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Munich I Regional Court (*Landgericht München I*), final judgment dated 8 January 2026 – 7 O 5007/25

Headnotes:

- 1. When assessing the willingness to take a licence, whether the party seeking the licence makes a partial payment is considered particularly significant. This partial payment obligation applies in a situation where it is not a matter of dispute between the parties that the party seeking the licence has to make a payment and it is only the amount itself that is in dispute. In such cases, the amount not in dispute between the parties must in any case be paid to the patent proprietor such that it remains permanently in the possession of the patent proprietor. This is a downpayment on the subsequent licence amount. The amount is based on the offer made by the party seeking the patent and is therefore – if the parties are negotiating a global licence – not limited to the territory of the Federal Republic of Germany.**
- 2. In addition to the obligation to pay an undisputed partial amount, there may be an obligation to provide additional security. When such an obligation exists is determined on a case-by-case basis and depends on the difference between the two offers in a.) absolute figures and b.) per cent.**
- 3. A party who has applied for the licence rate to be determined must provide the amount determined by the court seized as security in addition to the partial payment, irrespective of whether the defendant against whom the action has been filed in the other jurisdiction has agreed to the proposal of the court there or not.**
- 4. Licence agreements concluded recently with other licensees that are roughly the same in terms of size and with a comparable product portfolio are a very strong indication that the rate set there is within the FRAND corridor.**
- 5. The fact that infringement proceedings took place before the licence agreement was concluded should not be given too much weight. This is because it has been established that a not inconsiderable proportion of market participants are not prepared to conclude licence agreements without the corresponding pressure from infringement proceedings. In this respect, the effort to initiate infringement proceedings is a normal and acceptable part of the negotiations to find a licence rate that suits both sides.**
- 6. It is up to the claimant to decide whether and, if so, which comparison licence agreements it wishes to submit to substantiate what it is demanding. When submitting licence agreements for a lump sum payment, as a rule, the amount, the term and the number of units on which the calculation is based should be stated. If this is the first licence agreement between the parties, information should also be provided on how acts committed in the past have been settled.**
- 7. There is no obligation to submit all licence agreements that have been concluded by the Claimant regarding the subject matter of the licence.**
- 8. It can be assumed that market participants know that they have to take licences. Therefore, it can generally be required that they make provisions for such if they commence use without a licence. The situation may be different if certain technologies are not licensed for a long time**

or licences are not consistently enforced on the market. In this respect, specific pleadings are always required as to how a patent proprietor has behaved in the past.

9. It must therefore be assumed that licence payments for the period prior to a qualified demand for payment and a reasonable period required to adjust the sales prices cannot generally be claimed in full. Depending on the duration of the retroactive effect, however, reasonable partial amounts may be demanded. The actual amount and periods are questions for the individual case.

10. It is an admissible business decision for any patent proprietor to decide whether to assert claims for the past. This decision must be accepted as long as there are no indications of misuse in exceptional cases. There is no presumption that a waiver of claims for past use serves the sole purpose of setting a future rate that is excessively high to create comparison licence agreements with high licence rates.

11. The first step is to determine what amount is reasonable for the use of a particular standard. Based on such a determination, the specific patent proprietor's share in the standard must then be determined.

12. A control calculation using a top-down analysis is at least always possible if the patent proprietor has a significant share in the standard. For the very extensive mobile communications standard, a share of one per cent is sufficient for this in the Panel's view. A higher share may be required for smaller standards.

13. The unit price used as a basis will necessarily be based on an average value for certain product categories. This means that for certain categories, a product of median type and quality would have to be taken as the basis. This is because there are considerable price differences between the end products, which are not due to improved standard functionality, but due to a particularly attractive brand, a particularly high-quality camera or particularly functional software. It would not be compatible with the idea of a fair balance of interests if the manufacturer of high-quality branded products had to pay a higher price for the same functionality as the manufacturer of cheaper or of the lowest-priced products.

Facts

1

The Claimant is bringing an action against the Defendants for alleged infringement of European Patent 3 512 289 B1 with the title "Wireless communication method using enhanced distributed channel access, and wireless communication terminal using same".

2

The Claimant, together with SK Telecom, Ltd., is the proprietor of European Patent 3 512 289 B1 (Exhibit K 01, hereinafter: "patent at issue"), filed on 7 September 2017 claiming the priority of multiple South Korean patent applications, including KR 20160147189 of 6 November 2016. The application was published on 17 July 2019 and the mention of the grant was published on 26 January 2022. In a written statement dated 17 September 2025 (Exhibit HE 1), Defendant 2) brought an action for revocation before the German Federal Patent Court (case no. 4 Ni 31/25). The order indicating the aspects that will presumably be of particular significance in respect of the decisions or which will be helpful for concentrating the oral hearing on the issues which are essential for the decision (*Hinweisbeschluss*) pursuant to section 83 (1) German Patent Act (*PatG*) has not yet been issued.

3

Claims 1, 4, 5 and 12, which are decisive here, read as follows in the language of the proceedings:

"Claim 1:

"A wireless communication terminal (100) that wirelessly communicates with a base wireless communication terminal, the wireless communication terminal comprising:

a transceiver (120); and a processor (110) for processing a radio signal received through the transceiver (120) or a radio signal to be transmitted through the transceiver (120), wherein the processor (110) is configured to:

transmit, to the base wireless communication terminal (200), a trigger-based physical layer protocol data unit, PPDU, using the transceiver (120), switch an enhanced distributed channel access, EDCA, parameter set, which is a set of parameters used for the channel access, from a first EDCA parameter set to a second EDCA parameter set based on whether the base wireless communication terminal (200) triggers a multiuser uplink transmission participation of the wireless communication terminal (100), set a second EDCA parameter set timer based on whether a response to a MAC protocol data unit, MPDU, included in the trigger-based PPDU is received when the second EDCA parameter set timer expires, terminate an application of the second EDCA parameter set, calculate a random integer value within a contention window, CW, set a backoff timer based on the random integer value, and access a channel based on the back off timer and a predetermined slot time, wherein each of the first and second EDCA parameter sets comprises a minimum value, CW_{min}, of the CW and a maximum value, CW_{max}, of the CW."

