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Munich I Regional Court (*Landgericht München I*) (7th Civil Panel), final judgment dated 5 February 2026 – 7 O 7655/25

Official headnotes:

1. The decision of the German Federal Court of Justice KZR 10/25 (judgment dated 27 January 2026) does not contradict the case law of the Panel (order dated 14 July 2025 in proceedings 7 O 64/25 and 7 O 2750/25, as well as judgments in proceedings 7 O 5007/25 and 7 O 4102/25) (margin no. 117).

2. When assessing the Defendants' willingness to take a licence, a distinction must be made between external (in terms of the impression given to the outside world) and internal (in terms of the relationship between the Defendants and the Claimant) willingness to take a licence. External willingness to take a licence applies if there is no obvious hold-out. This is usually the case if the Defendants have paid an undisputed amount and deposited a security. Only then does the substance of the offer made by the Claimant have to be reviewed to determine whether it falls within the permissible FRAND framework. If the offer is within a permissible framework and is not accepted, the Defendants are deemed to have no internal willingness to take a licence (margin nos. 127 f.).

3. Determination of the FRAND corridor where comparison licence agreements are involved: If comparison licence agreements have been submitted, a FRAND corridor must be determined in such a way that the highest permissible value is three times the lowest value or a deviation of 50 % downwards and upwards from an average value is possible. (margin nos. 132 ff.).

4. For example: If an average value is 5, then the FRAND range is between 2.5 and 7.5. This means that it may be permissible for a very inexpensive licence to be valued at 2.5 and a very expensive licence to be valued at 7.5. However, there must be good reasons for such a discrepancy (otherwise it would be considered discrimination). Typical reasons for a differentiation are the scope of the licence (number of units/term) and the Defendants' conduct. A party that quickly concludes a licence agreement causes less effort for the Claimant and this can be taken into account when determining the licence price.

5. Particular attention must be paid to determining the average value. This assessment is based on an evaluative decision. In case of doubt, the per-unit rate used for comparison will have to be taken as the average value. A different assessment may be warranted, for example, if there are other agreements. This is illustrated by the previous example.

6. A fundamentally comparable licence agreement has a rate of 5. However, there are other agreements that are less suitable for comparison, for example because the size of the companies or the products differ. In these cases, however, a rate of 6 is provided for

products with a certain similarity.

7. In such a scenario, there are indications that the value 5 is low and therefore does not represent an average value. The specific calculation would then be such that the rate within the corridor of 1 to 3 would not be 2 (the average value), but could be set at 1.8. The corridor would then be between 2.78 and 8.33.

8. This framework is further narrowed when specific comparison licence agreements are available. The principle that a licensor may not discriminate applies in this case. In concrete terms, this means the following in figures:

9. If, in the first example, there were a licence agreement with a competitor (similar size/similar products) that was set at 4.5, then the basic range would be narrowed (as long as the parties seeking the licence behave similarly). In that case, only a 15 % increase would be possible. The FRAND range would therefore end at 5.175 (115 % of 4.5).

5 The Claimant is a subsidiary of ... based in ..., which developed the first Ethernet specification for the automotive industry, known as BroadR-Reach.

6 Defendant 2) is a ... car manufacturer: Defendant 1) is the German-based subsidiary of Defendant 2) and is responsible for the distribution of ... products and services in Germany. Defendant 3) is a subsidiary of Defendant 1), also based in Germany, and is involved in the sale of ... models in Germany.

10 The parties have so far been unsuccessful with their negotiations regarding a licence for the standard. The negotiations have progressed to the point where there is agreement on the scope of the licence. The only point of contention is the amount, with the Defendants' negotiator having made an offer

11 The Claimant pleads that the contested embodiments directly and literally infringe claim 11 of the patent at issue and indirectly and literally infringe claim 1 of the patent at issue because the 100BASE-T1 standard implements the teaching of the patent at issue and because the chips installed in the contested embodiments also implement the standard in this respect.

12 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.

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

110 The Claimant's offer meets the requirements for a fair, reasonable and non-discriminatory offer (FRAND). By submitting several licence agreements that it has concluded with competitors of the Defendants, the Claimant has demonstrated that its offer is within a permissible range.

