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The FRAND Objection – A Comparative Guide to UPC and German Practice

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Abstract

The FRAND objection – the antitrust defense of compulsory licensing in patent infringement proceedings – with its strategic importance for globally operating corporations has become one of the most high-profile and closely watched questions in European patent litigation. A decade after the Court of Justice of the European Union (CJEU) laid down its negotiation framework in *Huawei v. ZTE*, its precise application remains inconsistent – even prompting the European Commission (EC) to intervene along the way as *amicus curiae* before German courts, pushing for a strictly sequential reading and a renewed referral to the CJEU. This article offers a practitioner-oriented comparative guide to the refined, but in their details by no means uniform, lines of authority developed by the German courts – recently consolidated in early 2026 by the Federal Court of Justice (FCJ), Germany's highest court in patent and antitrust matters, in a decision highly anticipated in the global IP community – and to the evolving case law of the young and upcoming Unified Patent Court (UPC). It further maps strategic developments reshaping the field: counterclaims for rate-setting, proactive antitrust actions for concluding a license, and protective measures against foreign interim-license orders.

Keywords: SEPs; FRAND objection; UPC; German practice; Huawei v. ZTE.

Resumo

A objeção FRAND – a defesa antitruste de licenciamento compulsório em processos de infração de patentes – com sua importância estratégica para corporações que operam globalmente, tornou-se uma das questões mais relevantes e acompanhadas de perto no contencioso de patentes europeu. Uma década após o Tribunal de Justiça da União Europeia (TJUE) ter estabelecido seu quadro de negociação no caso Huawei v. ZTE, sua aplicação precisa permanece inconsistente – levando inclusive a Comissão Europeia (CE) a intervir como *amicus curiae* perante os tribunais alemães, defendendo uma leitura estritamente sequencial e um novo encaminhamento ao TJUE. Este artigo oferece um guia comparativo voltado para profissionais sobre as linhas de

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jurisprudência refinadas, mas de forma alguma uniformes em seus detalhes, desenvolvidas pelos tribunais alemães – recentemente consolidadas no início de 2026 pelo Tribunal Federal de Justiça (TFJ), a mais alta corte da Alemanha em matéria de patentes e antitruste, em uma decisão muito aguardada pela comunidade global de propriedade intelectual – e sobre a jurisprudência em evolução do jovem e promissor Tribunal Unificado de Patentes (UPC). O documento também mapeia os desenvolvimentos estratégicos que estão remodelando o setor: contestações para fixação de tarifas, ações antitruste proativas para a celebração de um contrato de licenciamento e medidas de proteção contraordens estrangeiras de licenças provisórias.

Palavras-chave: SEPs; objeção FRAND; UPC; prática alemã; Huawei v. ZTE.

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1 Introduction

Standards are the invisible infrastructure for technical compatibility in the technical and digital economy. Mobile communications, video and audio codecs, Wi-Fi and automotive connectivity all rest on technical specifications maintained by standardization organizations such as ETSI and the IEEE. Patents (declared) essential to those standards – standard-essential patents (SEPs) – give their owners the power to exclude any maker of standard-compliant products, thereby leading to a dominant position on this relevant market. In exchange, the SEP owner in principle irrevocably commits to the relevant standard-setting organization to grant licenses on fair, reasonable and non-discriminatory (FRAND) terms,[4] giving rise to a legitimate expectation that licenses will in fact be granted on those terms.[5]

From this tension arises the *FRAND objection*. The SEP owner is, in principle, not barred from enforcing its rights through injunctive and related claims.[6] Its dominant position, however, imposes a special responsibility: a refusal to license a genuinely willing implementer on FRAND terms – or the assertion of injunctive claims without first having seriously endeavored to enable such a license – may render those claims an abuse within the meaning of Art. 102 TFEU.[7]

This statutory interference with the patentee's exclusive right, justified by the freedom of market access and the broader societal benefit it creates, imposes one of the most politically charged questions in European patent litigation: how to strike a fair balance between SEP owner and implementer across a wide variety of cases, and how to determine FRAND-compliant behavior and the substance of FRAND-compliant licenses.

