Munich I Regional Court (*Landgericht München I*), final judgment dated 22 January 2026 – 7 O 4102/25

Facts

1

The Claimant is bringing an action against the Defendants for alleged infringement of European Patent 2 774 375 B1 with the title "Method and apparatus for video coding".

2

The Claimant is the proprietor of European Patent 2 774 375 B1 (Exhibit K1, hereinafter: "patent at issue"), filed on 2 November 2012 claiming the priority of US patent application 201161555703 P of 4 November 2011. The application was published on 10 September 2014 and the mention of the grant was published on 7 October 2020. In a written statement dated 11 June 2025 (Exhibit B5), a third party filed an action for revocation before the German Federal Patent Court (file no. 5 Ni 19/25 (EP)). 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 6 and 10, which are decisive here, read as follows in the language of the proceedings:

"Claim 6:

"A method comprising

receiving an encoded block of pixels including a prediction unit; determining for the encoded block (900) of pixels a set of spatial motion vector prediction candidates located belowleft (901), left (902), aboveleft (905), above (904) and aboveright (903) of the prediction unit; the spatial motion vector prediction candidates being provided with motion information comprising at least a motion vector and a reference index; determining a subset of spatial motion vector prediction candidate pairs among existing spatial motion vector prediction candidate pairs for comparison among all available spatial motion vector prediction candidate pairs in the set of spatial motion vector prediction candidates; selecting a spatial motion vector prediction candidate from the set of spatial motion vector prediction candidates as a potential spatial motion vector prediction candidate to be included in a merge list for the prediction unit; examining the subset of spatial motion vector prediction candidate pairs to determine which other spatial motion vector prediction candidate is defined to belong to the same spatial motion vector prediction candidate pair as the selected spatial motion vector prediction candidate;

comparing motion information of the selected spatial motion vector prediction candidate with motion information of the other spatial motion vector prediction candidate; if the comparison indicates that the motion vector information of the other spatial motion vector prediction candidate corresponds with the motion vector information of the selected spatial motion vector prediction candidate, excluding the selected spatial motion vector prediction candidate from the merge list wherein the method further comprises selecting one motion vector prediction candidate from the merge list to represent a motion vector prediction for the received encoded block of pixels; determining a maximum number of spatial motion vector prediction candidates to be included in a merge list; limiting the number of spatial motion vector prediction candidates in the merge list smaller or equal to the maximum number; if the number of spatial motion vector prediction candidates in the merge list smaller than the maximum number, examining whether a prediction unit to which the potential spatial motion vector prediction candidate belongs is available for motion prediction; if so, performing at least one of the following:

if the potential spatial motion vector prediction candidate (902) is located on the left side of the prediction unit, excluding the potential spatial motion vector prediction candidate (902) from the merge list if any of the following conditions are fulfilled:

- the received encoded block of pixels is vertically divided into a first prediction unit and a second prediction unit, and the prediction unit is the second prediction unit;
- the received encoded block of pixels is horizontally divided into a first prediction unit and a second prediction unit, and if the prediction unit is the second prediction unit, and the potential spatial motion vector prediction candidate (902) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit; if the potential spatial motion vector prediction candidate (904) is located above the prediction unit, excluding the potential spatial motion vector prediction candidate (904) from the merge list if any of the following conditions are fulfilled:
- the received encoded block of pixels is horizontally divided into a first prediction unit and a second prediction unit, and the prediction unit is the second prediction unit in decoding order;
- the potential spatial motion vector prediction candidate (904) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit; if the potential spatial motion vector prediction candidate (903) is located on the right side of the spatial motion vector prediction candidate (904) above the prediction unit, excluding the potential spatial motion vector prediction candidate (903) from the merge list if the potential spatial motion vector prediction candidate has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit; if the potential spatial motion vector prediction candidate (901) is located below the spatial motion vector prediction candidate (902) on the left side of the prediction unit, excluding the potential spatial motion vector prediction candidate (901) from the merge list if the potential spatial motion vector prediction candidate (901) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit; if the potential spatial motion vector prediction candidate (905) is cornerwise above-left neighbouring the prediction unit, excluding the potential spatial motion vector prediction candidate (905) from the merge list if any of the following conditions are fulfilled:
- all the other spatial motion vector prediction candidates (901904) have been included in the merge list;
- the potential spatial motion vector prediction candidate (905) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit;
- the potential spatial motion vector prediction candidate (905) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit."

Claim 10

"An apparatus comprising means for performing a method according to any one of claims 6 to 8."

4

The Claimant is part of the Finnish Nokia Group, which develops technologies, in particular in the field of telecommunications. It is responsible for managing and licensing Nokia's patent portfolio.

5

Defendant 1) is the Taiwan-based parent company of the ASUS group of companies, one of the world's leading manufacturers of desktop PCs and laptops. Defendant 2), based in Germany, is a subsidiary of Defendant 1) and assists, among other things, with the distribution of ASUS laptops in Germany.

6

The Claimant is contesting ASUS devices that can decode video data in accordance with the H.265/HEVC standard (hereinafter: "contested embodiments"), namely the ROG series or TUF series laptops, but also smartphones with the Android operating system.

7

The fact that the contested embodiments implement the "H.265/HEVC" standard (Exhibit K12) managed by the International Telecommunication Union (ITU) is not a matter of dispute between the parties.

8

The parties have so far been unsuccessful with their negotiations regarding a licence for the standard.

9

The Claimant pleads that the contested embodiments directly and literally infringe claim 10 of the patent at issue in conjunction with claim 6 because the H.265/HEVC standard implements the teaching of the patent at issue.

10

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.

11

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.

12

The Claimant most recently requested that:

I. The Defendants be ordered

1. to cease and desist, 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 offering, placing on the market or using in the Federal Republic of Germany or importing and/or possessing for said purposes

apparatuses comprising means for performing the following method:

receiving an encoded block of pixels including a prediction unit;

determining for the encoded block (900) of pixels a set of spatial motion vector prediction candidates located below-left (901), left (902), above-left (905), above (904) and above-right (903) of the prediction unit; the spatial motion vector prediction candidates being provided with motion information comprising at least a motion vector and a reference index; determining a subset of spatial motion vector prediction candidate pairs among existing spatial motion vector prediction candidate pairs for comparison among all available spatial motion vector prediction candidate pairs in the set of spatial motion vector prediction candidates; selecting a spatial motion vector prediction candidate from the set of spatial motion vector prediction candidates as a potential spatial motion vector prediction candidate to be included in a merge list for the prediction unit;

examining the subset of spatial motion vector prediction candidate pairs to determine which other spatial motion vector prediction candidate is defined to belong to the same spatial motion vector prediction candidate pair as the selected spatial motion vector prediction candidate;

comparing motion information of the selected spatial motion vector prediction candidate with motion information of the other spatial motion vector prediction candidate;

if the comparison indicates that the motion vector information of the other spatial motion vector prediction candidate corresponds with the motion vector information of the selected spatial motion vector prediction candidate, excluding the selected spatial motion vector prediction candidate from the merge list wherein the method further comprises selecting one motion vector prediction candidate from the merge list to represent a motion vector prediction for the received encoded block of pixels;

determining a maximum number of spatial motion vector prediction candidates to be included in a merge list;

limiting the number of spatial motion vector prediction candidates in the merge list smaller than or equal to the maximum number;

if the number of spatial motion vector prediction candidates in the merge list [is] smaller than the maximum number, examining whether a prediction unit to which the potential spatial motion vector prediction candidate belongs is available for motion prediction; if so, performing at least one of the following:

if the potential spatial motion vector prediction candidate (902) is located on the left side of the prediction unit, excluding the potential spatial motion vector prediction candidate (902) from the merge list if any of the following conditions are fulfilled:

– the received encoded block of pixels is vertically divided into a first prediction unit and a second prediction unit, and the prediction unit is the second prediction unit;
– the received encoded block of pixels is horizontally divided into a first prediction unit and a second prediction unit, and if the prediction unit is the second prediction unit, and the potential spatial motion vector prediction candidate (902) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit;

if the potential spatial motion vector prediction candidate (904) is located above the prediction unit, excluding the potential spatial motion vector prediction candidate (904) from the merge list if any of the following conditions are fulfilled:

– the received encoded block of pixels is horizontally divided into a first prediction unit and a second prediction unit, and the prediction unit is the second prediction unit in decoding order;
– the potential spatial motion vector prediction candidate (904) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit;

if the potential spatial motion vector prediction candidate (903) is located on the right side of the spatial motion vector prediction candidate (904) above the prediction unit, excluding the potential spatial motion vector prediction candidate (903) from the merge list if the potential spatial motion vector prediction candidate has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit;

if the potential spatial motion vector prediction candidate (901) is located below the spatial motion vector prediction candidate (902) on the left side of the prediction unit, excluding the potential spatial motion vector prediction candidate (901) from the merge list if the potential spatial motion vector prediction candidate (901) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit;

if the potential spatial motion vector prediction candidate (905) is cornerwise above-left neighbouring the prediction unit, excluding the potential spatial motion vector prediction candidate (905) from the merge list if any of the following conditions are fulfilled:

– all the other spatial motion vector prediction candidates (901-904) have been included in the merge list;
– the potential spatial motion vector prediction candidate (905) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit;
– the potential spatial motion vector prediction candidate (905) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit.
– direct infringement of claim 10 in conjunction with claim 6 – in particular if the method comprises comparing motion information of the potential spatial motion vector prediction candidate with motion information of at most one other spatial motion vector prediction candidate of the set of spatial motion vector prediction candidates.
– direct infringement of claim 10 in conjunction with claim 7 – in particular, when the method according to claim 6 or 7 comprises examining whether the received encoded block of pixels is divided into a first prediction unit and a second prediction unit in decoding order; and if so,

excluding the potential spatial motion vector prediction candidate from the merge list if the prediction unit is the second prediction unit.

– direct infringement of claim 10 in conjunction with claim 8 – namely end-user devices of the Defendants, devices capable of using the HEVC technology.

2. to provide the Claimant in writing and electronically with information on the extent to which they – the Defendants – have committed the acts referred to under 1. since 7 October 2020, stating a) the names and addresses of the manufacturers, suppliers and other previous owners,

b) the names and addresses of the commercial customers and of the points of sale for which the products were destined, (c) the quantities of the products manufactured, delivered, received or ordered and the prices paid for the products concerned;

whereby proof of purchase (namely invoices, alternatively delivery notes) is to be provided in the form of copies; confidential details that are not part of the data to be provided may be redacted;

3. to provide the Claimant with an orderly written account of the extent to which they – the Defendants – have committed the acts referred to under 1. since 7 November 2020, stating a) the individual deliveries, broken down into delivery quantities, times, prices and type designations as well as the names and addresses of the customers,

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

c) the advertising activities undertaken, broken down into advertising media, circulation levels, circulation period and circulation territory,

d) the manufacturing costs, broken down into individual cost factors and profit generated,

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

whereby the entire accounting data must also be transmitted in an electronic form that can be analysed by means of electronic data processing;

4. only Defendant 2): to surrender the products described under 1. that are in its direct or indirect possession or ownership to a court bailiff to be nominated by the Claimant for the purpose of destruction at its – Defendant 2)'s – expense;

5. to recall the products described under 1., which are in circulation, from commercial customers with reference to the judicial (judgment of … dated ..,) finding that the product infringes 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 and take possession of the products again.

II. It be established that the Defendants, as joint and several debtors, must compensate the Claimant for any losses it has incurred or incurs in the future owing to the acts specified under 1. that have been committed since 7 November 2020.

Auxiliary request 1:

The request under I. 1. according to the main request above is amended as follows; the remaining requests remain unchanged:

I. The Defendants be ordered

1. to cease and desist, 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 offering, placing on the market or using in the territory of the Federal Republic of Germany or importing and/or possessing for said purposes

apparatuses comprising means for performing the following method:

receiving an encoded block of pixels including a prediction unit;

wherein the encoded block of pixels is represented by an encoding unit, the prediction unit being the only prediction unit in the encoding unit;

determining for the encoded block (900) of pixels a set of spatial motion vector prediction candidates located below-left (901), left (902), above-left (905), above (904) and above-right (903) of the prediction unit; the spatial motion vector prediction candidates being provided with motion information comprising at least a motion vector and a reference index; determining a subset of spatial motion vector prediction candidate pairs among existing spatial motion vector prediction candidate pairs for comparison among all available spatial motion vector prediction candidate pairs in the set of spatial motion vector prediction candidates;

selecting spatial motion vector prediction candidates from the set of spatial motion vector prediction candidates each as a potential spatial motion vector prediction candidate to be included in a merge list for the prediction unit;

if the selected spatial motion vector prediction candidate is located below-left (901), above-left (905), above (904) or above-right (903) of the prediction unit:

examining the subset of spatial motion vector prediction candidate pairs to determine which other spatial motion vector prediction candidate is defined to belong to the same spatial motion vector prediction candidate pair as the selected spatial motion vector prediction candidate;

comparing motion information of the selected spatial motion vector prediction candidate with motion information of the other spatial motion vector prediction candidate; if the comparison indicates that the motion vector information of the other spatial motion vector prediction candidate corresponds with the motion vector information of the selected spatial motion vector prediction candidate, excluding the selected spatial motion vector prediction candidate from the merge list wherein the method further comprises: selecting one motion vector prediction candidate from the merge list to represent a motion vector prediction for the received encoded block of pixels;

determining a maximum number of spatial motion vector prediction candidates to be included in a merge list;

limiting the number of spatial motion vector prediction candidates in the merge list smaller than or equal to the maximum number; if the number of spatial motion vector prediction candidates in the merge list [is] smaller than the maximum number, examining whether a prediction unit to which the potential spatial motion vector prediction candidate belongs is available for motion prediction; if so, performing at least one of the following (a), (b), (c), (d), (e):

(a) if the potential spatial motion vector prediction candidate (902) is located on the left side of the prediction unit, including the potential spatial motion vector prediction candidate (902) on the left side of the prediction unit in the merge list;

(b) if the potential spatial motion vector prediction candidate (904) is located above the prediction unit, excluding the potential spatial motion vector prediction candidate (904) from the merge list [if]

the potential spatial motion vector prediction candidate (904) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit; if the potential spatial motion vector prediction candidate (904) above the prediction unit is not excluded, including the potential spatial motion vector (904) above the prediction unit in the merge list;