111 Even if the agreements concluded by the Claimant with significantly larger volume manufacturers are considered to be the relevant comparison licence agreements, the Claimant's relevant offer (namely the last offer before the conclusion of the hearing) lies within the range that can be considered FRAND (FRAND corridor).

112 Despite the fact that there are ... current comparison licence agreements (in ... cases, the relevant predecessor agreement was also submitted), the Defendants believe that these agreements are not comparable for them. They justify this view by stating that they are less profitable than their competitors and that their vehicles are not sold in the United States of America or the People's Republic of China. Approximately 80 % of the patents in the Claimant's patent portfolio are in force in these countries and this part of the portfolio is of no significance to the Defendants. Therefore, from the Defendants' point of view, it is imperative that it be granted a corresponding discount.

113 In the Defendants' view, if two comparable vehicles are offered for sale in a commercial zone in the Federal Republic of Germany on two neighbouring sites by dealers of different brands, the Defendants' vehicle would have an 80 % lower licensing burden than that of the competitor's vehicle. The Defendants argue that this should be the case because they do not supply cars to the USA and the People's Republic of China.

114 This line of argument by the Defendants is not compelling, but rather an expression of their unwillingness to take a licence at standard market conditions.

1. Basic principles

115 The patent at issue is essential for the implementation of the 100BASE-T1 (IEEE 802.3bw-2015) standard for Fast Ethernet. The objection under antitrust law must therefore be examined.

116 The Panel set out and specified the basis for dealing with the objection under antitrust law in SEP proceedings in an order dated 14 July 2025 (7 O 64/25 and 7 O 2750/25) and in the decisions 7 O 5007/25 (ASUS I) and 7 O 4102/25 (ASUS II). Reference is made to these decisions and the benchmark for examination set out therein.

117 Insofar as the German Federal Court of Justice states the following obiter dictum in its decision KZR 10/25 (judgment dated 27 January 2026) in margin no. 89:

As long as it remains unclear whether and under what conditions a licence agreement will be concluded, the user cannot be required to make payments to the patent proprietor. However, it is appropriate that, in view of the fact that it is already using the protected technical

teaching, it indicates its willingness to take a licence in the sense explained above by providing security that guarantees the feasibility of the patent proprietor's claims under the licence agreement to be concluded. At the same time, this ensures that the patent proprietor does not bear the risk of the user becoming illiquid during the negotiations.

118 this does not contradict the Panel's case law, at least in the present case. In the present case, the Defendants have made it clear by offering a minimum amount that, under normal circumstances, a licence agreement will be concluded. The content has also already been determined and the only point of contention is the amount to be paid (as in the vast majority of cases heard before the Panel). It should also be noted that the scope of the licence in question is already the result of a choice made by the Defendants. They deliberately opted for a comprehensive licence – and not just a licence relating to the standard relevant in this case. In this respect, the minimum amount to be paid is also part of the consensus between the parties.

119 In light of this, the possibility that a licence agreement might not be concluded must be regarded as theoretical, given that in the present case there are potential compensation claims arising from several hundred patents of the Claimant that are valid in the Federal Republic of Germany.

120 Last but not least, the payment of an undisputed portion is also in line with the usual practice in the international environment, as can be seen from interim licence decisions from the United Kingdom.

a. Conduct of both parties

121 The first two examination steps (notice of infringement and declaration of willingness to take a licence) have been fulfilled by the parties, as the Claimant issued a notice of infringement before bringing the action and the Defendants have expressed their fundamental willingness to take a licence.

122 It is incumbent upon the owner of a patent portfolio to determine what kind of licensing it offers. It is, in principle, possible to combine standards or to divide them up regionally. The limit is an abusive combination of different standards or the combination of standard-essential patents with non-standard-essential patents. If a patent proprietor offers several licence models to choose from, it is sufficient if at least one offer is not abusive. In the present case, the Claimant offered several licence models (including a licence purely for the 100BASE-T1 standard). In line with the Defendants' request, the parties have agreed to conclude a comprehensive licence agreement covering the Claimant's entire portfolio, which according to the Claimant comprises 19,000 patents, and are now pursuing only the conclusion of such a licence agreement through negotiations. The parties agree that the future licence agreement should be structured in such a way that there is a lump sum payment for the past and a running royalty agreement for the future.