Against this backdrop, and in light of the EC's unusual intervention through its *amicus curiae* letters[8] in the German *VoiceAge v. HMD* proceedings – urging a strictly sequential reading of the *Huawei v. ZTE* framework and another CJEU referral – the FCJ's *FRAND Einwand III* decision[9] of early 2026 gained unprecedented attention in the global IP community. Since the FCJ

4. For example: ETSI members must undertake to license their SEPs on FRAND terms as a condition of inclusion of their technology in a standard (ETSI IPR Policy, item 6.1, available for download at https://www.etsi.org/images/files/IPR/etsi-ipr-policy.pdf).
5. CJEU, Decision of 16 July 2015, Case C-170/13, *Huawei Technologies Co. Ltd v ZTE Corp.*, ECLI:EU:C:2015:477, GRUR 2015, 764, paras. 40, 51 et seq., 64 – *Huawei v. ZTE*.
6. CJEU, C-170/13, para. 46 – *Huawei v. ZTE*.
7. Treaty on the Functioning of the European Union, OJ C 326/47.
8. First, on 15 April 2024, to the Munich Higher Regional Court (Case 6 U 3824/22); second, on 11 December 2025, to the FJC (Case KZR 10/25), both available at "competition-policy.ec.europa.eu" (Amicus Curiae submissions).
9. FCJ, Decision of 27 January 2026, Case KZR 10/25, GRUR 2026, 383 – *FRAND-Einwand III*.

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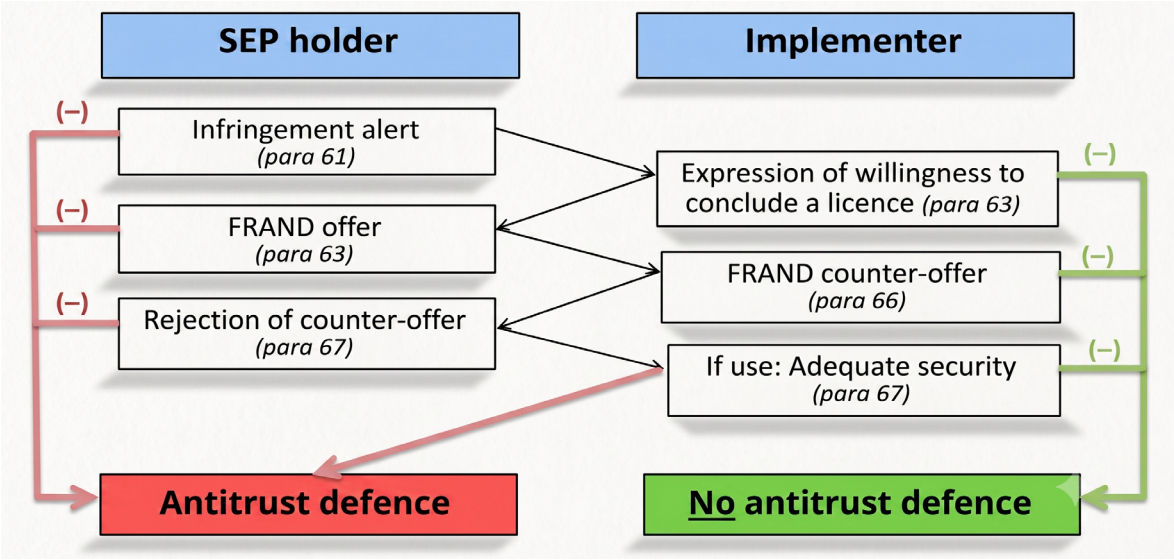
expressly engaged with the evolving case law of the UPC and of the Dutch and English national courts, it is likely to shape not only future German decisions but also the UPC's approach. This article therefore offers a practitioner-oriented comparative guide, tracing the *Huawei v. ZTE* steps (Section II) through German (Section III) and UPC practice (Section IV), mapping the FCJ's answers, isolating the points of genuine divergence (Section V), and situating the recent strategic expansion of FRAND litigation into counterclaims, antitrust contract-formation actions, and cross-border forum defense against foreign interim-license orders (Section VI), before concluding.