(c) if the potential spatial motion vector prediction candidate (903) is located on the right side of the spatial motion vector prediction candidate (904) above the prediction unit, excluding the potential spatial motion vector prediction candidate (903) from the merge list if the potential spatial motion vector prediction candidate has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit; if the potential spatial motion vector prediction candidate (903) on the right side of the spatial motion vector prediction

candidate (904) above the prediction unit is not excluded, including the potential spatial motion vector prediction candidate (903) on the right side of the spatial motion vector prediction candidate (904) in the merge list;

(d) if the potential spatial motion vector prediction candidate (901) is located below the spatial motion vector prediction candidate (902) on the left side of the prediction unit, excluding the potential spatial motion vector prediction candidate (901) from the merge list if the potential spatial motion vector prediction candidate (901) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit; if the potential spatial motion vector prediction candidate (901) below the spatial motion vector prediction candidate (902) on the left side of the prediction unit is not excluded, including the potential spatial motion vector prediction candidate (901) below the spatial motion vector prediction candidate (902) on the left side of the prediction unit in the merge list;

(e) if the potential spatial motion vector prediction candidate (905) is cornerwise above-left neighbouring the prediction unit, excluding the potential spatial motion vector prediction candidate (905) from the merge list if any of the following conditions are fulfilled:

– all the other spatial motion vector prediction candidates (901-904) have been included in the merge list;
– the potential spatial motion vector prediction candidate (905) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit;
– the potential spatial motion vector prediction candidate (905) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit;

if the potential spatial motion vector prediction candidate (905) cornerwise above-left neighbouring the prediction unit is not excluded, including the potential spatial motion vector prediction candidate (905) cornerwise above-left neighbouring the prediction unit in the merge list.

– direct infringement of claim 6 in conjunction with claim 4 according to auxiliary request 2 in the action for revocation – namely end-user devices of the Defendants, devices capable of using the HEVC technology.

Auxiliary request 2:

The request under I. 1. according to the main request above is amended as follows; the remaining requests remain unchanged:

I. The Defendants be ordered

1. to cease and desist, 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 offering, placing on the market or using in the territory of the Federal Republic of Germany or importing and/or possessing for said purposes,

apparatuses comprising means for performing the following method:

receiving an encoded block of pixels including a prediction unit;

wherein the encoded block of pixels is represented by an encoding unit, the prediction unit being the only prediction unit in the encoding unit;

determining for the encoded block (900) of pixels a set of spatial motion vector prediction candidates located below-left (901), left (902), above-left (905), above (904) and above-right (903) of the prediction unit; the spatial motion vector prediction candidates being provided with motion information comprising at least a motion vector and a reference index;

determining a subset of spatial motion vector prediction candidate pairs among existing spatial motion vector prediction candidate pairs for comparison among all available spatial motion vector prediction candidate pairs in the set of spatial motion vector prediction candidates;

selecting spatial motion vector prediction candidates from the set of spatial motion vector prediction candidates each as a potential spatial motion vector prediction candidate to be included in a merge list for the prediction unit;

if the selected spatial motion vector prediction candidate is located below-left (901), above-left (905), above (904) or above-right (903) of the prediction unit:

examining the subset of spatial motion vector prediction candidate pairs to determine which other spatial motion vector prediction candidate is defined to belong to the same spatial motion vector prediction candidate pair as the selected spatial motion vector prediction candidate;

comparing motion information of the selected spatial motion vector prediction candidate with motion information of the other spatial motion vector prediction candidate; if the comparison indicates that the motion vector information of the other spatial motion vector prediction candidate corresponds with the motion vector information of the selected spatial motion vector prediction candidate, excluding the selected spatial motion vector prediction candidate from the merge list wherein the method further comprises: selecting one motion vector prediction candidate from the merge list to represent a motion vector prediction for the received encoded block of pixels;

determining a maximum number of spatial motion vector prediction candidates to be included in a merge list;

limiting the number of spatial motion vector prediction candidates in the merge list smaller than or equal to the maximum number; if the number of spatial motion vector prediction candidates in the merge list [is] smaller than the maximum number, examining whether a prediction unit to which the potential spatial motion vector prediction candidate belongs is available for motion prediction; if so, performing at least one of the following (a), (b), (c), (d), (e):

(a) if the potential spatial motion vector prediction candidate (902) is located on the left side of the prediction unit, including the potential spatial motion vector prediction candidate (902) on the left side of the prediction unit in the merge list;

(b) if the potential spatial motion vector prediction candidate (904) is located above the prediction unit, excluding the potential spatial motion vector prediction candidate (904) from the merge list if

the potential spatial motion vector prediction candidate (904) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit; if the potential spatial motion vector prediction candidate (904) above the prediction unit is not excluded, including the potential spatial motion vector (904) above the prediction unit in the merge list;

(c) if the potential spatial motion vector prediction candidate (903) is located on the right side of the spatial motion vector prediction candidate (904) above the prediction unit, excluding the potential spatial motion vector prediction candidate (903) from the merge list if the potential spatial motion vector prediction candidate has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit; if the potential spatial motion vector prediction candidate (903) on the right side of the spatial motion vector prediction candidate (904) above the prediction unit is not excluded, including the potential spatial motion vector prediction candidate (903) on the right side of the spatial motion vector prediction candidate (904) in the merge list;

(d) if the potential spatial motion vector prediction candidate (901) is located below the spatial motion vector prediction candidate (902) on the left side of the prediction unit, excluding the potential spatial motion vector prediction candidate (901) from the merge list if the potential spatial motion vector prediction candidate (901) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit; if the potential spatial motion vector prediction candidate (901) below the spatial motion vector prediction candidate (902) on the left side of the prediction unit is not excluded, including the potential spatial motion vector prediction candidate (901) below the spatial motion vector prediction candidate (902) on the left side of the prediction unit in the merge list;

(e) if the potential spatial motion vector prediction candidate (905) is cornerwise above-left neighbouring the prediction unit, excluding the potential spatial motion vector prediction candidate (905) from the merge list if any of the following conditions are fulfilled:

– all the other spatial motion vector prediction candidates (901-904) have been included in the merge list;
– the potential spatial motion vector prediction candidate (905) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit;
– the potential spatial motion vector prediction candidate (905) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit;

if the potential spatial motion vector prediction candidate (905) cornerwise above-left neighbouring the prediction unit is not excluded, including the potential spatial motion vector prediction candidate (905) cornerwise above-left neighbouring the prediction unit in the merge list;

and wherein in the method, after processing the spatial motion vector prediction candidates and including a subset of the spatial motion vector prediction candidates in the merge list, a redundancy check is no longer performed between these spatial motion vector prediction candidates contained in the merge list,

– direct infringement of claim 6 in conjunction with claim 4 according to auxiliary request 2 in the action for revocation – namely end-user devices of the Defendants, devices capable of using the HEVC technology.