123 On the basis of their latest offer, the Defendants paid the Claimant an amount of ... and provided additional security in the form of a bank surety in the amount of ... (Exhibits B& B 43, 47 and 48)

b. Review of the Claimant's offer

124 By paying the last amount offered by the Defendant and providing the security, the Defendants created the conditions for reviewing the Claimant's offer.

125 The Claimant ultimately offered to conclude a licence agreement that included a payment for the past in the amount of ... and a per-unit price for the future in the amount of Since the subject of the review is only the Claimant's last offer, the previous offers are not presented here.

126 With regard to the review of this offer, the principles of the Panel's case law must be clarified:

127 When assessing the Defendants' willingness to take a licence, a distinction must be made between external and internal willingness to take a licence.

128 External willingness to take a licence applies if there is no obvious hold-out. This is usually the case if the Defendants have paid an undisputed amount and (as per the statements made by the Panel in the aforementioned decisions) deposited a security. Only when this is the case does the Panel have to review the substance of the Claimant's offer to determine whether it falls within the permissible FRAND framework. If the offer is within a permissible framework and is not accepted, the Defendants are deemed to have no internal willingness to take a licence.

129 This decision provides an opportunity to outline the requirements and procedure for reviewing a Claimant's offer.

(1) When is a licence agreement one that is suitable for comparison?

130 The Claimant has submitted a large number of licence agreements in the present proceedings. In the Panel's view, these are suitable comparison licence agreements for determining which licence rate is FRAND vis-à-vis the Defendants.

131 The criteria for assessing whether a licence agreement is suitable for comparison include at least the licensed patent portfolio, the scope of the licence (i.e. the economic size of the licensee) and the comparability of the licensed products.

(2) Principles for determining the FRAND rate if there are comparable licence agreements

132 The Panel outlined the basic principles for determining the FRAND range if comparison licence agreements have been submitted in its order dated 14 July 2025 (7 O 64/25 and 7 O 2750/25). As explained in that order, the permissible range is three times the lowest value, i.e. a deviation of 50 % downwards and upwards from an average value is possible.

133 This is illustrated by the following numerical example (which is not related to the present proceedings):

134 If an average value is 5, then the FRAND range is between 2.5 and 7.5. This means that it may be permissible for a very inexpensive licence to be valued at 2.5 and a very

expensive licence to be valued at 7.5. However, there must be good reasons for such a discrepancy (otherwise it would be considered discrimination). Typical reasons for a differentiation are the scope of the licence (number of units/term) and the Defendants' conduct. A party that quickly concludes a licence agreement causes less effort for the Claimant and this can be taken into account when determining the licence price.

135 Particular attention must be paid to determining the average value. As already explained in the order dated 14 July 2025, this assessment is based on an evaluative decision. In case of doubt, the per-unit rate used for comparison will have to be taken as the average value. A different assessment may be warranted, for example, if there are other agreements. This is illustrated by the previous example.

136 A fundamentally comparable licence agreement has a rate of 5. However, there are other agreements that are less suitable for comparison, for example because the size of the companies or the products differ. In these cases, however, a rate of 6 is provided for products with a certain similarity.

137 In such a scenario, there are indications that the value 5 is low and therefore does not represent an average value. The specific calculation would then be such that the rate within the corridor of 1 to 3 would not be 2 (the average value), but could be set at 1.8. Based on the scenario with the values 5 and 6, the corridor would then lie between 2.78 and 8.33.

138 This framework is further narrowed when specific comparison licence agreements are available. The principle that a licensor may not discriminate applies in this case. In concrete terms, this means the following in figures:

139 If, in the first example, there were a licence agreement with a competitor (similar size/similar products) that was set at 4.5, then the basic range would be narrowed (as long as the parties seeking the licence behave similarly; further details below). In this respect, the Panel already stated in its order dated 14 July 2025 that an increase of only 15 % would then be possible. The FRAND range would therefore end at 5.175 (115 % of 4.5).