2 A brief reminder: the underlying negotiation framework *Huawei v. ZTE*

The CJEU's 2015 decision remains the mandatory underlying framework. An SEP holder who has *given* a FRAND undertaking does not abuse its dominant position by suing for an injunction and related measures – provided it has observed a sequence of obligations, while the implementer has not.[10] The framework imposes reciprocal duties, vividly illustrated by the following figure:

Figure 01. Simplified scheme of the procedural steps[11] of *Huawei v. ZTE*, according to the EC's first *amicus curiae* letter of 15 April 2024 (para. 55)



In short, this process (also called the "FRAND Dance"[12]) begins with a notice of infringement by the SEP holder, designating the patent at issue and the manner of infringement (step 1). If the alleged infringer sufficiently expresses his willingness to take a FRAND license (step 2), the SEP holder must submit a concrete licensing offer specifying the royalty and its calculation (step 3). The implementer may accept that offer or, while continuing to use the patent, respond diligently with a counteroffer in accordance with recognized commercial practices and in good faith – assessed on objective factors, and notably excluding delaying tactics (step 4). If

10. CJEU, Case C-170/13, paras. 55-71 – *Huawei v. ZTE*.
11. The optional sixth step as described in CJEU, Case C-170/13, para. 68 – *Huawei v. ZTE* – third-party determination by mutual consent – is not pursued here.
12. *Burger/Kalbfus*, GRUR-Prax 2025, 131.

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the counteroffer is rejected and use continues, the implementer must promptly provide adequate security – such as a bank guarantee or deposit – calculated to include past acts of use, for which it must be able to render accounts (step 5).[13]

The specific requirements at each step are, however, left to the deciding court under the circumstances of the individual case, producing numerous and at times divergent decisions.[14] This very uncertainty over the "correct" reading of the CJEU's guidelines ultimately prompted the EC to approach[15] the German courts in *VoiceAge v. HMD* to ensure a coherent application of EU antitrust rules (Arts. 101, 102 TFEU) and to push for another CJEU referral – underscoring the legal and economic significance of the dispute.

3 The German line of authority

3.1 *FRAND Einwand III* – refinement of a trilogy

Building on the architecture of the FCJ decisions *FRAND Einwand I*[16] and *II*[17], i.e., the objection as a *dolo agit* defense under Sec. 242 of the German Civil Code (BGB), placing the implementer's *continuing* willingness to license at the center of the analysis, and treating the SEP owner's first offer as the *starting* point rather than the endpoint of negotiations, *FRAND Einwand III* of 27 January 2026 (*VoiceAge v. HMD*) does not break new ground but completes and refines this framework, providing some valuable detailed guidance on the parties' obligations within the FRAND Dance. The legal core remains unchanged: both parties must negotiate in good faith and work swiftly and constructively toward a FRAND license agreement, judged in light of the individual case. Yet even more than before, the FCJ now emphasizes the implementer's duty to engage with the SEP owner. The following takeaways stand out.

First, the FCJ unequivocally adopted a *holistic* view of the *Huawei v. ZTE* steps, confirming the Munich Higher Regional Court:[18] a court need not establish whether VoiceAge's offer was FRAND in every respect before assessing HMD's willingness.[19] The implementer must engage with the offer and work towards a license even where it is (initially) not FRAND, since whether a complex license agreement is FRAND in every detail cannot be assessed without the issues and interests surfaced in negotiations.[20] Compliance with Art. 102 TFEU can be assessed only where both parties have communicated their objections with prompt, substantiated reasoning. The