Auxiliary request 3:

The request under I. 1. according to the main request above is amended as follows (differences in content compared with the main request highlighted); the remaining requests remain unchanged:

I. The Defendants be ordered

1. to cease and desist, 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 offering, placing on the market or using in the territory of the Federal Republic of Germany or importing and/or possessing for said purposes

apparatuses comprising means for performing the following method:

receiving an encoded block of pixels including a prediction unit, wherein the encoded block of pixels is represented by an encoding unit, the prediction unit being the only prediction unit in the encoding unit;

determining for the encoded block (900) of pixels a set of spatial motion vector prediction candidates located below-left (901), left (902), above-left (905), above (904) and above-right (903) of the prediction unit; the spatial motion vector prediction candidates being provided with motion information comprising at least a motion vector and a reference index; determining a subset of spatial motion vector prediction candidate pairs among existing spatial motion vector prediction candidate pairs for comparison among all available spatial motion vector prediction candidate pairs in the set of spatial motion vector prediction candidates; selecting a spatial motion vector prediction candidate from the set of spatial motion vector prediction candidates as a potential spatial motion vector prediction candidate to be included in a merge list for the prediction unit;

examining the subset of spatial motion vector prediction candidate pairs to determine which other spatial motion vector prediction candidate is defined to belong to the same spatial motion vector prediction candidate pair as the selected spatial motion vector prediction candidate;

comparing motion information of the selected spatial motion vector prediction candidate with motion information of the other spatial motion vector prediction candidate;

if the comparison indicates that the motion vector information of the other spatial motion vector prediction candidate corresponds with the motion vector information of the selected spatial motion

vector prediction candidate, excluding the selected spatial motion vector prediction candidate from the merge list wherein the method further comprises selecting one motion vector prediction candidate from the merge list to represent a motion vector prediction for the received encoded block of pixels;

determining a maximum number of spatial motion vector prediction candidates to be included in a merge list;

limiting the number of spatial motion vector prediction candidates in the merge list smaller than or equal to the maximum number;

if the number of spatial motion vector prediction candidates in the merge list [is] smaller than the maximum number, examining whether a prediction unit to which the potential spatial motion vector prediction candidate belongs is available for motion prediction;

if so, performing at least one of the following: if the potential spatial motion vector prediction candidate (902) is located on the left side of the prediction unit, excluding the potential spatial motion vector prediction candidate (902) from the merge list if any of the following conditions are fulfilled:

– the received encoded block of pixels is vertically divided into a first prediction unit and a second prediction unit, and the prediction unit is the second prediction unit;
– the received encoded block of pixels is horizontally divided into a first prediction unit and a second prediction unit, and if the prediction unit is the second prediction unit, and the potential spatial motion vector prediction candidate (902) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit;

if the potential spatial motion vector prediction candidate (904) above the prediction unit, excluding the potential spatial motion vector prediction candidate (904) from the merge list if any of the following conditions are fulfilled:

– the received encoded block of pixels is horizontally divided into a first prediction unit and a second prediction unit, and the prediction unit is the second prediction unit in decoding order;
– the potential spatial motion vector prediction candidate (904) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit;

if the potential spatial motion vector prediction candidate (903) is located above-right of the spatial motion vector prediction candidate (904), excluding the potential spatial motion vector prediction candidate (903) from the merge list if the potential spatial motion vector prediction candidate has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit;

if the potential spatial motion vector prediction candidate (901) is located on the left side of the spatial motion vector prediction candidate (902), excluding the potential spatial motion vector prediction candidate (901) from the merge list if the potential spatial motion vector prediction candidate (901) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit;

if the potential spatial motion vector prediction candidate (905) is cornerwise above-left neighbouring the prediction unit, excluding the potential spatial motion vector prediction candidate (905) from the merge list if any of the following conditions are fulfilled:

– all the other spatial motion vector prediction candidates (901-904) have been included in the merge list;
– the potential spatial motion vector prediction candidate (905) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit;
– the potential spatial motion vector prediction candidate (905) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit.
– direct infringement of claim 10 in conjunction with claim 6 –
– direct infringement of claim 10 in conjunction with claim 4 according to auxiliary request 2 in the action for revocation – namely end-user devices of the Defendants, devices capable of using the HEVC technology.

Auxiliary request 4:

The request under I. 1. according to the main request above is amended as follows (differences in content compared with the main request highlighted); the remaining requests remain unchanged:

I. The Defendants be ordered

1. to cease and desist, 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 offering, placing on the market or using in the territory of the Federal Republic of Germany or importing and/or possessing for said purposes,

apparatuses comprising means for performing the following method:

receiving an encoded block of pixels including a prediction unit; determining for the encoded block (900) of pixels a set of spatial motion vector prediction candidates located below-left (901), left (902), above-left (905), above (904) and above-right (903) of the prediction unit; the spatial motion vector prediction candidates being provided with motion information comprising at least a motion vector and a reference index; determining a subset of spatial motion vector prediction candidate pairs among existing spatial motion vector prediction candidate pairs for comparison among all available spatial motion vector prediction candidate pairs in the set of spatial motion vector prediction candidates; selecting a spatial motion vector prediction candidate from the set of spatial motion vector prediction candidates as a potential spatial motion vector prediction candidate to be included in a merge list for the prediction unit;

examining the subset of spatial motion vector prediction candidate pairs to determine which other spatial motion vector prediction candidate is defined to belong to the same spatial motion vector prediction candidate pair as the selected spatial motion vector prediction candidate;

comparing motion information of the selected spatial motion vector prediction candidate with motion information of the other spatial motion vector prediction candidate;

if the comparison indicates that the motion vector information of the other spatial motion vector prediction candidate corresponds with the motion vector information of the selected spatial motion vector prediction candidate, excluding the selected spatial motion vector prediction candidate from the merge list, if the selected spatial motion vector prediction candidate is not excluded, including it in the merge list;

wherein after including the selected spatial motion vector prediction candidate in the merge list, a redundancy check is no longer performed between the selected spatial motion vector prediction candidate and the other spatial motion vector prediction candidates originating from the set of spatial motion vector prediction candidates and which are included in the merge list;

wherein the method further comprises selecting one motion vector prediction candidate from the merge list to represent a motion vector prediction for the received encoded block of pixels;

determining a maximum number of spatial motion vector prediction candidates to be included in a merge list;

limiting the number of spatial motion vector prediction candidates in the merge list smaller than or equal to the maximum number;

if the number of spatial motion vector prediction candidates in the merge list [is] smaller than the maximum number, examining whether a prediction unit to which the potential spatial motion vector prediction candidate belongs is available for motion prediction; if so, performing at least one of the following:

if the potential spatial motion vector prediction candidate (902) is located on the left side of the prediction unit, excluding the potential spatial motion vector prediction candidate (902) from the merge list if any of the following conditions are fulfilled:

– the received encoded block of pixels is vertically divided into a first prediction unit and a second prediction unit, and the prediction unit is the second prediction unit;

– the received encoded block of pixels is horizontally divided into a first prediction unit and a second prediction unit, and if the prediction unit is the second prediction unit, and the potential spatial motion vector prediction candidate (902) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit;

if the potential spatial motion vector prediction candidate (904) is located above the prediction unit, excluding the potential spatial motion vector prediction candidate (904) from the merge list if any of the following conditions are fulfilled:

– the received encoded block of pixels is horizontally divided into a first prediction unit and a second prediction unit, and the prediction unit is the second prediction unit in decoding order;
– the potential spatial motion vector prediction candidate (904) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit;

if the potential spatial motion vector prediction candidate (903) is located above-right of the spatial motion vector prediction candidate (904), excluding the potential spatial motion vector prediction candidate (903) from the merge list if the potential spatial motion vector prediction candidate has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit;

if the potential spatial motion vector prediction candidate (901) is located on the left side of the prediction unit below the spatial motion vector prediction candidate (902), excluding the potential spatial motion vector prediction candidate (901) from the merge list,

if the potential spatial motion vector prediction candidate (901) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit;

if the potential spatial motion vector prediction candidate (905) is cornerwise above-left neighbouring the prediction unit, excluding the potential spatial motion vector prediction candidate (905) from the merge list if any of the following conditions are fulfilled:

– all the other spatial motion vector prediction candidates (901-904) have been included in the merge list;
– the potential spatial motion vector prediction candidate (905) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit;
– the potential spatial motion vector prediction candidate (905) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit.
– direct infringement of claim 10 in conjunction with claim 6 –
– direct infringement of claim 10 in conjunction with claim 6 according to auxiliary request 4 in the action for revocation – namely end-user devices of the Defendants, devices capable of using the HEVC technology.