Claim 4: The wireless communication terminal (100) of claim 1, wherein the processor (110) is configured to determine when to set the second EDCA parameter set timer based on a type of responding requested by the MPDU included in the triggerbased PPDU.

Claim 5: The wireless communication terminal (100) of claim 4, wherein when the MPDU included in the triggerbased PPDU does not request an ACK, the processor (110) is configured to set the second EDCA parameter set timer when the transmission of the triggerbased PPDU ends.

Claim 12: An operation method of a wireless communication terminal (100) that wirelessly communicates with a base wireless communication terminal, the method comprising:

transmitting a triggerbased physical layer protocol data unit, PPDU, to the base wireless communication terminal;

switching an enhanced distributed channel access, EDCA, parameter set, which is a set of parameters used for the channel access, from a first EDCA parameter set to a second EDCA parameter set based on whether the base wireless communication terminal triggers a multiuser uplink transmission participation of the wireless communication terminal;

setting a second EDCA parameter set timer based on whether the response to the MPDU included in the triggerbased PPDU is received; when the second EDCA parameter set timer expires, terminating an application of the second EDCA parameter set;

calculating a random integer value within a contention window, CW; setting a backoff timer based on the random integer value;

accessing a channel based on the back off timer and a predetermined slot time; and transmitting the data through the channel, wherein each of the first and second EDCA parameter sets comprises a minimum value, CW_{min}, of the CW and a maximum value, CW_{max}, of the CW."

4

The Claimant is a South Korean research and development company specialising in wireless communication and multimedia technologies.

5

Defendant 1) is a Taiwan-based company that manufactures computer hardware and consumer electronics under the trade mark "ASUS". Defendant 2), based in Germany, is a wholly-owned subsidiary of Defendant 1) and acts as a distribution partner and service branch for Defendant 1)'s products in Germany. Defendant 3), also based in Germany, is an independent distribution partner of Defendants 1) and 2), which is responsible for the distribution of ASUS products in Germany, France, the Netherlands and other European countries.

6

The Claimant is contesting ASUS models that implement the Wi-Fi 6 standard, including the Wi-Fi 6-compatible smartphone "Zenfone 11 Ultra", various Wi-Fi 6-compatible laptops such as the "ASUS Zenbook S13", Wi-Fi 6-compatible mini PCs such as the "ASUS Chromebox 4" and Wi-Fi 6-compatible all-in-one PCs such as the "ASUS AiO E3 (E3402)" (hereinafter: "contested embodiments").

7

The fact that the contested embodiments implement the "IEEE Std 802.11ax™-2021" standard (Exhibit K 06) managed by the IEEE is not a matter of dispute between the parties. This standard is marketed under the name "Wi-Fi 6".

8

The parties have so far been unsuccessful in negotiating about licensing the "Wi-Fi 6 Pool" managed by Sisvel S.A., which includes the patent at issue and the Claimant's other patents, or alternatively about licensing the "Wi-Fi 6" portfolio of the Claimant and SK Telecom Ltd.

9

SK Telecom Ltd. has assigned its compensation claims against the Defendants relating to the patent at issue, insofar as they exist, to the Claimant.

10

The Claimant pleads that the contested embodiments directly and literally infringe claim 1 of the patent at issue in conjunction with claims 4 and 5 because the Wi-Fi 6 standard implements the teaching of the patent at issue. The Claimant pleads in addition that claim 12 of the patent at issue is indirectly infringed by placing the contested embodiments on the market.

11

The Claimant pleads that the compulsory licence defence under antitrust law raised by the Defendants is not successful; the Claimant made the Defendants FRAND offers but the Defendants are not willing to take a licence.

12

The Defendants' arguments are not suitable to cast doubt on the validity of the patent at issue. As such, staying the legal dispute in view of the pending action for revocation is ruled out. The patent at issue validly claims the priority of the South Korean patent application KR 20160147189 of 6 November 2016.

13

The Claimant most recently requested that:

I. the Defendants be ordered

1. to cease and desist as against the Claimant, subject to an administrative fine of up to EUR 250,000.00 to be determined by the Court for each contravention – alternatively imprisonment – or imprisonment of up to six months, in the event of repeated contraventions a total of up to two years, whereby the Defendants' legal representatives would be the ones sentenced to imprisonment, from

a) offering, placing on the market and/or using in the territory of the Federal Republic of Germany and/or importing and/or possessing for said purposes,

wireless communication terminals that wirelessly communicate with a base wireless communication terminal,

the wireless communication terminal comprising: a transceiver; and a processor for processing a radio signal received through the transceiver or a radio signal to be transmitted through the transceiver,

wherein the processor is configured to:

transmit, to the base wireless communication terminal, a trigger-based physical layer protocol data unit, PPDU, using the transceiver, switch an enhanced distributed channel access, EDCA, parameter set, which is a set of parameters used for the channel access, from a first EDCA parameter set to a second EDCA parameter set based on whether the base wireless communication terminal triggers a multi-user uplink transmission participation of the wireless communication terminal,

set a second EDCA parameter set timer based on whether a response to a MAC protocol data unit, MPDU, included in the trigger-based PPDU is received, when the second EDCA parameter set timer expires, terminate an application of the second EDCA parameter set, calculate a random integer value within a contention window, CW,

set a backoff timer based on the random integer value, and access a channel based on the back off timer and a predetermined slot time,

wherein each of the first and second EDCA parameter sets comprises a minimum value, CW_{min}, of the CW and a maximum value, CW_{max}, of the CW,