13. CJEU, C-170/13, paras. 55-71 – *Huawei v. ZTE*.
14. *Burger/Kalbfus*, GRUR-Prax 2025, 131; see also: *Leistner,* GRUR 2025, 193; *Leistner*, GRUR Patent 2024, 328; *Hauck*, GRUR 2026, 631 for detailed analyses in this regard and further references.
15. By invoking Article 15 (3) of Regulation (EC) No 1/2003 (Antitrust Procedure Regulation).
16. FCJ, Decision of 5 May 2020, Case KZR 36/17, *Sisvel v. Haier*, GRUR 2020, 961 – *FRAND Einwand*.
17. FCJ, Decision of 24 November 2020, Case KZR 35/17, *Sisvel v. Haier,* GRUR 2021, 585 – *FRAND Einwand II*.
18. FCJ, GRUR 2026, 383, paras. 38, 47 et seqq. – *FRAND Einwand III*; appellate instance: Munich Higher Regional Court, Decision of 20 March 2025, Case 6 U 3824/22 Kart, GRUR-RS 2025, 5771 – *Sprachsignalcodierer*; first instance: Munich Regional Court I, Decision of 25 May 2022, Case 7 O 14091/19, NZKart 2022, 532 – *Sprachsignalcodierer*; cf. for divergent approaches addressed by the FCJ, *Ibid*., paras. 74 et seqq – *FRAND Einwand III*, e.g. Dusseldorf Higher Regional Court, Decision of 12 May 2022, Case I-2 U 13/21, GRUR 2022, 1136, paras. 181 f. – *Signalsynthese II,* and diverging first-instance courts in *VoiceAge v. HMD*.
19. FCJ, GRUR 2026, 383, paras. 38, 47 et seqq. – *FRAND Einwand III*.
20. *Ibid*, para. 49 et seqq. – *FRAND Einwand III*.

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FCJ therefore rejected the EC's strictly sequential reading and – repeatedly – declined another CJEU referral under the *acte éclairé* doctrine.[21]

Second, a remarkable conceptual inversion: while the injunction is commonly seen as a *last resort* to be averted by negotiation, the FCJ holds that only the exclusionary powers of the patent make the invention a market object at all, and the prospect of injunctive relief is what brings a reluctant user to the table.[22] The injunction does not threaten negotiations – it *enables* them.

Third, the infringement notice (step 1) may be given by an action limited to information, accounts and a declaration of liability, enabling a staged approach to later injunction and recall claims.[23]

Fourth, willingness is a state the implementer must maintain throughout, including after the SEP owner's offer. Crucially, the absence of a definitive refusal does not suffice: the implementer must *positively demonstrate* its willingness.[24] The burden thus rests on the implementer, and the SEP owner's obligations beyond the notice are largely conditional on genuine engagement. Unwillingness can be inferred in particular where the implementer (a) fails to respond swiftly to an offer or (b) fails to provide adequate security after rejection of its counteroffer. Evidence may be – as in this case – a counteroffer made only after many months and inconsistent shifts between lump sum and running-royalty structures.[25]

On security – one of the most crucial issues – the FCJ confirmed that it must be furnished *promptly* after rejection of the counteroffer, both as proof of continuing willingness and as protection against the implementer's insolvency during potentially protracted proceedings.[26] Confirming the Munich Higher Regional Court, HMD's security was insufficient and too late: it had raised counteroffers gradually to USD 1,000,000 and matched the initial security of EUR 10,000 only after the appelate hearing years later.[27] On the *amount*, however, the FCJ deliberately withheld judgment: given the extreme facts (security of roughly one per cent of what the implementer itself regarded as FRAND), no threshold needed to be fixed. The decisive open question in Germany's most active FRAND district thus remains unresolved. The Court did, however, *partly reject* Munich Regional Court I's *partial-payment* doctrine: as long as it remains in dispute *whether*[28] a license will be concluded *and* on what terms, the implementer cannot be required to make actual payments to the SEP holder.[29] It expressly left open whether the Munich Higher Regional Court was right to require security at the level of the SEP owner's *last* offer (as a safe harbor), focusing abstractly on the requirement that security cover the royalties owed – in other words, reach the uppermost end of the FRAND range.