Auxiliary request 5:

The request under I.1. according to the main request above is amended as follows (differences in content compared with the main request highlighted); the remaining requests remain unchanged:

I. The Defendants be ordered

1. to cease and desist, 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 offering, placing on the market or using in the territory of the Federal Republic of Germany or importing and/or possessing for said purposes

apparatuses comprising means for performing the following method:

receiving an encoded block of pixels including a prediction unit, wherein the encoded block of pixels is represented by an encoding unit, the encoding unit being a skip mode in the encoding unit;

determining for the encoded block (900) of pixels a set of spatial motion vector prediction candidates located below-left (901), left (902), above-left (905), above (904) and above-right (903) of the prediction unit; the spatial motion vector prediction candidates being provided with motion information comprising at least a motion vector and a reference index; determining a subset of spatial motion vector prediction candidate pairs among existing spatial motion vector prediction candidate pairs for comparison among all available spatial motion vector prediction candidate pairs in the set of spatial motion vector prediction candidates; selecting a spatial motion vector prediction candidate from the set of spatial motion vector prediction candidates as a potential spatial motion vector prediction candidate to be included in a merge list for the prediction unit;

examining the subset of spatial motion vector prediction candidate pairs to determine which other spatial motion vector prediction candidate is defined to belong to the same spatial motion vector prediction candidate pair as the selected spatial motion vector prediction candidate;

comparing motion information of the selected spatial motion vector prediction candidate with motion information of the other spatial motion vector prediction candidate;

if the comparison indicates that the motion vector information of the other spatial motion vector prediction candidate corresponds with the motion vector information of the selected spatial motion vector prediction candidate, excluding the selected spatial motion vector prediction candidate from the merge list, if the selected spatial motion vector prediction candidate is not excluded, including it in the merge list;

wherein after including the selected spatial motion vector prediction candidate in the merge list, a redundancy check is no longer performed between the selected spatial motion vector prediction candidate and the other spatial motion vector prediction candidates originating from the set of spatial motion vector prediction candidates and which are included in the merge list;

wherein the method further comprises selecting one motion vector prediction candidate from the merge list to represent a motion vector prediction for the received encoded block of pixels;

determining a maximum number of spatial motion vector prediction candidates to be included in a merge list;

limiting the number of spatial motion vector prediction candidates in the merge list smaller than or equal to the maximum number;

if the number of spatial motion vector prediction candidates in the merge list [is] smaller than the maximum number, examining whether a prediction unit to which the potential spatial motion vector prediction candidate belongs is available for motion prediction; if so, performing at least one of the following:

if the potential spatial motion vector prediction candidate (902) is located on the left side of the prediction unit, excluding the potential spatial motion vector prediction candidate (902) from the merge list if any of the following conditions are fulfilled:

– the received encoded block of pixels is vertically divided into a first prediction unit and a second prediction unit, and the prediction unit is the second prediction unit;
– the received encoded block of pixels is horizontally divided into a first prediction unit and a second prediction unit, and if the prediction unit is the second prediction unit, and the potential spatial motion vector prediction candidate (902) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit;

if the potential spatial motion vector prediction candidate (904) is located above the prediction unit, excluding the potential spatial motion vector prediction candidate (904) from the merge list if any of the following conditions are fulfilled:

– the received encoded block of pixels is horizontally divided into a first prediction unit and a second prediction unit, and the prediction unit is the second prediction unit in decoding order;
– the potential spatial motion vector prediction candidate (904) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit;

if the potential spatial motion vector prediction candidate (903) is located above-right of the spatial motion vector prediction candidate (904), excluding the potential spatial motion vector prediction candidate (903) from the merge list if the potential spatial motion vector prediction candidate has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit;

if the potential spatial motion vector prediction candidate (901) is located on the left side of the spatial motion vector prediction candidate (902), excluding the potential spatial motion vector prediction candidate (901) from the merge list if the potential spatial motion vector prediction candidate (901) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit;

if the potential spatial motion vector prediction candidate (905) is cornerwise above-left neighbouring the prediction unit, excluding the potential spatial motion vector prediction candidate (905) from the merge list if any of the following conditions are fulfilled:

– all the other spatial motion vector prediction candidates (901-904) have been included in the merge list;
– the potential spatial motion vector prediction candidate (905) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (904) above the prediction unit;
– the potential spatial motion vector prediction candidate (905) has the same motion vectors and the same reference indices than the spatial motion vector prediction candidate (902) on the left side of the prediction unit.
– direct infringement of claim 10 in conjunction with claim 6 –
– direct infringement of claim 10 in conjunction with claim 6 according to auxiliary request 5 in the action for revocation – namely end-user devices of the Defendants, devices capable of using the HEVC technology.

The Defendants are requesting that

I. the claim be dismissed,

II. in the alternative, that the proceedings be stayed until conclusion of the revocation action 5 Ni 22/25 (EP) pending against the patent at issue,

III. in the further alternative, that the Defendant be permitted to avert enforcement against provision of security.

The Claimant is opposing the request to stay the proceedings.

13

The Defendants plead that the contested embodiments at least do not implement features 6.4, 6.9 and 6.10.

14

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

15

The patent at issue, they plead, is not legally valid because the prior art is prejudicial to the novelty of the patent claim asserted. 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.

16

The action was heard jointly with case number 7 O 4100/25. The FRAND issues were also heard jointly. Only when it came to the individual offers were the actions separated again and heard separately.

17

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

96

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

97

The Claimant has demonstrated that it has established a licensing programme for the H.264 (AVC)/H.265 (HEVC) standards, which it has established and consistently enforced on the market. Unreasonableness of the licence rate demanded does not result from the fact that the amount demanded for each individual unit appears high compared to the pool rates of Access Advance and VIA-LA for HEVC in relation to the number of licensed patents. Even when viewed critically, the rate demanded by the Claimant is not unreasonably high, but merely at the upper end of the permissible FRAND corridor.

1. Significance of the UK High Court's interim licence agreement proposal

98

The parties are disputing use of the HEVC standard in several countries. In addition to the present proceedings, there are proceedings before the High Court of the United Kingdom (UK High Court) in which the Defendants are seeking the determination of a licence rate for the Claimant's patent portfolio for the HEVC/AVC standard.

99

A licence agreement between the parties would bring these proceedings to a close, at least with regard to the request for injunctive relief, because there would then no longer be unlawful use of the patent.

100

The present proceedings were heard in a joint oral hearing together with an action against another manufacturer of desktop PCs and laptops. The two cases have in common that the defendants in both cases had applied in the United Kingdom for a licence rate to be determined for the claimant's patent portfolio. In both cases, the UK High Court granted an interim licence on 18 December 2025 further to an application by the Defendants in the present proceedings. It is the Panel's understanding that this determination constitutes an offer to the defendant in those proceedings (the Claimant in the present proceedings) to agree on these terms in order to then negotiate the actual licence rate in the main proceedings before the High Court.