(direct infringement of apparatus claim 1 of EP 3 512 289) if the processor is configured to determine when to set the second EDCA parameter set timer based on a type of responding requested by the MPDU included in the trigger-based PPDU,

(direct infringement of claim 1 in conjunction with claim 4 of EP 3 512 289) if the MPDU included in the trigger-based PPDU does not request an ACK, the processor is configured to set second EDCA parameter set timer when the transmission of the trigger-based PPDU ends,

(direct infringement of claim 1 in conjunction with claim 4 in conjunction with claim 5 of EP 3 512 289)

b) offering and/or supplying wireless communication terminals to customers for use in the territory of the Federal Republic of Germany in the Federal Republic of Germany,

which are suitable for performing an operation method of a wireless communication terminal that wirelessly communicates with a base wireless communication terminal,

the method comprising:

transmitting a trigger-based physical layer protocol data unit, PPDU, to the base wireless communication terminal; switching an enhanced distributed channel access, EDCA, parameter set, which is a set of parameters used for the channel access, from a first EDCA parameter set to a second EDCA parameter set based on whether the base wireless communication terminal triggers a multi-user uplink transmission participation of the wireless communication terminal;

setting a second EDCA parameter set timer based on whether the response to the MPDU included in the trigger-based PPDU is received;

when the second EDCA parameter set timer expires, terminating an application of the second EDCA parameter set;

calculating a random integer value within a contention window, CW;

setting a backoff timer based on the random integer value;

accessing a channel based on the back off timer and a predetermined slot time; and transmitting the data through the channel,

wherein each of the first and second EDCA parameter sets comprises a minimum value, CW_{min} , of the CW and a maximum value, CW_{max} , of the CW;

(indirect infringement of method claim 12 of EP 3 512 289)

2. to provide the Claimant with information in electronic form, alternatively in writing, and in the form an orderly list, including supporting documents such as invoices or delivery notes or receipts, in electronic form, alternatively in writing, containing the information in electronic form as an Excel spreadsheet (xls file), stating the extent to which it has committed the acts referred to under A.I. since 26 February 2022, stating

a) the quantity of products delivered, received or ordered and the names and addresses of the manufacturers, suppliers and other previous owners, and the prices paid,

b) the individual deliveries, broken down into the quantities supplied, delivery periods and prices, including the invoice numbers and the respective type designations as well as the names and addresses of the customers, including the points of sale for which the products were destined,

c) the individual offers, broken down into the quantities offered, delivery periods and prices and the respective type designations as well as the names and addresses of the recipients of the offers,

d) the advertising activities undertaken, broken down into advertising media, circulation levels, distribution period and distribution area, in the case of internet advertising the domain, the access

figures and the periods for which the adverts were available and, in the case of direct advertising, such as mailings, the names and addresses of the recipients,

e) the production costs broken down into the individual cost factors and profit generated,

the Defendants being free to alternatively provide the names and addresses of the recipients of the offers and non-commercial customers not to the Claimant but to a chartered accountant with his place of business in the Federal Republic of Germany and nominated by the Claimant who is subject to confidentiality provided that the Defendants bear his costs and simultaneously place him under an obligation to notify the Claimant, on request, whether particular customers and/or non-commercial customers are included in the information provided;

3. to recall the products referred under A.I. above, which have been placed on the market in the Federal Republic of Germany since 26 February 2022, from the distribution channels, pointing out that the products have been found by the Court to infringe the patent, together with a binding commitment that it will reimburse any amounts received for the products and bear any necessary packaging and shipping costs and any customs and warehousing costs associated with the return of the products, or to finally remove these products from the distribution channels, in that the Defendants take possession of the products again;

4. to surrender the products described under A.1. that are in their direct or indirect possession or ownership to a court bailiff to be nominated by the Claimant for the purpose of destruction at the Defendants' expense.

II. it be established that the Defendants must compensate the Claimant for any losses it and SK Telecom Co., Ltd. have incurred or incur in future owing to the acts specified under I.1. that have been committed since 26 February 2022.

The Defendants are requesting that

I. the claim be dismissed,

II. in the alternative, that the proceedings be stayed until a final decision has been issued in the revocation action against the German part of European Patent EP 3 512 289.

The Claimant is opposing the request to stay the proceedings.

14

The Defendants plead that the contested embodiments do not implement feature 4 of claims 1 and 12.

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The Defendants are raising the compulsory licence defence under antitrust law because the Claimant did not make them a FRAND licence offer.

16

The patent at issue, the Defendants also plead, is not legally valid because the prior art is prejudicial to the novelty of the patent claim asserted. In this context, it is important that the patent at issue cannot claim the priority of the South Korean patent applications. The present infringement proceedings, they plead, must be stayed in accordance with section 148 German Code of Civil Procedure (*ZPO*) in view of the pending revocation action.

17

The pleading relating to the objection under antitrust law will be set out in the reasons for the decision in a non-confidential and a confidential part (with certain parts redacted for third parties).

18

Reference is also made to the parties' written statements together with the exhibits as well as the record of the oral hearing on 8 January 2026.

94

The compulsory licence defence under antitrust law raised by the Defendants is not successful.

1. Introductory summary

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The Claimant offered two different types of licence: firstly, a bilateral licence for the Wi-Fi 6 portfolio of the two patent proprietors Wilus and SK Telecom (hereinafter referred to as the "Wilus" portfolio) and, secondly, a licence for the "Sisvel" Wi-Fi 6 pool, in which the two proprietors of the patent at issue have included their Wi-Fi 6 patents.

96

Most recently, the Defendants were primarily seeking a bilateral licence and submitted corresponding licence offers. The Claimant, on the other hand, has always made offers for both licensing options.