Finally, an unwilling licensee regularly has no disproportionality defense against an injunction.[30]

21. FCJ, GRUR 2026, paras. 62 et seqq – *FRAND Einwand III*, providing a comprehensive analysis of the FRAND case law of CJEU and – available – national courts, specifically the Dutch and UK courts, and UPC case law.
22. *Ibid*, 383, para. 19 – *FRAND Einwand III*.
23. *Ibid*, paras 31 et seqq., 36 et seq. – *FRAND Einwand III*.
24. *Ibid*, para. 45 – *FRAND Einwand III*.
25. *Ibid*, paras. 43 et seqq., 77 et seqq, 83 – *FRAND Einwand III*, also confirming the Munich Regional Court I.
26. *Ibid*, paras. 84 et seqq. – *FRAND Einwand III*.
27. *Ibid*, paras. 92 et seqq. – *FRAND Einwand III*.
28. Exactly this cautious (double) condition has a significant influence, as will be shown in the following section.
29. FCJ, GRUR 2026, 383, para. 89 – *FRAND Einwand III*.
30. *Ibid*, para. 97 et seqq. – *FRAND Einwand III*.

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3.2 The recent Munich refinement: appellate gate-keeping and first-instance innovation

While the FCJ supplied the overarching architecture, it is the Munich courts that have given the German framework recently its sharpest practical contours – though the two instances diverge in detail. In its first ever FRAND case, the Munich Higher Regional Court erected a strict procedural gateway centered on security, whereas the Munich Regional Court I has developed the most granular FRAND jurisprudence in (continental) Europe.

a. The Munich Higher Regional Court: security as a procedural gateway

The decision under review in *FRAND Einwand III* was that of the Munich Higher Regional Court's *Sprachsignalcodierer* (20 March 2025).[31] Its signature contribution is the elevation of security from a mere element of "continued willingness" to a procedural gateway: the court reviews the FRAND conformity of the SEP owner's offer – as a rule – *only if* the implementer has first furnished adequate security.[32]

Two features define this gateway. As to *amount*, absent "recognized business practices" the "appropriate" security must be calibrated to the SEP owner's *last* offer – and, where that offer is a global portfolio license, must cover the worldwide royalty rather than being scaled down to the asserted patent or German territory.[33] As to form, the security must be *qualified*: accompanied by a binding declaration that the SEP owner will receive the secured sum as a license payment should its offer ultimately prove FRAND and the infringement be confirmed by final judgment.[34] Although not derivable directly from *Huawei v. ZTE*, the court grounded this in the demand for an "appropriate" security – one apt to secure the FRAND royalty claim and to foreclose the implementer from "changing its mind" after the court's assessment, leaving the patentee with no more than a weak damages claim. Absent such qualified security, the FRAND objection fails *without any review of the offer at all*.[35]

As shown in Section III.1, the FCJ neither endorsed nor rejected this gate-keeper calibration, leaving only the *amount* expressly open. The Munich Higher Regional Court's model thus survives *FRAND Einwand III* intact but unconfirmed. Two further features round out the court's approach, both flowing from its understanding of the FRAND objection as a *dolo agit* defense. First, since that defense rests on good faith (Sec. 242 BGB), deficiencies at earlier steps can be *healed*: a party engaging in the next negotiation step – for instance, substantive licensing talks despite an arguably defective infringement notice or willingness declaration – is barred from later invoking that earlier defect.[36] Second, as the structural counterpart to its security doctrine, the court treats the implementer's counteroffer as wholly irrelevant. Only the SEP owner's *last* offer matters for the abuse analysis: if it is FRAND, the implementer must

31. Munich Higher Regional Court, Decision of 20 March 2025, Case 6 U 3824/22 Kart, GRUR-RS 2025, 5771 – *Sprachsignalcodierer*, confirming its preliminary indication (*Hinweisbeschluss*) of 30 October 2024, GRUR-RS 2024, 30064. For details, see for example *Burger/Kalbfus*, GRUR-Prax 2025, 131; *Donle*, GRUR 2025, 746.
32. *Ibid*, Headnotes 4 and 5 – *Sprachsignalcodierer*; further, *Hinweisbeschluss* of 30 October 2024, GRUR-RS 2024, 30064, paras. 35 et seqq.
33. *Ibid*, Headnote 4, para. 141– *Sprachsignalcodierer.*
34. *Ibid*, Headnote 4, para. 144 – *Sprachsignalcodierer.*
35. *Ibid*, Headnote 5, para. 144 – *Sprachsignalcodierer.*
36. *Ibid, Headnote 3, paras. 93 et seqq.,* paras. 103 et seqq. (infringement notice; left open by FCJ, GRUR 2026, 383 para. 37), 111 et seq. (willingness declaration) – *Sprachsignalcodierer.*