101

The interim licence determined by the UK High Court provides for a sum of money which is to be paid immediately and finally. The amount to be paid is essentially determined by the last offer made by the Defendants in these proceedings. Furthermore, a security amount was set which – for lack of better knowledge – is in the middle of the positions of both sides. In this respect, there may be a reduction if the licence period envisaged by the parties extends far into the future.

102

As the Panel understands it, such a determination has no binding effect on the defendant in relation to the territory of the Federal Republic of Germany, even according to the UK High Court, but merely constitutes an offer to the party against whom action is being brought in the United Kingdom. If this offer were to be accepted, this would show that the defendant in the proceedings in the United Kingdom is prepared to take a licence on FRAND terms. It is unclear what conclusions will be drawn if the defendant in the proceedings in the United Kingdom does not accept the offer as the UK High Court is well aware that it lacks the power to determine a worldwide licence in a dispute between a Finnish and a Taiwanese group. In this respect, the legitimacy of these decisions falters.

103

The Claimant in the present proceedings has not accepted the respective offers. There is therefore no intermediate licence preventing the assertion of the patent at issue in the Federal Republic of Germany. This cannot lead to the conclusion that the Claimant in the present proceedings is unwilling

to conclude a licence as no party is required to submit, against its will, to the decision of a court that clearly has no jurisdiction to determine a worldwide licence with cross-border effect.

104

As the Panel understands it – and this was not disputed by the parties' representatives at the hearing – the application to the UK High Court was made in order to prevent a decision in the action being heard jointly by the Panel. The Panel takes the view that it is not possible to finally conclude from this attempt alone that the Defendants in the present proceedings are unwilling to take a licence. However, the Defendants must accept the decision by the UK High Court at least to the extent that they voluntarily meet the conditions proposed by the UK High Court for the interim licence in order to express their own willingness to take a licence.

2. The specific procedural situation

105

In cases 7 O 4100/25 and 7 O 4102/25 before the Panel, the Claimant brought an action for patent infringement against two manufacturers of (mainly) desktop PCs and laptops. The cases were combined for the purposes of the hearing and most of the FRAND aspects were also negotiated jointly. To a small extent, the comparability of licence agreements was argued differently. For the hearing relating to the parties' specific offers, which was subject to confidentiality, the cases were separated and heard separately.

3. The Claimant's licensing programme

106

The Claimant has a licensing programme through which it licenses its share of the H.264/H.265 standard (video streaming). The Claimant pleads that it is the proprietor of approximately one per cent of the patents essential to these standards.

107

The parties have been negotiating the conclusion of a licensing programme for some time, whereby a notice of infringement was sent shortly before the action was brought, which also expressly referred to the patent at issue. At that time, the Claimant and the respective Defendant had already negotiated the conclusion of a licence agreement for the portfolio in dispute. The parties agree in each case that a lump sum payment (and not a running royalty agreement) is to be made on the basis of the quantities already distributed or forecast by the Defendants. In this respect, the parties have reached an agreement. The only point of dispute is the amount to be set for each unit (the "per unit price").

108

The special feature of the licensing of the H.265 standard (including the H-264 standard as a downward-compatible previous version) is that the licensing landscape is characterised by the fact that the patent pools of Access Advance and Via-LA (formerly MPEG LA) offer a total coverage of approx. 90 % of the standard. The Claimant is one of the owners of the remaining 10 % (together with Interdigital, Qualcomm, Ericsson, Intel and VelosMedia).

109

In view of the strength of the pool, the Claimant has an outsider role with a share of around 1 % of the standard. In the view of the Panel, special requirements apply to the assessment of licence offers from outsiders, which are particularly important when reviewing the reasonableness of an offer.

110

In the present proceedings, the Claimant has demonstrated, by submitting a large number of comparison licence agreements, that it does, in fact, consistently implement the licensing programme it has set up with the established rates. The fact that some very small market participants have also concluded licence agreements is irrelevant to the quality of the licensing programme. This is because the Claimant has also concluded a considerable number of licence agreements with larger market participants. The fact that discounts have been granted in some cases does not oppose this. This is because the discounts actually granted – as evidenced by the submission of the comparison licence agreements – were comprehensible and economically reasonable.

111

The Claimant correctly assumed that only agreements concluded for the same standard are to be used as comparison licence agreements. Multi-standard licence agreements (or mobile communications, Wi-Fi and streaming in combination) that also cover the existing standards do not constitute comparison licence agreements as the economic interest usually lies with the strongest standard and the Court is aware that the Claimant has a very strong patent portfolio in mobile communications (5G, 4G and 3G). Agreements focusing on mobile communications and which also license H.264/H.265 do not constitute a comparison licence agreement for an agreement licensing only patents related to the H.264/H.265 standard. This applies in particular if the claimant's portfolio – as here – has different strengths in the individual standards.

4. General

112

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 currently still considering the decision of Munich Higher Regional Court in case 6 U 3824/22 dated 20 March 2025. Although the Panel has taken note of the German Federal Court of Justice's press release on case number KZR 10/25, which shows that Munich Higher Regional Court's concept regarding the provision of security (in the amount of the Claimant's offer) has not been confirmed, until the written reasons for the decision of the German Federal Court of Justice are available, these requirements will continue to be addressed, especially as this corresponds to the status at the time of the conclusion of the oral hearing.

a. Principles of the FRAND examination

113

The Panel already set out the principles of the FRAND examination in detail in its decision 7 O 5007/25 – ASUS I. The following applies:

114

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".

115

On the basis of the aforementioned understanding of Munich Higher Regional Court, a qualified security in the amount of the patent proprietor's 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).

116

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 a case, the amount not in dispute between the parties must 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.

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 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 terms of a.) absolute figures and b.) per cent.

117

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).

118

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, 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 the amount it is proposing must then also be paid already 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.

119

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 a decision on an interim licence is such that 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.

b. Application of the principles to the present case

120

In the present case, there is the peculiarity that the Defendants have each shown serious efforts by paying or intending to pay a partial amount equal to their last offers. Insofar as a party had not actually paid at the time of the conclusion of the oral hearing, this was at least also due to the behaviour of the Claimant. It is possible that the licensing department and the accounting department of the Claimant were not sufficiently prepared for the requirement to accept the partial payment of an undisputed amount in order to be able to react quickly enough.

121

By paying the undisputed partial amount or seriously offering to pay an undisputed partial amount, the Defendants have, as a matter of principle (subject to the question of a supplementary payment of

security), satisfied the requirements of the Panel set out in the order dated 14 July 2025. However, the requirements of Munich Higher Regional Court are not satisfied.

122

The representatives of both parties expressed their surprise at the oral hearing when they heard that further security is required in addition to the obligation to make a partial payment. In the view of the Panel, this is clear from the order dated 14 July 2025. However, the Panel is assuming, in favour of each Defendant, that clarification was required in this respect. This has been provided in the form of the publication of decision 7 O 5007/25 (ASUS I) after the conclusion of the oral hearing.

123

It must therefore be presumed in the present case that the Defendants are willing to take a licence. Whether the objection under antitrust law is successful therefore depends on whether the last offer made by the Claimant is within the permissible FRAND corridor. If so, the Claimant has exercised its right to determine prices in a permissible manner.

