Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Local division Mannheim
UPC_CFI_219/2023

Order
of the Court of First Instance of the Unified Patent Court, Mannheim
Local Division
issued on 4 July 2024
concerning EP 2 568 724

Plaintiff:

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

defendant:

Xiaomi Technology Germany GmbH (party to the main proceedings - Not provided) - Niederkasseler Lohweg 175 - 40547 - Düsseldorf - DE	Represented by Dr Corin Gittinger
Xiaomi Technology France S.A.S (Party to the main proceedings - Not provided) - 93 rue Nationale Immeuble Australia - 92100 - Boulogne-Billancourt - FR	Represented by Dr Corin Gittinger

Xiaomi Technology Italy S.R.L (Party to the main proceedings - Not provided) - Viale Edoardo Jenner 53 - 20158 - Milan - IT	Represented by Dr Corin Gittinger
Xiaomi Technology Netherlands B.V. (Party to the main proceedings - Not provided) - Prinses Beatrixlaan 582 - 2595BM - Den The Hague - NL	Represented by Dr Corin Gittinger
Odiporo GmbH (party to the main proceedings - Not provided) - Formerweg 9 - 47877 - Willich - DE	Represented by Dr Corin Gittinger
Shamrock Mobile GmbH (Party to the main proceedings - Not provided) - Siemensring 44H - 47877 - Willich - EN	Represented by Dr Corin Gittinger

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: Notes on technology

At the current stage of the proceedings, the following information and questions have been sent to the parties in order to structure the further proceedings:

I. By way of introduction, in order to avoid repetition, reference is made to the court's instructions concerning the same patent in the parallel case between the plaintiff and Oppo (UPC_CFI_210/2023 ORD 3680/2024 Order of 27 June 2024). The statements made there under I. apply accordingly in the present case.

II. On the injury discussion

1. In their rejoinder, the defendants emphasise that feature 1.1 is not realised because the transmission bandwidth in a scenario described in more detail does not lie between the control channels, but that overlaps could occur - thus leading to an undesirable collision according to the teaching of the patent in suit. This situation can arise if the transmission of PUCCH and SRS takes place in the same subframe (duplicate para. 13). In this case, the LTE standard provides for the use of a shortened PUCCH format.
In this respect, it will have to be discussed to what extent this scenario - which, according to this side's understanding, depends on the specific configuration of the signalling - prevents the feature from being realised. Reference is made to Section I.6 of the Order in proceedings UPC_CFI_210/2023.

2. The same question is likely to arise with regard to the submission in the duplicate regarding the non-realisation of feature 1.3.2, insofar as the defendants argue that the standard provides for different configurations for narrowband SRS (duplicate para. 25). It could be considered how the "invariability criterion" of feature 1.3.2 is to be defined - abstractly (i.e. a basic setting option, i.e. it may never be changed) or concretely (i.e. it may be changeable in principle, but it must then be fixed once the setting has been made and may not be variable in the specifically selected configuration).

3. Again, the same question may concern the defendant's submission that feature 1.3.3 is not realised because in the LTE standard there is "technically no direct adaptation of the SRS allocation in response to and depending on a change in the PUCCH bandwidth" because "the SRS [...] are only configured semi-statically and thus at much greater intervals than the dynamically configurable PUCCH" (duplicate para. 39 with subsequent reference to section 8.2 ETSI TS 136 213 V8.8.0 (2009-10)). Reference is then made to the different "adjustment rhythms" of the PUCCH bandwidth on the one hand and the SRS allocation (via the $_{CSRS}$ parameter) on the other (duplicate para. 42 f.). Again, it seems worth discussing whether this scenario precludes the realisation of the feature if the feature is realised in other situations (i.e. the scenario described by the defendants does not occur due to the different "timing" of the two aforementioned parameters).

III. Attack on the body of law

1. For unauthorised expansion and priority, see first of all the information in the Order in the parallel procedure for interpretation.

2. a) Since in the present case the lack of novelty of the subject-matter of claim 1 is initially placed at the centre of the attack on the body of law compared to a previous version of the LTE standard, it should be discussed - assuming for the mere purposes of discussion that the defendants' argumentation that priority is wrongly claimed is correct - with regard to the standard documents FBD- T11 a and -T11b read in context by the defendants, to what extent these contain a uniform disclosure content in law.

b) New feature compared to the FBD-T13
In this respect, with regard to feature 1.1, the disclosure content of figures 3 and 4 and their explanations in the document will have to be discussed (to be read in context or not?). Is the conflict addressed in the patent in suit excluded because, according to the plaintiff, the resources are assigned to different frequency bands from the outset and does the CP include this scenario if, in the case of frequency hopping in paragraph [0003], the resources are also assigned to different frequency bands?
"shifting frequency bands" be taken into consideration?).

With regard to feature 1.3.3, Figures 5C and 5D will have to be discussed. If the defendant's interpretation approach is followed, it could appear worth discussing whether Figure 5C shows the uniform distribution required by the feature (but perhaps 4 directly adjacent signals with a subsequent frequency gap of 6 RB, which remains unused and in which the conflict according to the patent in suit cannot occur). Conversely, the argument emphasised by the plaintiff with regard to Figure 5D must be examined more closely as to whether the overlapping of the reference signals #1-#4 shown there discloses to the skilled person the teaching claimed as the invention.
In addition, the argument could be pursued that in the figures the width of the PUCCH is 2 RB in both scenarios, i.e. possibly does not vary and therefore the different representations could not be shown as a distribution "corresponding to the change in the transmission bandwidth".

c) New feature compared to the FBD-T14
With regard to this document, it will have to be discussed whether the possible case of conflict according to the teaching of the patent in suit is solved by a different approach (according to the plaintiff: fundamental prohibition of the simultaneous transfer of PUCCH and CS RS) than provided for in the patent. The plaintiff should explain which tests of the patent "in other jurisdictions" it refers to in para. 229 of the Reply.

d) No further comments on the written submission relating to inventive step appear necessary at present. The points are then to be discussed at the hearing.

3. Application to amend the patent

Reference is made to Rule 30.2 RP. According to Tilmann/Plassmann, UPCA, Rule 30 RP, para. 47, the rule is to be characterised as a strict rule of preclusion. According to the standard, the aim is to prevent the patent proprietor from depriving the opponent of the opportunity to react at an early stage by successively filing various amendments and the court from dealing with the applications in an appropriate manner. In this respect, the question of whether a new amendment will be allowed will have to take into account whether the new amendment would have been necessary at an earlier stage in response to the arguments already submitted by the plaintiff for revocation and whether the late request for amendment will cause delays in the proceedings. In particular, the patent proprietor must provide detailed reasons as to why the later amendment is necessary (see also Central Chamber Paris, Order of 27 February 2024, UPC_CFI_255/2023, GRUR-RS 2024, 4923). The applicant's unqualified reservation to respond with further amendments in due course therefore raises concerns and any new amendments will have to be measured against the above requirements.

ORDER:

If deemed appropriate by the parties, there is an opportunity to comment on the points raised by **19 July 2024** (submission in accordance with the current deadline for the FRAND aspect).

NAMES AND SIGNATURES

Issued in Mannheim on 4 July 2024

Peter Michael Dr Daughter

Digitally signed by Peter Michael Dr. Daughter
Date: 2024.07.04 18:21:12 +02'00'

Dr Tochtermann

Chairman and judge-rapporteur