accept it; if not, the injunction fails regardless of any counteroffer.[37] Security is therefore pegged exclusively to the SEP owner's last offer – the counteroffer, on the court's logic, being the wrong yardstick, since it never becomes the operative measure of the dispute.[38]

b. The Munich Regional Court I: first-instance innovation

Since its guidance order of 14 July 2025, the 7th Civil Chamber of the Munich Regional Court I has produced a remarkably dense series of decisions operationalizing the FRAND framework with a precision unmatched in Europe.[39] Only a brief overview of the key points is possible here.

A dual conception of willingness. In *Avago v. Renault*, the 7th Chamber distinguished *outer* willingness – the absence of obvious hold-out, evidenced by undisputed payment and provision of security – from *inner* willingness, the genuine readiness to accept a FRAND-corridor offer.[40] Only after outer willingness is shown does the court examine the offer; if a FRAND offer is then rejected, inner willingness is lacking.

Partial payment – and a conditional revival. The most distinctive – and most contested – innovation is the *partial-payment obligation*: where the parties agree that *some* royalty is due and dispute only its amount, the implementer must *pay* the undisputed minimum to the SEP owner as a kind of down payment, not merely secure it, since the patentee needs liquidity rather than a frozen guarantee.[41] As Section III.1 noted, this is the very doctrine the FCJ *partly* disapproved. Yet the Chamber has not abandoned it. Reading the FCJ's conditional wording narrowly – that no payment may be required "so long as it remains open *whether and* on what terms a license will come about" – the Chamber reasons in *Avago v. Renault* that where the implementer has offered a *minimum amount*, it is no longer open *whether* a contract will arise but only *on what terms*; the FCJ's restriction therefore does not bite, and the partial-payment obligation revives. The Chamber thus formally observes the FCJ's holding while preserving its own line through the interstice the FCJ left open. [42]

Determining the FRAND corridor with comparables. *Avago v. Renault* translated the abstract notion of a FRAND "range" into a workable calculation method, but only after defining when a license qualifies as a *comparable*. Three criteria are decisive: the licensed patent portfolio, the scope of the license (the licensee's economic size), and the comparability of the licensed products.[43] Where comparables exist, the permissible range extends to the *threefold* of the lowest comparable rate, or ±50 % around a mean. Differentiation within that range is permissible only on objective grounds – otherwise it amounts to discrimination. Typical justifying factors are the

37. *Ibid*, paras. 124 et seqq. – *Sprachsignalcodierer.*
38. *Ibid*, paras. 137 et seqq. – *Sprachsignalcodierer.*
39. Munich Regional Court I, *Hinweisbeschluss* of 14 July 2025, Cases 7 O 64/25 and 7 O 2750/25, GRUR-RS 2025, 19196 – *Mobilfunktechnologie.*
40. Munich Regional Court I, Decision of 5 February 2026, Case 7 O 7655/25, *Avago v. Renault*, GRUR-RS 2026, 2292, headnote 2 – *FRAND-Korridor.*
41. Munich Regional Court I, Decision of 8 January 2026, Case 7 O 5007/25, *Wilus v. ASUS*, GRUR-RS 2026, 791, headnote 1 – *ASUS I.*
42. Munich Regional Court I, GRUR-RS 2026, 2292, headnote 2 – *FRAND-Korridor*, headnote 1 negating the impact of *FRAND Einwand III*, paras 117 et seq., reading FCJ, GRUR 2026, 383, para. 89 – *FRAND Einwand III.*
43. Munich Regional Court I, GRUR-RS 2026, 2292, headnote 3, para. 131 – *FRAND-Korridor.*

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scope of the license (volume, duration) and the implementer's negotiating conduct, since swift conclusion reduces the patentee's effort and may legitimately be reflected in the rate.[44]

The outcome turns less on the corridor's width than on the valuation of the mean, which the Chamber treats as evaluative rather than arithmetic. The comparable unit rate is taken as the mean only *in case of doubt*; where less comparable agreements show higher rates, the comparable rate is read as a *favorable* one lying below the mean, shifting the corridor upward.[45] The range narrows further where a concrete transaction with a competitor of *similar size and products* exists: the non-discrimination principle then caps any upward deviation at 15 % above that competitor's rate, provided the licensees behaved comparably.[46]