2. Application of these principles to the present case

a. The licensed portfolio

140 As explained above, the parties are ultimately only negotiating a comprehensive licence to the Claimant's portfolio, which according to the Claimant comprises 19,000 patents. This decision by the parties means that the best licence agreements for a comparison are those that also cover the entire portfolio. In fact, all of the licence agreements submitted with other car manufacturers covered the entire patent portfolio.

141 In this respect, there is a high degree of comparability with regard to all agreements.

b. The structure of the parties to the other licence agreements and the products:

142 The Claimant has submitted licence agreements with car manufacturers that include the following:

...

143 The Claimant has submitted two licence agreements with The licence agreement from 2020 (Exhibit CBH 29) provides for a one-off payment of This is to be apportioned as follows: ... for each luxury vehicle, ... for additional vehicles and ... for commercial vehicles and vehicles of the brand

144 The licence agreement from 2024 (Exhibit CBH 30) provides for a fee of ... per vehicle. ...

145 The agreement from 2024 (CBH 24) provides for a fee of ... for each vehicle. These are primarily commercially used vehicles.

...

146 The agreement from 2024 provides for a per-unit licence of At the same time, however, it also regulates other business relationships (CBH 26). ...

147 The agreement from 2020 provided for a one-off payment of ... for a period of

...

148 Two licence agreements have been submitted with The earlier agreement from 2018 (Exhibit CBH 22) provided for a distinction based on vehicle category. A per-unit price of ... was agreed for economy vehicles, a per-unit price of ... for standard vehicles and a per-unit price of ... for luxury vehicles.

149 The agreement from 2023 (CBH 23) no longer distinguishes between vehicle categories. Instead, it introduces a graduation based on the number of vehicles, as shown in the following table:

...

150 The agreement from 2024 (CBH 25) provides for a per-unit licence of

Summary of the licence agreements submitted for comparison

151 The Claimant has summarised the key information and also the numbers of units of the individual manufacturers in the following table:

c. Consideration of the expert opinion submitted by the Defendants

152 The expert opinion submitted by the Defendants (B& B 35) deals with the licence agreements with It concludes that these agreements can be broken down into the following per-unit licences:

...

153 (1) In the Panel's view, the calculation with regard to the company ... is already inaccurate because the expert, on the instructions of the Defendants' representatives, took into account a past release of ... years, which is not included in the concluded agreement. In fact, the unpacked per-unit licence for this agreement is likely to be around twice the amount.

154 With regard to the ..., the expert based their assessment on forecast figures from 2022, which were significantly higher than the actual figures for at least the past few years. As the licence agreement provides for a gradual reduction in the licence rates, this means that an increase in the number of low-cost licences reduces the average price.

155 (2) The expert also made further deductions from the per-unit rates they determined. On the one hand, they base a discount on an alleged lower profitability (in relation to Earnings Before Interest and Taxes (EBIT)) of the Defendants in contrast to the parties to the comparison licence agreements and, on the other hand, they criticise the fact that the Claimant did not submit a "Patent Landscape Report", as such a report would show that the Defendants have no business activities on the US market. In total, only 16 % of the Claimant's patent families are validated in the geographical area in which the Defendants operate. This means that a large proportion of the patents in the Claimant's overall portfolio would not be used if the overall portfolio were licensed and would therefore not be relevant for determining an appropriate FRAND licence.

156 These two points do not justify the conclusions drawn by the Defendants.

157 aa. With regard to the difference in profitability, no reduction in an appropriate licence amount is justified because it is not the responsibility of an inventor or patent proprietor to determine whether a party seeking a licence organises its business efficiently or not very efficiently. This applies in particular in the present scenario, where there is a requirement for licensing from an antitrust perspective. In such a situation, a patent proprietor is not in a position to refuse licensing even to poorly performing companies, although the very fact that the technology is being used by an inefficient company may in itself damage the reputation of the technology. Against this background, a reduction for a less profitable licensee is not justified.

158 bb. The Panel is not convinced that a discount on the licence rate is justified because the Defendants are not active on the markets in the USA and the People's Republic of China.

159 Firstly, the expert failed to take into account the fact that certain components of the Defendants' vehicles originate from the USA and the People's Republic of China. This applies, for example, to the chips in which the patent-infringing system is embodied. This means that parts of the value chain are also located outside the Defendants' actual distribution area.

