

## Munich regional court cuts British courts' interim FRAND licence “imperialism”

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In a long-expected guidance order, the Munich Regional Court cut a British courts’ interim FRAND licence “imperialism” and exposed the interim licence and the proceedings to obtain them as anti-anti-suit-injunctions (**AASI**). The following article is an analysis of the background of the guidance order and its implications for future SEP litigation involving courts in multiple jurisdictions, including German courts and the Unified Patent Court (**UPC**).

### Samsung vs. ZTE SEP licensing dispute

The worldwide patent dispute between Samsung and ZTE began around the turn of the year after their previous cross-licence agreement expired. Even before its expiry, Samsung initiated FRAND rate-setting proceedings in the UK. ZTE initially filed patent infringement lawsuits before courts in China, Germany, and the UPC in January 2025. In response, Samsung sued ZTE before the UPC and German courts for patent infringement and initiated further FRAND-related proceedings before the US District Court Northern District of California and the German Regional Court of Frankfurt am Main in a strategy of brute force.

### Guidance order

The guidance order is a specific instrument of German civil procedural law that intends to guide the parties of a dispute on how the panel seized will approach certain legal questions. Rather than a single final judgment, no immediate injunction or dismissal results. Instead, the court outlines its standards for evaluating the FRAND defence going forward, indicating these principles will govern subsequent hearings and decisions. Such a guidance order has no immediate binding effect, even not to the parties to the specific proceedings. It outlines the court’s thoughts on how to address certain aspects of the FRAND defence and related issues. Therefore, it has a factual impact beyond the specific case. Considering the current lead of the Munich Regional Court in SEP cases, it is nothing less than a playbook for future FRAND defences raised before that court, and beyond.

### How the Court can deal with foreign proceedings and possible interference – the new comity

The guidance order addresses many basic and very special questions of the FRAND defence, which we do not address in this piece. Rather, we focus on the court’s approach to foreign-related proceedings in the interest of comity, which are as follows:

- The court recognises that foreign judgments such as those from the UK or China carry no binding force for German infringement actions. In Germany, a patent holder may only enforce its rights for the national territory of the Federal Republic of Germany; consequently, a foreign court cannot unilaterally impose global licensing terms that override domestic jurisdiction.
- It is further emphasized that variations in judgments across jurisdictions reflect national

sovereignty, rather than any impermissible overlap. Because injunctive relief is territorially limited to Germany, the court sees no fundamental risk of contradictory decisions if each country respects its own legal remit.

- While foreign courts may set certain interim or worldwide license rates, the German court deems them non-binding unless the defendant (i.e. the SEP proprietor) voluntarily accepts their applicability to Germany. Even then, any purported agreement or acceptance might come under scrutiny if it was made under pressure from the foreign litigation.
- In principle, each state decides patent infringement and remedies within its own territory. The LG Munich I is wary of any foreign proceedings that attempt to negate domestic judicial competence or pressure the SEP holder (defendant in a rate setting proceeding) to accept foreign-determined licensing arrangements. If a party attempts to exploit foreign court proceedings (e.g. seeking an anti-suit injunction abroad) to disrupt or block the enforcement of patent rights in Germany, the LG Munich I notes that countermeasures (i.e. AASI) can be taken in Germany to preserve the local court's authority and ensure uninterrupted enforcement.
- Should a party claim that another is exploiting foreign litigation to forestall the German process, the court will examine whether protective measures, such as anti-anti-suit injunctions (AASIs), are necessary.

## Legal basis for AASIs against foreign rate setting

The court's approach will come as no surprise to those who have been following recent case-law of the Munich Regional Court regarding countermeasures against antisuit injunctions, which have frequently been attempted to block the automatic injunction available under German patent law.

In its guidance order, the Munich court ponders to issue AASIs as a remedy also for foreign rate-setting proceedings aimed at forcing the SEP holder into an interim licence agreement without its consent. From a purely legal point of view, this is understandable, especially if one considers the reasoning behind the anti-antisuit injunctions issued by German courts. German courts consider the patent right to be protected against unjustified interference, not only the rights conferred by a patent. This means that, from a German legal perspective, the rights conferred by a patent include not only measures against the infringement of the patent (i.e. the prohibition of the use of the patented technology without the SEP owner's consent) but also measures to protect the assertion of the patent right.

It is this second meta-layer of protection that is the basis for measures against anti-suit injunctions issued by foreign courts that seek to prevent a SEP owner from enforcing its patents domestically (or from enforcing an injunction that has already been issued), and thus seek to deprive the owner of its right to have a domestic court decide the specific claims based on alleged patent infringement that can be successfully asserted before the seized court.

## How would the UPC decide?

There are strong indications that the UPC, if confronted with the same issue, would follow the approach of the Munich Regional Court. The UPC has already issued AASIs based on the reasoning that foreign courts may not be used to interfere with domestic proceedings in a way that deprives the patentee of the right conferred by the patent to have a domestic court decide on its claims

based on alleged domestic infringement of that patent. Of course, if this is the underlying legal basis, it does not matter what the instrument used to achieve this goal is called, whether it is an anti-suit injunction, an anti-enforcement injunction, or an interim licence, and it will apply to any such measure.

The UPC Mannheim Local Division in *Panasonic vs. OPPO* already touched this question and asked whether declaratory decisions by the UK Court could be considered as “anti-suit relief by the back door”, but did not decide it.

## Viability of the court's approach

While the Munich Regional Court's approach is understandable from a legal perspective, it is unlikely to help solve the puzzle of how to determine the FRAND rate for a particular SEP licensing case and what exactly FRAND is in the absence of agreement between the parties. The Munich Court's approach seems to ultimately shift all power to the SEP owner, who can reject any forced determination by a third party. The background of this view may be that the court considers FRAND to be a range, so that FRAND cannot be unilaterally determined (as explained a few paragraphs earlier in the guidance order).

This ultimate power shift would be acceptable if the market for licensing SEPs functioned like a real market where the implementer (the buyer) can simply reject a given (non-competitive or non-FRAND) offer from the SEP owner (the seller) and choose to licence a competing technology to implement the device. In reality, however, such a market does not exist, since it is precisely the purpose of technical standardisation to eliminate competition between technologies for solving a given technical problem by agreeing on a common solution among competitors.

For the implementer of a given SEP, there is no alternative to the licence agreement but to leave the standardised product market as such and, in this case, the exit could even be enforced by an injunction of a (German) court. The court is mistaken when it refers to the market economy principles on which FRAND royalty rates are based. If market principles indeed determine the FRAND rate, there would have been no need for a FRAND licensing statement and the underlying IPR policies of the SSOs that require such irrevocable commitments when proposing the inclusion of patented technology into the standard.

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