5. Presentation of the Claimant's offer

124

As a result, the objection under antitrust law is unsuccessful because the Claimant's offer is FRAND.

a. Structure of the Claimant's licensing programme

125

According to the Claimant's pleading, it licenses its patent portfolio for the video coding standard H.264 (AVC)/H.265 (HEVC) at the conditions stated below. A differentiation is made on the basis of the average price of the respective product category (Average Sales Price: ASP). A differentiation is also made depending on whether a running royalty or a lump sum payment is to be agreed.

ASP: running royalty: lump sum:

126

With regard to the specific scaling, unequal treatment of licensees could be due to the fact that practically all major product groups (mobile phones, tablets, televisions, desktop PCs and laptops) fall into the highest category, meaning that the actual price differences between the individual product categories no longer make any difference to the licence rate.

127

Another problem is that the difference between the ASB price categories is small. As such the jumps in the per unit licence rates between the cheapest category and the most expensive category could be relatively high and therefore tend to be disproportionate. An example would be a licensee that manufactures products with an ASP of [x] euros compared to a manufacturer that manufactures products with an ASP of [x] euros.

128

Despite this structurally unequal treatment, the licensing programme is not generally inappropriate. Rather, the individual case must always be considered. The specific product portfolio of the licensee must be taken into account. In this respect, it is of particular significance that the Defendants mainly manufacture desktop PCs and laptops, i.e. products with a relatively high ASP. The Panel is currently assuming an ASP of between USD 500 and 550. It must therefore be assumed that the structure of the Claimant's licensing programme is advantageous for the Defendants generally speaking.

b. Concrete licence offer by the Claimant to the Defendants in the present proceedings

129

Most recently, the Claimant made an offer in the amount of [x] which is based on a unit price of [x] and covers the period from [x] until [x]. A past release is included for the period from [x] until [x]. According to Exhibit K 25-FRAND, this is based on a number of units.

c. Defendants' offer

130

The Defendants had previously offered an amount of [x] on 21 November 2025 for an essentially identical period (licence period, past release of [x]). This corresponds to an average converted licence rate of [x] (as at 21 November 2025).

d. Course of the negotiations

131

The negotiations between the parties continued for a lengthy period of time. On the basis of a traditional understanding, conclusions could be drawn from the manner in which the negotiations were conducted alone as to the Defendants' unwillingness to take a licence. However, this is not decisive for the reasons already mentioned.

132

The Defendants' willingness to take a licence is not opposed by the fact that the payment or promise of payment was made exclusively with regard to the principles established by the Panel and that the associated activities of the Defendants took place at the latest conceivable point in time shortly before the oral hearing.

e. Requirement of a supplementary payment of security

133

As the Panel understands it, the Claimant's demands and the payment actually made or the amount offered by the Defendants are so far apart that a supplementary payment of security would be necessary. According to the principles set out in decision 7 O 5007/ 25 (ASUS I), this is the amount which, as the Claimant understands it, is attributable to one licence year.

In the present case, this would be [x].

134

However, because the Defendants sought for the licence rate to be determined in the United Kingdom, it would have had to provide security to cover the difference between the amount offered and the amount resulting from the proceedings in the United Kingdom.

135

Since this did not happen, the Defendants would have to be regarded as unwilling to take a licence. In the present case, however, the Panel is assuming, in favour of the Defendants, that this conclusion cannot be drawn for reasons of legitimate expectations. This is because the Defendants have credibly argued that they were not working on the basis of an obligation to provide additional security.

6. Justification of the Claimant's offer a. Comparison licence agreements as a benchmark

136

As the Panel has already set out in case 7 O 5007/25, 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.

137

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.

138

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.

139

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.

140

The Panel does not fail to recognise that the Defendants certainly have an interest in finding out what conditions their competitors have. Therefore, the desire for more transparency and the reference to a possible lack of comparability cannot be interpreted per se as an argument in favour of a so-called "hold out". Rather, each individual case must be assessed individually based on the specific overall circumstances.

b. Comparison licence agreements in the specific case

141

In the present proceedings, the Claimant has substantiated its offer by submitting comparison licence agreements. The question of whether and to what extent comparison licence agreements must be submitted was at the centre of the dispute between the parties. An anonymised list was already provided before the action was brought. Further details were only provided after the action was brought. Finally, the Claimant submitted comparison licence agreements showing the contracting parties. At the request of the Court, the actual amount paid (in the case of per unit agreements) or the underlying number of units (for lump sum agreements) was notified for a large number of agreements.

142

According to the undisputed information provided by the Claimant, it has submitted all licence agreements it has concluded with other licensees for H.264/H.265 (only). These agreements were partially discussed at the oral hearing until the representatives of both Defendants made it clear that there was no longer any interest in explaining further agreements. At this point, it was also clear that the Claimant was able to provide detailed and comprehensible answers to questions about the individual agreements.

143

At the suggestion of the Panel in a judicial notice on the day before the oral hearing, all of the comparison licence agreements were unpacked in a table. With regard to the agreements that provided for a unit price, the amount actually paid was listed. An ASP of the products covered was listed for numerous agreements.

144

The Panel drew the following conclusions:

– There are very different licensees who are active in different areas of technology.

– The lowest licence agreement in terms of value covers a quantity of significantly less than [x].

– Some of the companies can be described as reputable and well-known on the market and can be assumed to have sufficient business acumen.

– Some of the licence agreements were of great economic significance and involved high payments:

  o One licence agreement with one volume of [x] o One licence agreement with a higher volume of [x] o Several licence agreements with a low volume o Numerous licence agreements with a volume of [x].

– No licence agreements were submitted in which the licensed products essentially also required mobile telecommunications use.

– All licence agreements had in common that the unit rates actually paid were close to the rate demanded by the Claimant as a starting point.

– The highest discount was [x].

– The highest discount was granted to a manufacturer with a large volume.

– For manufacturers of very low-cost devices (low ASP), the cheapest rates of the licensing programme were applied. There were no further discounts.

145

On the basis of the agreements submitted and examined, the Panel is assuming that the Claimant consistently implements its licensing programme for H.264/H.265 and does not grant any discounts that would call into question the equal treatment of licensees. The Panel finds that granting a discount of less than that granted to a licensee with large quantities is a permissible economic decision.

c. Further licence agreements

146

The Claimant did not submit multi-standard licences for which the H.264/H.265 standard was also licensed. Based on this, the Defendants' main argument was that the agreements with competitors on the market for desktop PCs and laptops had not been submitted.

147

According to the Panel's case law, it is up to the Claimant to decide which agreements it submits to prove that what it is demanding is FRAND. This is justified by the fact that it is the Panel's experience that, when submitting comparison licence agreements, there is a risk that defendants will look for the clauses that are favourable to them from several agreements and combine them in their favour. In order to minimise the resulting discussions, which are not conducive to achieving the objective, which agreements are to be submitted is up to the discretion of the Claimant. If certain agreements – which would clearly be conducive to achieving the objective – are not submitted, this may justify conclusions in exceptional cases. However, this always requires a case-by-case assessment.

148

In actual fact, ASUS has an 80 % share of the desktop PC and laptop market. ASUS and [x] were parties to the jointly heard proceedings. With regard to the remaining competitors, only one licence agreement was submitted. With regard to the other parties, the Claimant has concluded licence agreements in some cases, but these have not been submitted. In this respect, the Claimant pleaded that these licence agreements are not comparable. The Defendants plead that it is unreasonable for them to conclude a licence agreement without knowing what competitors on the same market are paying.