Top-down as a primary method. In *ZTE v. Samsung*[47], absent comparables, the Chamber deployed a full top-down calculation as the first-order tool – the first European court to do so other than as a cross-check. It expressly distinguished *ASUS I* (*Wilus v. ASUS*): there, a *pool license* was at issue, and because the rate demanded did not exhaust the pool's licensing potential, the court could work with approximations in the defendant's favor. No such shortcut was possible here, since the SEP owner's offer largely exhausted the FRAND range and required full computation.[48] Crucially, the Chamber retained its *reviewing* posture even when calculating: it determined not a point figure but a corridor, transposing the *Avago v. Renault* ±50 % mechanism onto a top-down mean, while noting that the 15 % non-discrimination ceiling – specific to comparables – has no role in a first determination. The operative formula is a product-specific per-unit value × an aggregate royalty burden for the entire standard × the patentee's portfolio share – the latter *including patent applications*, on the forward-looking rationale that the license addresses the future.[49]

Supplementary security and foreign rate-setting. Alongside the partial payment, *ASUS I* [50] introduced – confirmed in *ASUS II*[51] – a *supplementary* security, required where the implementer's offer falls below 60 % of the patentee's demand *and* the difference exceeds USD 10 million, set at the value of one license year (regarding lump sums). The Chamber added a pointed rider for cross-border constellations: an implementer that has sought a rate determination abroad must furnish, as additional security, the amount determined there – irrespective of whether it accepts that determination.[52] In the Chamber's worked example, where the parties' positions for a five-year license stand at 30 and 100, and a foreign interim-license decision provides for 10 to be paid outright and 50 as security, the firmly payable amount is raised to 30 (the implementer's own undisputed offer, payable under the partial-payment obligation), while the *additional* security is calibrated to the foreign determination, yielding a supplementary security of 30.[53] The mechanism thus combines partial-payment (the undisputed minimum paid outright) with

44. *Ibid*, paras. 132 et seqq. – *FRAND-Korridor.*
45. *Ibid*, headnotes 3-7, paras. 135 et seqq. – *FRAND-Korridor.*
46. *Ibid*, headnote 8 and 9, paras. 138 et seq. – *FRAND-Korridor.*
47. Munich Regional Court I, Decision of 30 April 2026, Case 7 O 64/25, *ZTE v. Samsung*, GRUR-RS 2026, 8886 – *Kanalqualitätsanzeige*.
48. *Ibid*, paras. 127 et seq. – *Kanalqualitätsanzeige*.
49. *Ibid*, paras. 129-140 – *Kanalqualitätsanzeige*.
50. Munich Regional Court I, GRUR-RS 2026, 791, paras. 109 et seq. – *ASUS I.*
51. Munich Regional Court I, Decision of 22 January 2026, Case 7 O 4102/25, *Nokia v. ASUS*, GRUR-RS 2026, 1112, paras. 116 et seqq. – *ASUS II.*
52. Munich Regional Court I, GRUR-RS 2026, 791, paras. 111 et seq. – *ASUS I; Ibid – ASUS II.*
53. *Ibid*, para. 112 – *ASUS I*, confirmed in *ASUS II.*

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a top-up security keyed to the foreign rate-setting, ensuring that an implementer cannot use a foreign forum to lower its European exposure below what it has itself conceded.

An evidentiary innovation. Finally, in *Decodiervorrichtung*[54], the 7th Chamber addressed the recurrent problem of access to third-party comparables, combining an independent evidence-taking procedure with an interim order compelling the patentee to tolerate production of comparable agreements – a procedural device designed to break the customary confidentiality impasse. Yet because this novel, as-yet-unconfirmed procedure rests strictly on consensus, the SEP owner effectively controls which documents are produced – markedly less effective than, for instance, discovery under 28 U.S.C. § 1782.