97

The fact that the Defendants' conduct violates antitrust law results from the fact that, firstly, the Defendants have not provided security based on the Claimant's last licence demand, as required by Munich Higher Regional Court (Munich Higher Regional Court, judgment of 20 March 2025, 6 U 3824/22) and, secondly, the Defendants did not pay the Claimant the most recent licence amount it had offered as a non-recoverable (final) downpayment (partial payment obligation), as required in the Panel's published order of 14 July 2025 (7 O 64/25 and 7 O 2750/25, GRUR-RS 2025, 19196).

98

Instead, the Defendants deposited an amount corresponding to their latest offer – which was rejected by the Claimant (actually their penultimate offer) – as security. However, depositing their own offer as security does not meet the requirements established by Munich Higher Regional Court or the Panel for conduct of a patent user willing to take a licence. The Panel cannot understand why the Defendants deposited the specified amount as providing security in this amount is not relevant for the assessment of the case under German law.

99

Regardless of the insufficient provision of security and failure to make partial payment, the Panel assumes that both offers (bilateral licence and pool licence) are FRAND, with the Claimant not exhausting the licensing potential contained in the respective portfolio in either offer.

2. The facts (insofar as there are no confidentiality interests)

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The Claimant is a founding member of Sisvel's Wi-Fi 6 patent pool. Therefore, licensees of Sisvel's Wi-Fi 6 pool automatically have licences for the Claimant's corresponding patents. In addition, the Claimant is offering to license its patents (and SK Telecom's patents) under a bilateral licence agreement. The parties are in dispute over a licence for all devices that are Wi-Fi 6-enabled. They agree that the licence includes backward compatibility and is therefore also to cover all patents of the earlier standards (Wi-Fi 5, Wi-Fi 4, etc.). The parties' most recent offers did not include devices that make use of the Wi-Fi 7 standard. These Wi-Fi 7-enabled devices are to be completely excluded from the licence negotiations. With regard to these devices, no patents for Wi-Fi 6 and below are to be licensed. Rather, these devices are to be the subject of a separate and subsequent agreement.

101

The Claimant has submitted offers for a bilateral licence that are subject to confidentiality. The licence rates for the Sisvel Wi-Fi 6 pool are published on Sisvel's website. They are as follows:

Standard rate: EUR 0.60 Compliant rate: EUR 0.50 Enterprise rate: EUR 3

102

According to the Claimant, the standard rate applies until a licence agreement is entered into. The compliant rate applies for the period after a licence agreement is concluded. The unit rate does not differentiate according to the specific unit for which each prospective user wishes to use the standard. It is therefore irrelevant whether it is a very cheap technical product, such as a toy, or a more expensive product such as a personal computer (PC). The conditions for the enterprise rate are irrelevant for the present decision.

103

The parties were most recently negotiating a licence agreement term until the end of 2028. The bilateral licence was to take effect on 1 January 2021, and the pool licence on 1 June 2021. Due to the different time periods resulting from the different start dates of the licence term, the offers differ in terms of the number of units on which they are based.

104

When the oral hearing ended, both parties based their calculations on the unit quantities specified by the Claimant in an email dated 6 February 2025, which were based on information provided by the Defendants. This email is not available to the Court, but excerpts from it were submitted by the Defendants. In their offers, both parties multiplied these quantities by the per-unit prices they considered to be accurate. The average per-unit price set by the Claimant and the Defendants differed by a low single-digit factor at the end of the oral hearing (subject to confidentiality: factor [redacted text]).

3. Benchmark for examination

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The starting point is the ECJ's decision in *Huawei v ZTE* (C-170/13, GRUR 2015, 764) as interpreted by the German Federal Court of Justice in its decisions *FRAND Objection I* (KZR 36/17, GRUR 2020, 961) and *FRAND Objection II* (KZR 35/17, GRUR 2021, 585). Furthermore, the Panel is taking account of the decision of Munich Higher Regional Court in case 6 U 3824/22 dated 20 March 2025.

106

The examination of whether the proprietor of a standard-essential patent can assert a claim for injunctive relief against an unlicensed user of this patent, or whether the user can oppose the claim for injunctive relief by arguing that it has not been offered a licence on FRAND terms, is determined in a multi-stage examination procedure. The 5th step listed below follows the case law of Munich Higher Regional Court.

1st step: Notice of infringement by the patent proprietor

2nd step: Declaration of willingness to take a licence by the patent user

3rd step: Submission of a licence offer by the patent proprietor

4th step: Examination of the licence offer by the patent user; if not accepted, submission of its own offer within a short period of time (continuous willingness to take a licence)

5th step: If the patent proprietor rejects the patent user's offer, the patent user must provide security in accordance with "recognised commercial practice".

107

On the basis of the understanding of Munich Higher Regional Court, a qualified security in the amount of the patent proprietor's most recent licence offer must generally be provided – an exception may apply if the patent proprietor's offer is clearly and obviously excessive. According to Munich Higher Regional Court, the court seized does not generally have to examine the objection under antitrust law if appropriate security has not been provided. In this case, the patent user would have to be ordered to cease and desist in the event of infringement being established (if the proceedings are not to be stayed although a revocation action is pending).

108

In its published order in cases 7 O 64/25 and 7 O 2750/25 (GRUR-RS 2025, 19196), the Panel set out the precise requirements. Reference is made to these statements. In summary, whether the licence seeker makes a partial payment is considered particularly significant with regard to the assessment of its willingness to take a licence. This partial payment obligation applies in a situation where it is not a matter of dispute between the parties that the party seeking the licence has to make a payment and it is only the amount itself that is in dispute. In such cases, the amount not in dispute between the parties must definitely be paid to the patent proprietor such that it remains permanently in the possession of the patent proprietor. This is a downpayment on the subsequent licence amount. The amount is based on the offer made by the party seeking the patent and is therefore – if the parties are negotiating a global licence – not limited to the territory of the Federal Republic of Germany.