149

The comparison licence agreement submitted by another manufacturer contains a few peculiarities that could be interpreted as consideration by the licensee (a cross-licence; and a notification that the standards are to be permanently deactivated in the future). It was assumed in favour of the Defendants in these proceedings that the licence value paid would not be higher if these considerations were omitted. The fact that the manufacturer has licensed a larger number of units than the Defendants is also relevant for the assessment.

150

Specifically, it is the manufacturer who concluded a licence agreement with the Claimant at the end of 2024 (see Exhibit K 6a-FRAND, licensee no. 45). This agreement has a term of [x] and was based on [x] units. A payment of [x] was agreed, of which [x] was payable immediately by [x]. This results in a per unit rate of [x].

151

With regard to the other manufacturers of desktop PCs and laptops, the Claimant pleaded that either no agreements have been concluded or that the agreements are not comparable. Specifically, it was argued with regard to the agreement with the manufacturer that the payments for the much larger mobile communications portfolio had taken centre stage at the time of conclusion of this agreement. This portfolio alone triggered very large licence payments and the other standards were therefore not the focus of the negotiations. Licensing the standard for mobile phones would also have played a significant role for the manufacturer.

152

These reasons make sense to the Panel. When negotiating the conclusion of a licence agreement for a larger, multi-layered patent portfolio, it appears to be common business practice to concentrate on the most important standards and to co-license additional standards. This cannot be interpreted as an indication of an abusive contractual arrangement.

d. Result

153

The Panel therefore finds that the Claimant has demonstrated that it has established its licensing programme for H.264/H.265 on the market and that the rate it is demanding is therefore FRAND.

7. Pool licence agreements a. Structure of the HEVC patent pools

154

In particular, a different assessment does not result from a consideration of the rates demanded by the two patent pools Access-Advance and VIA-Licensing Alliance for HEVC (H.265).

155

As the Panel has already set out in case 7 O 5007/25, pool licences tend to mean that the licensing potential associated with a patent portfolio is often not exploited. A particularly low rate can be observed for the two pools mentioned. As the rates are publicly available, there is no need for confidentiality in this respect.

HEVC Advance Patent Pool from Access Advance

156

According to its own website, the HEVC Advance Patent Pool has 401 licensees. The rates are publicly available on the website. The standard rate for mobile devices is USD 0.533 for Region 1 and USD 0.267 for Region 2. For PCs, a price-dependent rate of USD 1.067 is specified for products with a sales price of more than USD 80. There are also discounted rates that provide for lower unit prices as well as caps.

157

According to information on the Access Advance website, the HEVC standard comprised a total of around 36,863 patents in October 2025. The patent portfolio of the Access Advance Pool comprises 29,080 of these patents. The VIA-LA pool comprises a total of approx. 6,395 patents, of which approx. 2,552 patents are also part of the Access Advance Pool. The two pools therefore cover around 90 % of the entire standard.

158

According to the information on the Access Advance Pool's website, approximately 3,940 patents are not included. These patents belonged to the companies Nokia, Interdigital, Qualcomm, Ericsson, Intel and VelosMedia.

VIA Licensing Alliance

159

This pool comprises a total of 6,395 patents, some of which overlap with Access Advance's HEVC Advance Patent Pool. According to the publicly available website, a standard licence rate of USD 0.20 is charged.

160

There is also another programme for use of the AVC/H.264 standard.

A staggered standard licence rate is charged for this.

b. Relevance to the specific case

161

In the Panel's view, the two pools are not suitable to act as a benchmark for assessing the reasonableness of the Claimant's offers as these offers are clearly low. The parties have not submitted any pleadings regarding the structure of the two pools. However, it is already clear from the public website that the pools are characterised by the membership of the main manufacturers of streaming-capable products. As the Panel understands it, these companies are patent proprietors on the one hand, but on the other hand they are also dependent on a licence. Therefore it cannot at least be ruled out that they may have a significant interest of their own in low licence rates, which would explain the low rates.

162

Even if the higher standard rates of the two pools for the more expensive Regional group 1 are taken as a basis, then less than USD 1.50 in costs are incurred for both standards when used for PCs. Based on the 90 % share of the standard, the price of the standard would be USD 1.65 if this price were extrapolated to 100 %. For laptops (which fall into the "mobile devices" category), the total cost would only be around USD 0.70.

163

This is in no way proportionate to the benefits that the standard brings for the individual device types. It must be assumed that this is at least USD 2 for mobile phones and at least USD 7 for desktop PCs and laptops. Taking a realistic point of view, it can be assumed that the values are approximately twice as high. For this control calculation, the Panel has adopted the assessments and values set out in decision 7 O 5007/25 and measured the Aggregate Royalty Burden (ARB) share for streaming at 2 – 4%. Furthermore, a deduction of 1/3 has been made because there are different streaming standards. In other words, if a user wants to use HEVC for the lifetime of the device in question, the minimum price – even if all values are determined to be low – is likely to be USD 2 for a mobile phone and USD 7 for a desktop PC or laptop (2 to 2.5 times these values seems realistic). The pool rates are a far cry from these prices.

8. Top-down analysis as means of reviewing reasonableness

164

a. According to the Panel's case law, the reasonableness of a licence offer can be reviewed using a top-down approach if the licensor's portfolio comprises a sufficiently large share of the standard. This is because once a portfolio reaches a certain size, it can be assumed that the innovation behind it (specifically the financial and personal resources and the concrete intellectual innovative strength of the team) and the concrete application behaviour (the question of how much money and effort is spent on patent applications) converge to such an extent that a meaningful approximation of the "value" of a patent portfolio can be obtained by determining the share of the standard.

165

This assumption does not apply to small patent portfolios because such portfolios may well have a high innovation value, but this is not reflected in many patent applications and patent grants. This may be due, for example, to the fact that the available capital is predominantly invested in research and development instead of splitting actual inventions into several patent families or financing patent

applications in secondary markets (which would ultimately result in more patent families and patents). In such a case, the value of a patent portfolio can generally only be determined via comparison licence agreements.

166

According to the Claimant, it has a share of approximately 1 % of the overall HEVC standard. This is not sufficient to carry out a top-down analysis for control purposes.

167

After the hearing, the Panel has no doubt that the Claimant's offer is within the FRAND corridor, at least with regard to the rather expensive product groups desktop PCs and laptops. This has been proven by the submission of numerous comparison licence agreements.

168

b. In doing so, the Panel also took into account that the overall cost of using the HEVC standard is low, above all because the pool licences do not exhaust the licensing potential.

169

In this respect, it must be taken into account that FRAND licensing cannot mean that a patent proprietor can increase its rates if another licensee has particularly favourable conditions. In this respect, however, the specific licensing situation is exceptional because the position of the two pools is very strong due to their high degree of coverage.

170

As explained, the standard is characterised by the fact that Access Advance and ViaLA cover 90 % of the standard-essential patents and charge below-average rates. In such an environment, innovation can only be encouraged by giving outsiders (and these are the owners of the 10 % not covered by the pool) a very free pricing structure. This is the only way to expand and further develop one's own patent portfolio.

9. Result

171

The licence rate the Claimant is demanding is at the upper end of the FRAND corridor. However, it is permissible.