160 Furthermore, the Defendants' entire argument is based on a false understanding of licence payments. These payments compensate the patent proprietors for their development costs and innovative strength. The specific contribution is determined, among other things, by the number of patent applications and patents granted (this forms the basis of the top-down analysis). This number is always relative to the total number of patents that exist.

161 It is therefore fundamentally misleading for the Defendants to argue that a licence amount applicable to a global company should be reduced to 16 % because the Defendants only operate in Europe. This fails to take into account the fact that, if only the patents in

Europe are considered (which is impermissible), the total number of patents is also lower. As a result, the Defendants' calculation is based on reducing the numerator but leaving the denominator unchanged. This not only contradicts basic calculation rules, but also fair practice in determining comparison licence amounts.

162 As a result, the expert opinion submitted by the Defendants is therefore not suitable for proving that the licence rates from the agreements submitted by the Claimant should be reduced due to the Defendants' corporate and distribution structure.

d. Evaluation of the licence agreements submitted in terms of their comparability

163 In the Panel's view, the agreements with ... should be disregarded in the comparative analysis because the Claimant has submitted licence agreements that are significantly more comparable.

164 The agreement with ... regulates additional considerations that may have their own value, which could prevent simple comparability. The agreement with ... relates primarily to commercial vehicles, meaning that a lower degree of comparability can also be assumed in this respect. However, the per-unit rate from this agreement for commercially used vehicles (which are likely to have simpler technical equipment) can be used as a reference value to verify the result found.

165 In terms of the size of the licensees, the Defendants are most comparable to the companies According to the information provided by the parties, the Defendants sold ... vehicles in 2024,

166 However, the Defendants' products are unlikely to be fully comparable with the products of It can be left open as to whether the exact design of the vehicles has an actual impact on the licence price per unit. This could be countered by the fact that a distinction between basic vehicles and premium vehicles was made in the earlier agreements with ... but that such a distinction is no longer included in the successor agreements.

167 The agreements with ... with lower per-unit licence rates are considered to be in favour of the Defendants, even though these manufacturers sell significantly higher numbers of units.

168 It should be noted that these volume manufacturers also have a somewhat different structure than the Defendants. This is evident from the average sales prices contained in the Defendants' expert opinion. These are as follows: ...

169 In this respect, it can be assumed that the agreement with ... is the most suitable agreement for comparison.

e. Calculation of the specific FRAND ranges

170 If the per-unit price of ... specified in the agreement concluded with ... is taken as an average value, the permissible FRAND corridor would be between ... taking into account the principles set out above. The Panel believes that this assumption is highly favourable to the Defendants, because ... has significantly higher numbers of units and the average selling price is only slightly higher (and as a result of the same product category, namely

vehicles

171 The FRAND range determined in this way is also confirmed by the agreement with ... from 2023. The Panel assumes that the price ... represents the average value, resulting in a FRAND corridor of

172 Even if one considers the average value determined by the parties in the agreement with ..., the Panel arrives at similar results when correctly determining the appropriate starting factor in relation to the average value. In this respect, the Claimant has broken down the graduations in such a way that an average value of ... is obtained. The Defendants have calculated a value of

173 The Panel assumes that these values are very low rates. This is evident from the large volume of the licence agreement and from an overall view of the other agreements. In particular, it was taken into account that the first agreement with ... that the model group ... was taken into account and that commercial vehicles were also calculated at ... in the agreement with The Panel does not fail to recognise that in the first ... vehicles in the Economy group were calculated at ... because the "Standard" category

174 On this basis, the Panel assumes that the average values calculated by the parties (...) lie within the range of 1 to 3 at approximately 1.7 (Claimant) and 1.5 (Defendants). This results in the following FRAND ranges:

...

