



Local division Mannheim
UPC_CFI_219/2023

Order
of the Court of First Instance of the Unified Patent Court, Mannheim
Local Division
issued on 13 June 2024
concerning EP 2 568 724
concerning
App_35009/2024
concerning App_35013/2024

Plaintiff:

Panasonic Holdings Corporation - 1006, Oaza Kadoma, Kadoma-shi - 571-8501 - Osaka - JP
represented by Christopher Weber

defendant:

Xiaomi Represented by Dr Corin Gittinger
Technology
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(party to the main
proceedings - Not
provided) -
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Xiaomi Represented by Dr Corin Gittinger
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Xiaomi Represented by Dr Corin Gittinger
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proceedings - Not
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DE

Shamrock Mobile Represented by Dr Corin Gittinger
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proceedings - Not
provided) -
Siemensring 44H -
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EN

STREITPATENT:

EUROPEAN PATENT NO. EP 2568724

ADJUDICATING BODY/CHAMBER:

Mannheim local division JUDGES:

This Order was issued by the Chairman and judge-rapporteur Dr Tochtermann. LANGUAGE OF THE

PROCEEDINGS: German

SUBJECT: Further FVL due to secrecy regime

FACTS OF THE CASE

In all three parallel proceedings concerning the patents EP 724, EP 270 and EP 315, the defendants request the extension of the time limits concerning

- the duplicate in the infringement proceedings
- Reply to the action for annulment
- mutatis mutandis also the defence to the application for amendment of the patent (contained in the defence to the action for revocation)

Prior to this, the time limit had already been extended in favour of the defendant - largely with the consent of the other party.

The hearing dates for EP 724 have been set for 7 to 10 October 2024, for EP 270 for 10 and 11 December 2024 and for EP 315 for 4 and 5 February 2025.

The plaintiff initially submitted its Reply in all proceedings with total redactions, which are located in parts of the Reply that are also only partially legible for the court and relate to the FRAND aspect of the dispute. In response to various submissions directed against itself, the plaintiff then submitted further documents and annexes, which it labelled "Supplement Reply". The documents now contain extensive, stratified submissions on the settlement licences which the plaintiff refers to and has submitted. The plaintiff has filed accompanying applications under Rule 262A of the Rules of Procedure for each of these consecutively filed further written submissions. In this respect, the court issued interim secrecy orders and granted an opportunity to comment on the details of the secrecy order. In addition, the defendants have been given access to the unedited versions of the last version of the documents referred to by the plaintiff as "Reply" - partly via release by the law firm in the CMS, partly outside the CMS due to technical problems with the CMS or misapplications whose origin could not yet be clarified. The parties are currently being given further opportunity to comment on the

confidentiality regime. The confidentiality regime, in particular the number of persons authorised to access the documents on the defendant's side, has therefore not yet been conclusively decided. So far, in addition to the party representatives, only one natural person on the defendant's side has access to the unredacted documents.

The Reply on the technical aspects of the case as well as the defence to the revocation counterclaim and the application to amend the patent do not contain any redactions. The plaintiff's applications for protection of secrecy do not relate to the submission on the technical aspects on the infringement and validity side.

REASONS FOR THE DECISION

The requested extension of time had to be rejected in view of the technical aspects of the case. The defendants based their application exclusively on the delayed accessibility of the passages edited by the plaintiff dealing with the FRAND aspect of the dispute. The statements on the technical aspects on the infringement and validity side do not contain any redactions - the statements were immediately accessible to the defendants. Therefore, no extension of time is justified in this respect. This applies not only to the statements on the legal facts, but also to those on the infringement facts. Both parts must be based on a coherent interpretation of the patent.

In the present case, the defendants' interest in being granted uniform deadlines is also not in dispute. In the present case, the requested extension of the time limit would lead to the hearing date regarding EP 724 being jeopardised. If the time limit were extended as requested, the written procedure could only be concluded one day before the oral hearing and the proceedings could not be concluded within the time period specified by the Rules of Procedure, which will in any case be exceeded in the present case - based on the mutually agreed request for later scheduling. Furthermore, it must be taken into account that the technical judges assigned on a case-by-case basis also have a valid interest in being able to familiarise themselves with the technical aspects of the case in particular with reasonable advance notice and not just shortly before the date of the hearing.

Such a divergence of time limits is also not in conflict with Rule 29 (d) of the Rules of Procedure.

However, the request for an extension of the deadline was to be granted in order to safeguard the right to a fair hearing, insofar as it concerns the intended statement on the plaintiff's submission on the FRAND aspect, which was initially not freely accessible. The defendants were only able to take note of this submission considerably after the end of the reply period and are not yet able to discuss the facts with the group of people they consider appropriate. The submission is also extensive and complex and must - in accordance with the case law practice of the local division cited by the defendants (Düsseldorf local division of 4 April 2024, UPC_CFI_355/2023; Mannheim local division of 22 April 2024, UPC_CFI_365/2023) - lead to an extension of the deadline.

In this respect, an extension until 19 July 2024 appears appropriate for the time being. According to the defendants' submission, access was guaranteed for the first time on 6 June 2024, although the defendants are currently still disputing the access authorisation of other persons. When determining the scope, it had to be taken into account that the defendants were already aware when applying for the last extension of the deadline that a submission order had been issued by the plaintiff against itself with regard to two settlement licence agreements and that the actual submission and presentation in this regard was therefore to be seriously expected. At that time, the defendants considered the requested and already granted extension until 19 June 2024 to be sufficient. Subsequently, however, the plaintiff applied for a further submission order against

itself with regard to a third contract, which was then submitted together with an accompanying presentation. This justifies the further extension of the deadline to the extent currently granted.

The court reserves the right to further extend this period depending on the further duration of the dispute between the parties regarding an appropriate confidentiality regime upon further application, which the defendants have expressly reserved the right to do. Should this result in the case not yet appear to be ready for hearing with regard to the FRAND aspect concerning EP 724, the Court reserves the right to limit the hearing on 7 to 10 October 2023 to the technical aspects and to use the further date already set concerning EP 270 to discuss the FRAND aspect relating to all patents in dispute anyway.

The immediate decision by the court, which the defendant's representatives demanded with some clarity, was not appropriate in view of the application, which was clearly too far-reaching in view of the technical submission.

For the further written procedure, it is ordered that the submission of further main pleadings in various versions - each flanked by applications for protection of secrecy - is to be omitted. If necessary, for example due to previous submission orders by the court, corresponding requests for extensions of time are to be submitted and then the document provided for in the Rules of Procedure is to be submitted with a coherent submission. The splintered submission, spread over several versions of the pleadings, does not fulfil the duty to promote proceedings required by the Rules of Procedure, as it makes it considerably more difficult for all parties to understand the subject matter of the dispute and involves a large number of avoidable work steps - especially with regard to the protection of secrets.

ORDER

1. The deadline for the defence of the plaintiff's submission contained in the documents designated as "Supplement Reply Part II Non-Technical Part" together with annexes on the FRAND aspect of the dispute is extended until **19 July 2024**.
2. The further applications for an extension of the deadline are rejected.
3. Further main pleadings of the written procedure must be submitted in a coherent final version. If necessary, a corresponding extension of the deadline must be requested.

NAMES AND SIGNATURES

Issued in Mannheim on 13 June 2024

Peter Michael

Dr Tochtermann

Digitally signed by
Peter Michael Dr
Tochtermann

Date: 2024.06.13 16:52:23
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Dr Tochtermann
Chairman and judge-rapporteur