejected.

23. For Amazon has provided no justification – and the Court likewise discerns no plausible explanation – as to why it submitted its request to be permitted to file a written statement on these two matters merely five days before the oral hearing and several weeks after the conclusion of the written procedure, despite both documents having been available to it since 22 December 2024 and 28 January 2025 (or shortly thereafter), respectively. If it were granted the opportunity to submit a written statement in this regard, then, in the interest of ensuring equality of arms, Nokia would likewise have to be granted an opportunity to respond — which would no longer be possible before the oral hearing.

24. For reasons of procedural efficiency and to avoid any delay in the proceedings pending at first instance before the Düsseldorf Local Division, a postponement of the oral hearing scheduled for 26 March 2025 — currently being prepared for by both the parties and the judges — is not a viable option. 25. It follows that, taking into account the principles of fairness, justice, and efficient conduct of proceedings, as well as the right to be heard, Amazon’s application cannot succeed.

26. As the rights of the respondent are not affected by this order, and considering the fact that the appellant’s request was submitted only a few days prior to the oral hearing scheduled for 26 March 2025, it was not necessary to hear the respondent before issuing this order.

#### **PROCEDURAL ORDER**

The applicants’ request is dismissed.

This order is issued on 24 March 2025.

Klaus Grabinski, President of the Court of Appeal,

Peter Blok, legally qualified judge,

Emmanuel Gougé, legally qualified judge and Judge-rapporteur

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