175 Based on the result obtained in this way, it should be noted that, according to each calculation, the Claimant's offer is within the FRAND framework, albeit at the upper end.

f. Non-discrimination by the offer of the Claimant

176 The extent to which a patent proprietor can go to the upper limit of the FRAND range depends on the negotiating behaviour of the Defendants. As long as a party seeking a licence submits significantly lower offers, the licensor is under no obligation to move away from the upper limit of the framework. This is because it is not yet clear at this stage how long the licence negotiations will take and to what extent this may result in non-recoverable costs for the Claimant, which may have an impact on the licence rate.

g. The Defendants have not demonstrated an internal willingness to take a licence

177 By paying an undisputed amount to the Claimant and also providing security, the Defendants have clearly demonstrated externally that they are not engaging in obvious hold-out behaviour. However, by insisting on a low rate with reference to an expert opinion from an expert of their choice, the content of which is not convincing, they have shown that they have no internal willingness to take a licence. Against the background of this behaviour, the Claimant's offer is to be assessed as FRAND.

3. Objection of the supplier

178 In the present case, intervening party 1) has raised its own objection under antitrust law. It argued that it uses chips from ... and ... in the products it supplies. However, ... has

a licence from the Claimant for the 100BASE-T1 standard on the basis of a licence agreement from 2010 or 2011, meaning that patent law exhaustion applies in this respect. In the opinion of intervening party 1), the other chip supplier is entitled to receive a corresponding licence agreement on grounds of equal treatment.

179 In patent infringement proceedings, only the Defendants can raise the objection under antitrust law. The Defendants supported the objection of the intervening party, but did not assert it as their own objection. This objection was therefore not relevant to the decision."

180 IV. The Defendants offer the contested embodiments in the Federal Republic of Germany, distribute them and thus make unlawful use of the teaching of the patent at issue within the meaning of section 9 sentence 2 no. 1 German Patent Act (*PatG*).

181 1. The Claimant is therefore entitled to claims for injunctive relief, provision of information and rendering of accounts as well as for a declaratory judgment establishing the obligation to provide compensation in principle pursuant to sections 139 (1) and (2), 140b German Patent Act (*PatG*), 242, 259 German Civil Code (*BGB*).

182 In this respect, the Defendants did not assert any disproportionality (section 139 (1) sentence 3 German Patent Act (*PatG*)) that is not examined ex officio (see Panel, GRUR-RS 2022, 13480 margin no. 75 - Speech signal coder II; see also legislative bill of a Second Act to Simplify and Modernise Patent Law, BT-Drucks. 19/25821, p. 53).

183 2. In addition, the Claimant is also entitled to claims for recall and destruction pursuant to section 140a (1) and (3) German Patent Act (*PatG*). Contrary to the Defendants' opinion, these are in particular not ruled out due to disproportionality pursuant to section 140a (4) German Patent Act (*PatG*).

184 a. The Defendants plead that the established infringement "[relates] exclusively to a subordinate functionality (of the chip) within a technically complex overall product (navigation radio unit/telematics unit), which in turn is installed in an even more complex product (motor vehicle)". The infringement "does not affect the main operation or the essential functions of the vehicles". It should also be noted "that a workaround solution is not technically and economically feasible". The "existing data transmission paths [cannot] simply be changed; this would require structural changes to the electronic units, which in turn would be equivalent to a recall". The replacement "would be so cost-intensive that it would be economically preferable to destroy the vehicles". In a similar case (patent-infringing headlights installed in a car), Düsseldorf Regional Court affirmed that the recall claim was disproportionate (GRUR-RS 2022, 57352 – Signalling device).

185 The Claimant also has "no competitive relationship with the Defendants on the market for motor vehicles", meaning that the Claimant's interest was limited "largely to financial compensation".

186 b. The question of the disproportionality of the destruction, recall or removal from the distribution channels must be answered in accordance with section 140a (4) German Patent Act (*PatG*), taking into account all the circumstances of the individual case, including

the legitimate interests of third parties. By emphasising "in an individual case", the legislature has made it clear that disproportionality is the exception (see also BT-Drucks. 19/25821, p. 53: "only in particularly exceptional cases").