109

In addition to the order in those proceedings, the Panel states that in addition to the obligation to pay an undisputed partial amount, there may be an obligation to additionally provide security. When such an obligation exists is determined on a case-by-case basis and depends on the difference between the two offers in a.) absolute figures and b.) per cent.

110

Specifically, additional security will be required if the defendant's offer is less than 60 % of what the claimant is demanding and the difference is more than USD 10 million. In such a case, the defendant must provide security, which – as far as a lump sum licence is concerned – will be the amount that corresponds to the amount for one licence year (this means: If the claimant is demanding 100 for a period of 5 years and the defendant offers 30, then an amount of 30 is to be finally paid as a partial payment and a further amount of 20 is to be deposited as security).

111

However, the situation is different if a defendant has had a licence rate determined by a court in another jurisdiction or applies to such a court for the rate to be determined. The Panel already referred to this case in its order dated 14 July 2025 (page 13), which reads as follows:

According to the case law of the Panel, the party seeking the rate to be determined in another country must accept that it is then also required to already pay the amount it is proposing to the other party. So far, there have only been decisions that have dealt with the effect of decisions already issued abroad. However, it can be assumed that corresponding obligations could already arise when the corresponding application is made.

112

A party which has requested that the licence rate be determined must pay the amount determined by the court seized as security in addition to the partial payment, irrespective of whether the defendant against whom the action has been filed in the other jurisdiction has agreed to the proposal of the court there or not. The following is a concrete example: If a defendant in a dispute where the parties' positions are 30 and 100 for a licence with a term of 5 years and, according to a decision on an interim licence, an amount of 10 is to remain fixed and a further amount of 50 is to be provided as security, the Panel considers that the fixed amount to be paid is 30 and an additional security amount of 30 is to be provided as determined by the foreign court.

4. Application of these principles to the present case

113

In the view of Munich Higher Regional Court, the Defendants must be considered unwilling to take a licence simply because they have not deposited a security in the amount of the last offer made by the Claimant. The fact that the Defendants deposited a lower security – based on their most recent offer, which was formally rejected by the Claimant – is irrelevant. In this respect, Munich Higher Regional Court left no doubt as to the amount to be deposited. These requirements are not met.

114

The Panel takes the view that the Defendants must be considered unwilling to take a licence on formal grounds. In order to express one's own willingness to take a licence, it is, as a rule, necessary that the undisputed amount is actually paid to the Claimant. This did not happen. The question of whether security has to be paid additionally therefore does not arise in the present case.

5. FRAND assessment of the Claimant's offers

115

Furthermore, it must be assumed that both the pool offer "Sisvel Wi-Fi 6" and the bilateral licence offer are within the permissible FRAND corridor. This is the result of a comparative top-down analysis in which all assumptions were made in favour of the Defendants. The starting point was the specific facts of the case: there is a pool offer and the Defendants' specific product portfolio comprises predominantly high-priced PCs and laptops. The Panel is assuming, on the basis of experience in numerous proceedings, that pool offers practically never exhaust the licensing potential inherent in their patent portfolio.

a. Subject of the licence

116

The subject of the licence for both the Sisvel Wi-Fi 6 pool and the bilateral offer are patents for the Wi-Fi 6 standard, including all patents relating to earlier standards, in order to ensure backward compatibility. Whether a device is covered by the licence is determined by the best technically implemented Wi-Fi standard. Devices that can implement Wi-Fi 7 are not covered by the licence. To clarify: This means that the Claimant can also take action against the Defendants' Wi-Fi 7-enabled products on the basis of a Wi-Fi 6 patent in the event that a licence agreement is concluded for the Wi-Fi 6 portfolio.

b. The structure of the licence offers (unit-price concept)

117

In principle, a licensing programme that does not differentiate between the product categories to be licensed carries an increased risk of being classified as non-FRAND. This is because a reasonable

licensor takes the interests of the licensees into account in its offer and recognises that licence payments must be refinanced through the sales price. If the same price is charged for high-value and high-priced products as for low-priced products, this may be an indication of an unbalanced licensing programme. However, if the licences required are very cheap overall, this is irrelevant. If a licensee has different product categories in its offer, an overall assessment must be made (even if the licence is only offered uniformly). It is therefore not possible for an offer to be considered FRAND for one product category and non-FRAND for another product category.

c. Comparison licence agreements

118

In the Panel's view, the preferred and most accurate way to determine whether a patent proprietor's offer is within the FRAND corridor is to compare it with licences already concluded by the patent proprietor. In doing so, the principle applies that licence agreements concluded recently with other licensees that are roughly the same in terms of size and with a comparable product portfolio are a very strong indication that the rate set there is within the FRAND corridor.

119

(1) This applies in particular if the licence agreement was concluded without the pressure of infringement proceedings. In this connection, the fact that infringement proceedings took place before the licence agreement was concluded, and that these proceedings may have concluded with a decision, should not be given too much weight. This is because it has been established that a not inconsiderable proportion of market participants are not prepared to conclude licence agreements without the corresponding pressure from infringement proceedings. In this respect, the effort to initiate infringement proceedings is a normal and acceptable part of the negotiations to find a licence rate that suits both sides. Pending infringement proceedings do not appear to have such a threatening effect that free negotiations are no longer possible under the resulting pressure.

120

It is up to the patent proprietor to submit the agreements in proceedings that it needs to support its demands. When submitting licence agreements for a lump sum payment, as a rule, the amount, the term and the number of units on which the calculation is based should be stated. If this is the first licence agreement between the parties, information should also be provided on how activities in the past have been settled.

