

Kluwer Patent Blog

The second UPC FRAND decision in Huawei v Netgear: is it time for a new CJEU referral?

Enrico Bonadio (City, University of London) and Magali Anabel Contardi (Sant'Anna School of Advanced Studies) · Monday, February 3rd, 2025

In another standard essential patents (SEPs) case from the Unified Patent Court (UPC), on 18 December 2024 the Munich Local Division (LD) [issued](#) an injunction in favour of Huawei (UPC_CFI_9/2023, available in German [here](#)). The order prohibited Netgear from selling Wi-Fi 6 routers in Belgium, Germany, Italy, Finland, France, and Sweden. Netgear is also required to withdraw the infringing products from the market and hand them over to a court-appointed bailiff for destruction. The ruling was enforceable upon the provision by Huawei (the SEP owner) of partial security, the full amount of which remains confidential (order of the court Lett. M, p.161). Nevertheless, faced with a seven-country injunction, Netgear [settled](#) in early January, agreeing to take a license to the WI-Fi 6 standard patents.

The Munich LD decision stems from an infringement claim filed by Huawei before the Munich LD in July 2023. The dispute centered on Huawei's [EP3611989](#), which relates to the Wi-Fi 6 standard and covers both methods and devices for transmitting and/or receiving information within a wireless local network. The case had been previously reported in this blog [here](#).

In addition to addressing Huawei's infringement claim, the Munich LD ruled on, and rejected, Netgear's counterclaim for revocation (§C, ACT_588071/2023-UPC_CFI_9/2023). A parallel dispute between these parties is still pending at the US District Court of California, but it will likely be [withdrawn](#) in light of the settlement. Earlier in December 2024, the Munich LD had issued an anti-anti-suit injunction, [prohibiting](#) Netgear from pursuing an anti-suit or anti-enforcement application at the US District Court of California (the UPC decision CNF_791/2024 is available in the German language [here](#)).

The decision is worth commenting as it provides clarifications on several key issues, including the withdrawal of an opt-out (§A), the exhaustion defence (§F), a contractual defence based on a letter of Assurance submitted to the IEEE (§B), and a FRAND defence based on EU competition law (§G). We focus here on the latter point.

In its decision in *Huawei v Netgear*, the Munich LD rejected Netgear's FRAND defence based on EU competition law (§G, p-125). In doing so, it followed the interpretation adopted by the Mannheim LD in *Panasonic v. Oppo* (commented in this blog [here](#) and [here](#)) which focused on good-faith FRAND negotiations under the [Huawei/ZTE](#) framework established by the Court of Justice of the European Union (CJEU). As already pointed out in a [previous blog](#), Mannheim LD's

approach diverged from the one suggested by the European Commission (EC) in its 2024 [Amicus Curiae](#) Brief (Brief) submitted in the case involving VoiceAge EVS and HMD Global before the Munich Higher Regional Court (also [commented](#) in this blog), where the EC advocated for courts to evaluate the SEPs user's willingness to obtain a FRAND license based on their initial declaration.

The decision of the Munich LD in *Huawei v Netgear* begins by reminding the principles that underpin FRAND negotiations, as laid down by the CJUE in *Huawei v ZTE* (§G.III. 1-5, p. 126-138). The Munich LD then applied those principles to the case at hand (§G.IV. 1-8, p. 139-143). Based on this, it found that Netgear failed to demonstrate sufficient willingness to license after receiving the infringement notice from the plaintiff. According to the Munich LD, the defendants delayed negotiations, rejected the plaintiff's offer without providing a valid counteroffer, and neglected to furnish security or relevant information. The Munich LD also found that Netgear failed to demonstrate that the patent in dispute conferred Huawei a dominant position in the relevant market (§G, IV,1); and that Huawei had complied with its FRAND obligations.

As the Mannheim LD did in *Panasonic v. Oppo*, the Munich LD held that a defendant's reference to publicly available data alone is not FRAND-compliant and therefore does not suffice to show (good faith) "willingness to license". In other words, the court expected Netgear to provide specific, company-related data and reasoning rather than relying solely on publicly available information. The court thus found Netgear's failure to provide such information critical.

The Munich LD has thus aligned with the Mannheim LD's approach in *Panasonic v. Oppo* as it looked at the subsequent behavior adopted by the parties during the negotiation, regardless of the initial declarations. But it departs from EC's opinion that the infringement notice must contain all required information upfront.

No need for another CJUE's intervention, Munich LD says: Yes, but...

The decision of the Munich LD in *Huawei v Netgear* is thus in line with the approach the Mannheim LD took in *OPPO v. Panasonic*, which in turn reflects the approach taken by German courts. Yet, this approach collides with how the EC has interpreted in its brief the Huawei/ZTE framework, which as mentioned highlights a focus on the parties' initial declarations and a more rigid, step-by-step approach. The Munich LD has instead embraced a more holistic evaluation of the parties' conduct throughout the negotiation process.

While the Munich LD explicitly rejected the need to seek clarifications from the CJEU because the case "could be resolved by applying the principles developed by the CJUE in *Huawei v. ZTE*" (§G.II, our unofficial translation), we believe that the CJEU's intervention would have been here helpful. Indeed, the UPC and the EC stances reflect differing views on how to balance the parties' obligations in FRAND licensing negotiations and how each party involved should comply in good faith with such duties. After all, in *Daimler v. Nokia* (2021), German courts had already [sought clarifications](#) on how implementers and SEP owners should comply with the *Huawei v. ZTE* framework, which suggests that the matter is far from being perfectly clear (*). It may therefore be time for another CJEU referral. Time will tell.

(* *Since the originating case was withdrawn from the Düsseldorf Regional Court, the CJEU could not give an answer to the questions asked.*

To make sure you do not miss out on regular updates from the Kluwer Patent Blog, please [subscribe here](#).

A graphic for a survey report. It features a dark background with a circular inset showing a gavel on a glowing digital circuit board. The text is white and blue. A blue button with a white arrow points to the download link. The Wolters Kluwer logo is in the bottom left, and the Future Ready Lawyer logo is in the bottom right.

2024 Future Ready Lawyer Survey Report

Legal innovation: Seizing the future or falling behind?

[Download your free copy →](#)

 Wolters Kluwer

 Future Ready
LAWYER

This entry was posted on Monday, February 3rd, 2025 at 6:41 pm and is filed under [Patents](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.