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The European Commission's Amicus Curiae Brief in VoiceAge v HMD – A Timely Admonition of the Importance of Following Closely the Huawei v ZTE Guidelines

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The 2015 landmark decision by the Court of Justice of the European Union (CJEU) in [Huawei/ZTE](#) established a balanced framework for licensing standard essential patents (SEPs), striking a compromise between the interests of SEPs holders and implementers. The ruling notoriously clarified when SEP holders can seek injunctions without abusing their dominant market position. It stated that SEP holders who have committed to grant licenses on fair, reasonable, and non-discriminatory (FRAND) terms must follow specific steps before seeking an injunction.

Yet, post-Huawei/ZTE, not all national courts in EU Member States have closely followed the steps in question when dealing with FRAND litigations, which may result in a misalignment with EU law. This is for example the case of some German courts. In [Sisvel v Haier](#) the German Federal Court of Justice [strengthened](#) the position of SEP owners, by making clear that implementers need to actively and constantly pursue a licence and that they cannot just claim that the SEP holder's licence offer is not FRAND.

But the European Commission has been concerned about what is perceived to be a divergence from the Huawei/ZTE guidelines. In April 2024 it intervened in a pending case involving VoiceAge EVS and HMD Global before the Munich Higher Regional Court (6 U 3824/22 Kart) by submitting an [Amicus Curiae brief](#) (in German: see [here](#) for an unofficial translation).

This dispute centres on VoiceAge's claim that HMD used its SEPs for the Enhanced Voice Services (EVS) standard without obtaining a proper license. VoiceAge initiated legal action in the District Courts of Munich I (*Landgericht München I*, Case references 7 O 15350/19 and 7 O 14091/19) and Mannheim (*Landgericht Mannheim*, Case references 7 O 116/19, 7 O 32/20, 7 O 33/20 and 7 O 90/21), seeking injunctions. HMD argued that this enforcement is an abuse of VoiceAge's dominant position.

The Munich and Mannheim courts delivered differing judgments on whether VoiceAge followed the Huawei/ZTE steps and whether HMD sufficiently expressed a willingness to negotiate a FRAND license. These conflicting rulings led to appeals in higher courts and prompted the European Commission to submit the amicus curiae brief in question.

In this brief the Commission criticises *Sisvel v Haier* and the subsequent German case law,

including the lower Munich court's decision in *VoiceAge v HMD*. And it urged courts in the country to align their interpretations with the *Huawei v. ZTE* steps.

The Commission's intervention underscores the ongoing competition concerns in SEPs licensing, particularly abuse of dominance through the misuse of injunctions. Specifically, the Commission reminds us that SEP holders occupy a unique and powerful market position due to the essential nature of their patents, noting that:

“if a patent has achieved the status of an SEP, its owner can prevent competing products from entering or remaining on the market and can thus reserve the right to manufacture these products. ... The SEP holder is in a powerful position when negotiating licences precisely because of the injunctive relief to which it is entitled. It must therefore be ensured that the SEP holder cannot, for example, enforce unreasonably high licence fees in breach of its obligation to grant licences on FRAND terms.” (unofficial translation).

The Commission's brief thus reaffirms the *Huawei/ZTE* steps, especially the first and second. It also emphasises that these procedural steps cannot be rectified after an injunction has been ordered.

Specifically, SEP holders – the Commission insists – must first clearly notify the alleged infringer of the specific patent infringement before bringing an injunction. And this condition is only fully satisfied if said notice *“(i) expressly complains of patent infringement, (ii) names the patents concerned with their number and (iii) specifies the manner of infringement in the letter itself”*. Regarding the second step, the Commission elaborates that while SEP implementers must express a willingness to license on FRAND terms, this willingness is not negated by a desire to confirm the essentiality or validity of the SEP. The Commission clarified that the focus should be on whether the implementer has expressed willingness, rather than on their actions or behaviours during negotiations. The Commission added that this approach seeks to maintain a fair balance between the rights of SEP holders and implementers, ensuring that the procedural framework is followed in a way that supports fair competition.

The Commission's brief also sheds light on the broader issues plaguing SEP licensing, including the inherent power that SEP holders possess in licensing negotiations, while also touching on the lack of transparency around FRAND pricing, essentiality and the validity of SEPs; and how these issues further complicate the negotiation process from the perspective of SEP licensees. In addition, the Commission notes that the over-declaration of essentiality and validity further exacerbates the situation, making the SEP licensing landscape even more complex, imbalanced, and opaque.

As we look ahead, it remains to be seen how the German court in *VoiceAge EVS v. HMD* will react to the Commission's Amicus Curiae brief. There is also a possibility that the court may refer a preliminary question to the CJEU to clarify again what steps must be taken by SEP holders and implementers during FRAND negotiations – this is exactly what the Commission has encouraged in its brief. Such referral would certainly be welcome.

In late October 2024, ahead of a scheduled hearing, the German court released a [legal note](#) that provides insights into its preliminary views. This note is indicative of the expected outcome and reveals some concerning interpretations. Notably, the Court delves into further “Huawei Steps” (3–5), areas not covered in detail by the European Commission's amicus brief. These interpretations, including the views on the security deposits having to reflect the initial offer, and

discussions around binding undertakings to accept the initial offer by the SEP holder if the Court finds it to be within the “FRAND range”, highlight that a comprehensive CJEU clarification is needed on all steps of the Huawei framework.

A decision by the German court in *VoiceAge EVS v. HMD* is expected in early 2025. Such court might refer preliminary questions to the CJEU, but if it does not, an appeal is likely, taking around two years, which could lead to a referral.

Regardless of whether there will be a reference to the CJEU, the Commission’s Amicus Curiae brief may influence German case law on SEPs as a whole, by also sparking broader discussions about the inherent imbalances in SEP licensing negotiations. More specifically, the brief may build momentum for the proposed [SEP Regulation](#) (which is complementary to the Huawei/ZTE steps) to move forward quickly, paving the way for a more balanced and transparent SEP licensing landscape.

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