121

There is no obligation to submit all licence agreements that have been concluded by the Claimant regarding the subject matter of the licence. This is because experience from previous proceedings has shown that this can lead to the defendant selecting and combining the most favourable arguments from various agreements in order to be able to demand low licence rates for itself. Furthermore, experience has shown that after the submission of comparison licence agreements, it is almost always requested that further agreements be submitted and it is pleaded that the agreements submitted are not comparable. The Panel therefore considers it to be up to the Claimant to decide whether and, if so, which comparison licence agreements it wishes to submit to substantiate what it is demanding.

122

The Panel does not fail to recognise that the arguments pleaded by the Defendants may well be correct and are not per se an argument in favour of a so-called "hold out". Rather, each individual case must be assessed individually based on the specific overall circumstances.

123

(2) The following principles apply with regard to the – already mentioned – settlement of past use:

124

When calculating the licence rates, past use must be treated differently from current or future use. The background to this is that manufacturers of products must be able to refinance the costs incurred for licence payments by passing these costs on to buyers or users. Refinancing is excluded in the case of past use as the sales have already been completed and it is no longer possible to pass on the costs. In this respect, there is a certain amount of eligibility for protection, at least up to the point in time when the specific patent proprietor unequivocally demanded a licence payment for the first time. The Panel already explained this in its order of 14 July 2025. The following explanations serve to provide further clarity.

125

It can be assumed that market participants know that they have to take licences. Therefore, it can generally be required that they make provisions for such if they commence use without a licence. The situation may be different if certain technologies are not licensed for a long time or licences are not consistently enforced on the market. In this respect, specific pleadings are always required as to how a patent proprietor has behaved in the past. For example, a situation where a product manufacturer builds up a portfolio over a long period of time, but initially does not take action against other manufacturers and then, after restructuring, takes action against other manufacturers and also asserts claims that relate to the past that was dealt with differently, would seem to require explanation.

126

It must also be assumed that potential licensees do not have to proactively approach licensors. After all, it is up to the patent proprietors to enforce their rights. If a longer period of time passes in this way, it can be assumed, at least for the past, that a certain level of confidence can develop that a claim will not be filed. This applies at least if the specific patent proprietor has not made it clear through high-profile actions (e.g. publications in specialist publications or trade fair appearances) that licensing is desired and will be enforced. This is because, in such a case, a patent user cannot invoke protection of legitimate expectations because it is one of many patent users who has not taken a licence and the capacity of the patent proprietor is not sufficient for claims to be filed against all patent users at the same time. Rather, the patent user must then assume that claims will be asserted against it in due course (and also for the past).

127

In order to avoid misunderstandings, a patent proprietor should therefore send a clear and unambiguous demand for payment to a patent user. Otherwise it could lose all or at least some of its past claims.

128

The Panel assumes, given this situation with regard to the interests, that licence payments for the period prior to a qualified demand for payment and a reasonable period required to adjust the sales prices cannot generally be claimed in full. Depending on the duration of the retroactive effect, however, reasonable partial amount may be demanded. The actual amount and periods concerned are questions for the individual case.

129

(3) The question of whether claims can be asserted for the past must be separated from the question of whether claims must be asserted for the past. This is particularly important for the calculation of comparison licence agreements.

130

The Panel takes the view that it is an admissible business decision for any patent proprietor to decide whether to assert claims for the past. This decision must be accepted as long as there are no indications of misuse in exceptional cases.

131

The Panel is aware from many cases that the conclusion of a first licence agreement is very difficult. If the patent proprietor waives claims for the past in whole or in part in such a situation, this is generally due to the fact that a future-oriented business relationship is to be established. There is no presumption that a waiver of claims for past use serves the sole purpose of setting a future rate that is excessively high to create comparison licence agreements with high licence rates. Although this presumption is regularly put forward in patent infringement proceedings, there are no actual indications to support this. For the reasons mentioned, it also appears to be remote. Rather, the licensing reality seems to be that patent proprietors are faced with such a large number of companies that are not readily willing to take a licence that significant concessions are made in order to reach a swift conclusion of a licence agreement.

d. Comparison agreements in the present proceedings

132

In the present proceedings, the Claimant submitted comparison agreements, but the payment amounts were redacted and there was no information about the quantities on which they were based. Insofar as the per-unit rates alone were stated in the agreements, this was not sufficient because the comparability of these agreements could not be verified.

e. Control calculation based on the top-down analysis

133

The Panel has therefore carried out a control calculation based on a top-down analysis.

(1) Fundamental considerations

134

The Panel understands the underlying approach as posing the question of what amount is reasonable for the use of a certain standard. Based on such a determination, a specific patent proprietor's share in the standard must then be determined. In the individual case, such an analysis raises numerous questions, for example:

- What is the starting value?
- What is the value of the standard per product? Does this have to be a fixed amount or in relation to the specific product or product category (i.e. is the same amount appropriate for use of a certain standard per product, regardless of whether it is a cheap mobile phone or a high-end laptop)?
- What influence do other standards have on a possible starting value (Total Royalty Burden)?

135

A control calculation using a top-down analysis is at least always possible if the patent proprietor has a significant share in the standard. For the very extensive mobile communications standard, a share of one per cent is sufficient for this in the Panel's view. A higher share may be required for smaller standards. In the present case, the required level is exceeded.

136

Values that have been submitted to the Panel in other cases and that appear realistic were taken as a basis. As a starting point, the mobile communications standard is of particular importance. One reason for this is that the majority of the cases heard by the Panel concerned mobile communications. Moreover, this is a standard that is largely out-licensed and for which there have already been numerous renewals of existing licence agreements, meaning that there are a sufficient number of agreements for which the often contentious issue of remuneration for past use does not arise.

(2) Structure of the Wi-Fi 6 pool from Sisvel

137

The starting point for the control calculation is the Wi-Fi 6 pool from Sisvel with rates of EUR 0.60 as the standard rate and EUR 0.50 as the reduced rate. According to Sisvel's website, this pool includes patents from

- Huawei Technologies Co., Ltd.
- Mitsubishi Electric Corporation
- Orange S.A.
- Panasonic Holdings Corporation
- Koninklijke Philips N.V.
- SK Telecom Co., Ltd.
- Wilus Inc.