187 When assessing all the circumstances of the individual case, it may be relevant, among other things, whether the patent proprietor itself manufactures or distributes products that make use of the technical teaching of the patent and compete with the contested products, or whether its primary concern is to monetise its rights. However, the mere fact that the injured party does not use the patent itself through its own or licensed production is not sufficient to justify the exclusion of the claim for injunctive relief. Whether the claims for recall and destruction would have a particularly severe impact on the infringer and put it at a particular disadvantage due to special circumstances may also need to be taken into account. This may be the case, for example, if the teaching of the patent relates only to a minor, non-essential component of a complex overall product and redesigning the product without using this teaching would involve a great deal of effort. In addition, subjective elements may have to be taken into account, such as the nature and extent of fault. In this context, the question of whether the infringer has made sufficient efforts to obtain a licence agreement may also become relevant (see German Federal Court of Justice, judgment dated 27 January 2026, KZR 10/25, margin no. 100, with reference to BT-Drucks. 19/25821).

188 The German Federal Court of Justice commented in detail on the scenario of complex products in its "Heat exchanger" decision (X ZR 114/13, GRUR 2016, 1031 margin no. 40 ff.), which is also quoted extensively in the government's rationale on the codification of the principle of proportionality. Although this was in the context of a discussion on a grace period against the patent proprietor's claim for injunctive relief, the considerations of the German Federal Court of Justice can also be used in the present context of the claim for recall and destruction.

189 According to the German Federal Court of Justice, a restriction of the claim for injunctive relief on grounds of proportionality can only be considered "if the party subject to injunctive relief would suffer disproportionate disadvantages if the injunction took effect immediately and if the temporary continuation of the contested behaviour does not entail any unreasonable impairment for the injured party"; this can only be assumed "under strict conditions". This is because it is a "necessary consequence of the claim for injunctive relief under patent law that the infringer must cease the patent-infringing production or distribution and can only bring the affected product back onto the market if it has either obtained the necessary rights from the patent proprietor or has modified the product in such a way that it no longer infringes the property right, which may require considerable time and expense" (German Federal Court of Justice, X ZR 114/13, GRUR 2016, 1031 marginal no. 40 ff. – Heat exchanger).

190 c. Based on this, there is no disproportionality in the present case.

191 (1) It is true that the objects of infringement are each a single element (chip) of a component (navigation and radio unit or telecommunication unit, referred to in the following as "electronic units") incorporated into a complex delivery item (car). In such a scenario, the

German Federal Court of Justice considered in the "Heat exchanger" case the fact that the object of infringement in that case was not a "functionally essential component" but a "special equipment feature that does not affect the general usability and functionality of the vehicle and the vehicle seat" (German Federal Court of Justice, GRUR 2016, 1031 margin no. 52 – Heat exchanger) to be an aspect that in principle argues against the need for a use-up period (German Federal Court of Justice, GRUR 2016, 1031 margin no. 52 – Heat exchanger). That case concerned a "separate auxiliary heating system, detached from the vehicle's heating and ventilation system" installed in the vehicle seat for open-top driving in convertibles.

192 The present case is different in this respect. The Ethernet communication enabled by the chips is not merely a "special equipment feature" in the aforementioned sense. Rather, a fast, secure and wired Ethernet connection is essential for the operation of even simple vehicles. However, this also directly gives rise to another aspect that argues against a use-up period, as the auxiliary heating system at issue in the "Heat exchanger" case could easily be deactivated by the dealer or manufacturer due to its design, which was separate from the "vehicle heating and ventilation system". This does not apply in the present case. However, this increases the significance of the patent infringement, as it reoccurs every time the car is used. It must also be taken into account that the Claimant holds several standard-essential patents, meaning that, on evaluation, other patents of the Claimant are also infringed when the contested embodiments are operated.

193 (2) In addition, the German Federal Court of Justice considered the possibility of appropriate licensing to be relevant in the sense that such a possibility argues against disproportionality (op. cit., margin no. 52, also now in the judgment dated 27 January 2026, KZR 10/25, margin no. 100). In the present case, as established, the Claimant made the Defendants a FRAND licence offer, while the Defendants defended an offer that fell below the FRAND framework for months without any significant change in their position. This distinguishes the present case from the case cited by the Defendants from Düsseldorf Regional Court, but also from the "Heat exchanger" decision, since, unlike in this case, no licence offer that had been reviewed by a court for its appropriateness was at issue in that case.

194 However, the Defendants cannot reject a FRAND licence and then invoke the disproportionate nature of terminating this patent-infringing situation when seen in relation to the millions of patent infringements that occur every day.

B.