138

According to the publicly available figures, Huawei is the company with the most patents for the Wi-Fi 6 standard, including the earlier standards (see the publicly available document: LexisNexis, Who is Leading the Wi-Fi 6 Patent R..., submitted as Exhibit HE23). Panasonic, Philips, SK Telecom and Wilus are listed among the 40 companies with the most patents in the Wi-Fi 6 standard.

139

Publicly available figures show that the pool comprises a total of 245 patent families and around 2,000 patents. These figures correspond to the undisputed figures submitted in these proceedings.

140

It is difficult to determine the number of patents or patent families that make up the Wi-Fi 6 standard (including all previous standards). The publicly available figures vary greatly. However, it can be stated with certainty that the "Sisvel Wi-Fi 6" patent pool comprises at least 10 % of the total patent volume. This is because it cannot be assumed that the Wi-Fi 6 standard comprises more than 2,450 patent families or 20,000 patents.

141

According to publicly available figures from the internet, the Defendants' group is the fifth largest PC manufacturer in the world. In 2024, 17.39 million PCs were delivered. Other product groups are probably not very important for the Defendants' business.

(3) Calculation methodology

142

The Panel has been involved in numerous cases, particularly in the field of mobile communications. In these cases, the issue of the maximum burden associated with mobile communications (Aggregate Royalty Burden), i.e. the question of what percentage of the unit price of a product is attributable to the licence to use the mobile communications standard, was discussed in part in expert opinions. The positions of the patent proprietors and the patent users were not as far apart as one might think when looking at the offers on both sides. Experience has shown that the position of patent proprietors was around 8 % and the position of patent users around 4 %. In other words, the parties agreed that between 4 % and 8 % of the purchase price of a device is reasonable as a licence rate for the use of all patents of all mobile communications standards. However, this does not mean that this also represents the area of FRAND licence rates.

143

Based on this value for the most important standard (mobile communications), the total burden for a mobile phone for all standards required for meaningful operation (mobile radio, Wi-Fi, streaming, etc.) is around 10 % to 18 %.

144

The Panel already stated in its order of 14 July 2025 that an average value for certain product categories necessarily has to be taken as a basis. This means that for certain categories, a product of median type and quality would have to be taken as the basis. This is because there are considerable price differences between the end products, which are not due to improved standard functionality, but due to a particularly attractive brand, a particularly high-quality camera or particularly functional software. It would not be compatible with the idea of a fair balance of interests if the manufacturer of high-quality branded products had to pay a higher price for the same functionality as the manufacturer of cheaper or of the lowest-priced products. If this were to lead to the price of the cheapest products having to be increased, this would have to be accepted.

145

The Panel states for the purposes of making this more concrete that a differentiated approach is sometimes required when determining the product category. For example, it may be necessary to differentiate between maximum performance (e.g. 4G and 5G-capable mobile phones) or particularly valuable additional functions (tablets/laptops without mobile communications (as standard) and with mobile communications capability (as a higher-priced premium segment)).

146

In the Panel's view, the average value for a mobile phone with 5G capability is in the range of USD 150 - 200 (unit price), whereby this is a view taken in favour of the patent users. Even if, therefore, all assumptions (low ARB of 4 % of the sales price and low unit price submitted by the Defendants) are calculated in favour of the patent users, the total burden amounts to USD 6. The proprietor of a patent portfolio can therefore demand an amount of USD Cent 6 for each per cent that it holds in the standard, even if all assumptions are made in favour of the patent user.

147

It must be clear here that this amount is in all probability significantly below a permissible FRAND amount because all figures applied were in favour of the patent users. In judicial practice, this is important simply because most proprietors of large patent portfolios do not exploit the licence potential. In the field of mobile communications in particular, it would appear possible to assume higher unit prices if the parties to the proceedings were more specific about the technical capabilities of the patent users' devices.

(4) Application of this methodology to Wi-Fi 6

148

The Panel understands the Claimant's offer to mean that Wi-Fi 6 and all earlier standards would be licensed. All devices that are Wi-Fi 7 capable have been excluded from the licence. Therefore, there is no need to allocate a licence rate to the individual standards. If a division had to be made, the Panel would consider the following for a standard such as Wi-Fi, which is often improving significantly:

If a new standard is introduced, this standard accounts for 0 % in the first two years, 30 % in the third year and 40 % from the fourth year onwards. The best two standards together account for a total of 70 %, leaving a total of 30 % for the remaining standards.

149

Wi-Fi is used in numerous products. Typical product groups are mobile phones, tablets, laptops, desktop PCs and routers. Although kitchen appliances and toys, for example, also make use of the technology, this is irrelevant here. For the first product groups mentioned, the Panel assumes the following starting prices for an averagely equipped device:

- Mobile phones: USD 150 – 200
- Tablets: USD 150 – 200
- Laptops/desktop PCs USD 500 – 550
- Routers: USD 130 – 150

150

The Panel considers the maximum licence fee (ARB) to vary depending on the functionality and importance of Wi-Fi for the respective product group. The following figures reflect this. The low amount is the burden that would be argued by the patent user side in corresponding application of the arguments set out above.

– Mobile phones:	2 – 6 %
– Tablets:	3 – 7 %
- Laptops/desktop PCs	2 – 7%
– Routers:	6 – 10 %

151

Based on the two figures, the following hypothetical maximum licence rates (ARB) result for the individual product groups, which ultimately reflect extreme positions and are probably both outside a FRAND corridor:

- Mobile phones: USD 3 – 12
- Tablets: USD 4.5 – 14
- Laptops/desktop PCs USD 10 – 38.5

- Routers: USD 7.8 – 15

152

This means that the following can be demanded as a minimum amount for a patent portfolio that covers one per cent of the standard:

- Mobile phones: USD Cent 3
- Tablets: USD Cent 4.5
- Laptops/desktop PCs USD Cent 10
- Routers: USD Cent 7.8

153

Since the Claimant has not provided any information on the Defendants' product portfolio, the Panel estimates the share of the Defendants' group's products (which is one of the largest manufacturers of PCs worldwide) in its favour such that 50 % of the units fall into the product group laptops/desktop PCs and 50 % into the cheapest product group (mobile phones). Since, as explained above, Sisvel's Wi-Fi 6 pool covers at least 10 % of all relevant patents, acceptance of this maximum burden (ARB) results in an average value of USD 0.65 per device. If this amount is converted into euros, the result is EUR 0.56. This lies exactly between the standard rate and the compliant rate of the Sisvel pool and is therefore to be regarded as FRAND.

154

The Panel does not fail to recognise that this result was achieved in particular because the Defendants manufacture products from an expensive product group. This result cannot be easily justified for other product groups. This would require a substantiated pleading by the Claimant. No such substantiated pleading was submitted.

155

Finally, the same considerations can also be applied to the bilateral licence offer. However, as the exact offer is not public, it will be dealt with in the confidential part below. As a result, it must be noted that both offers made by the Claimant were FRAND.

f. Analysis of the Claimant's bilateral offer (subject to confidentiality)

156

The Claimant submitted several offers for a pool licence and for a bilateral licence.

(1) Offer dated 7 November 2024

157

The most recent three offers made by the Claimant will be considered. The earliest of these offers was the one shown below, dated 7 November 2024. The specific figures can be seen in the overview.

158

With regard to the pool offer, the amount asserted results from the following calculation:

- [redacted text] units of USD 0.60 each = USD [redacted text]
- [redacted text] units of USD 0.50 each = USD [redacted text]
- Total: USD

159

There is a discount compared to the published licence rate insofar as US dollars have been used in the calculation instead of euros.

160

For the bilateral licence, the average licence amount per unit is USD ([redacted text] for [redacted text] units).

161

A comparative calculation in which an average value calculated in the same way is also calculated for the pool offer ([redacted text] USD for units = USD [redacted text]) results in a ratio of [redacted text] to 1.

162

According to the undisputed information provided by the Claimant, the Sisvel pool comprises a total of 244 patent families with 1,864 patents. The share of Wilus/SKT (i.e. the Claimant's patents) amounts to 57 patent families with 542 patents. The ratio of patent families is therefore 4.281 to 1 and of patents 3.439 to 1.

163

Based on the figures provided, it can be stated that the Claimant has largely stuck to its published rate for this offer. The conversion of the payment amount from EUR to USD represents a discount of approximately 10 % (depending on the exchange rate).

(2) Comparison licence agreements

164

Although the Claimant submitted comparison licence agreement, these were redacted to such an extent that they are of no informative value. It is not clear what amounts were paid or what number of units the agreements were based on. This makes it impossible for either the Panel or the other party to carry out a review.

165

Therefore, the agreements submitted by the Claimant cannot be used to verify whether the Claimant's offers are FRAND.

(3) Plausibility calculation by way of a top-down analysis

166

It has already been explained that the pool rate of the Sisvel Wi-Fi 6 pool is within the FRAND corridor, at least for the Defendants' specific product portfolio. For the same reasons, the bilateral offer is also within the FRAND corridor. This is because the following considerations apply:

167

It must be assumed that the downpayment on the Claimant's patents amounts to more than 2 % of the total Wi-Fi 6 standard. As such, the requirements for a top-down analysis are met.

168

The pool licence and the bilateral offer differ slightly in terms of their relative amounts, if the shares of patents in the pool are taken as the basis. It is being assumed – in favour of the Defendants – that the ratio of the patent families is to be taken as the basis and not the number of patents.

- It follows from the above that an amount of USD 0.65 per licensed device is FRAND.
- The average pool rate is USD [redacted text].
- The bilateral licence is USD [redacted text]. If this amount is multiplied by the ratio of patent families (4.281 to 1), the comparison value is USD [redacted text]

169

Both offers were therefore FRAND.

(4) Claimant's offer of 6 February 2025

170

The penultimate offer made by the Claimant on 6 February 2025 differs from the offer made on 7 November 2025 in terms of the quantities on which it is based. The figures taken as the basis were corrected on the basis of the information provided by the Defendants. The parties have also agreed that they will completely exclude all devices that are Wi-Fi 7-capable from the licence. The following figures were therefore taken as the basis:

171

Based on these figures, the Claimant demanded USD [redacted text] for the pool licence and USD [redacted text] for the bilateral licence.

172

This results in the following average unit prices (which are higher for the pool licence than in the previous calculation because the number of units in the past is higher in this calculation):

- Pool licence: USD [redacted text] for [redacted text] units: USD [redacted text]
- Bilateral licence: USD [redacted text] for [redacted text] units: USD [redacted text]

173

Since these unit prices are below the amount calculated where all values assumed were in favour of the Defendants, this offer is also FRAND.

(5) Claimant's offer dated 16 December 2025

174

The most recent offer dated 16 December 2025 provided for a further reduction in the licence rate. The Claimant offered the following:

Sisvel pool:

- Standard rate: USD 0.60/running royalty
- Compliant rate: USD 0.50/running royalty

Wilus:

175

As these offers were lower than the previous offers, they are FRAND.

(6) The offers made by the Defendants

176

The Defendants most recently offered an amount of USD [redacted text] for the bilateral licence. It based its calculation on the unsubstantiated allegation that a competitor was paying a rate of USD

[redacted text]. This rate is well below what is paid for comparable licences and is therefore an expression of the Defendants' unwillingness to take a licence on FRAND terms.