Taken together, the Munich picture is highly active, though whether all these inventive approaches will endure remains to be seen. In any event, even after *FRAND Einwand III*, the two models – appellate gate-keeping (qualified security pegged to the patentee's offer) and the first-instance model (partial payment plus tailored supplementary security) – will continue to coexist, despite the FCJ's partial disapproval. Through careful reading of the FCJ's own conditional language, the Munich Regional Court I has contrived to maintain – by ensuring the "whether" of a license remains a mere theoretical chance – and further refine its granular system.

4 The evolving UPC case law

The UPC's first FRAND judgments – *Panasonic v. Oppo* (Local Division [LD] Mannheim, 22 November 2024),[55] *Huawei v. Netgear* (LD Munich, 18 December 2024)[56] *Dolby v. Beko* (LD Dusseldorf, 18 March 2026)[57] and *InterDigital v. Disney* (LD Mannheim, 16 June 2026)[58] – have firmly established the new court's significance for the resolution of global SEP disputes. They share a common foundation and diverge only at the margins. Compared with German national case law and the EC's position, the (German) UPC LDs so far chart a path in between, with the LD Mannheim leaning closest to the CJEU and EC.

4.1 Common ground across these German Local Divisions

The foundations are settled. All three LDs accept that the UPC applies EU law in full and is bound by CJEU case law – including *Huawei v. ZTE* – under Arts. 20 in conjunction with 24(1)(a) and 21 sentence 2 UPCA.[59]

Two features stand out. First, the LDs have aligned closely with the continental – above all German – line of authority, which has produced by far the largest body of FRAND case law in Europe.[60] They read *Huawei v. ZTE* not as a rigid, strictly sequential checklist but as a binding negotiation program whose primary purpose is to establish reciprocal obligations serving to

54. Munich Regional Court I, Decision of 26 March 2026, Case 7 O 4101/25, *Nokia v. ASUS*, GRUR-RS 2026, 8382, headnotes 1-4 – *Decodiervorrichtung*.

55. LD Mannheim, Decision of 22 November 2024, UPC_CFl_210/2023 – *Panasonic v. Oppo*.

56. LD Munich, Decision of 18 December 2024, UPC_CFl_9/2023, GRUR-RS 2024, 35919 – *Huawei v. Netgear*.

57. LD Dusseldorf, Decision of 18 March 2026, UPC_CFI_135/2024, UPC_CFI_477/2024 – *Dolby v. Belko*.

58. LD Mannheim, Decision of 16 June 2026, UPC_CFl_86/2025 – *InterDigital v. Disney*.

59. Previously not established with this clarity, see: *Leistner*, GRUR Patent 2024, 328.

60. *Kommer*, GRUR Patent 2025, 152 (156); also *Leistner*, GRUR 2025, 193 (195), noting the UPC's seamless with Member States, citing Gerechtshof Den Haag, Decision of 24 December 2019, Zaaknr. 200.233.178/01,

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assess whether the patentee's injunction and recall rights are subject to antitrust-law constraints; the determination of a FRAND rate is merely one component of that broader program.[61] The LDs thus adopt the same dual behavioral/substantive character recognized by the German national courts, and none saw cause to refer questions to the CJEU.[62] The LD Dusseldorf recently joined this consensus on the fundamentals, including a flexible, non-formalistic reading of step 1 (infringement notice) and step 2 (willingness) – though it declined initial willingness in the case at hand, since the implementer remained silent for two and a half months, and a declarative phrase in a court submission concerning a zero-rate plan because of *another* already licensed standard was not deemed "serious".[63] The LD left open, whether it would have been precluded.

Both other German LDs further converge on the preclusion of implementer objections: the depth of the court's review of the SEP owner's conduct turns on which points the implementer raised *during negotiations*, and objections developed for the first time in the proceedings – under the looming threat of an injunction – do not suffice.[64] As the LD Mannheim made clear, a defendant cannot retrospectively justify its lack of constructive pre-litigation engagement by subjecting the now-available material to a privately commissioned expert assessment and deriving fresh objections in court. Except in extremely rare cases, the implementer is obliged to respond to the SEP owner's offer and at least raise objections and request corrections.[65] An implementer who withholds substantive criticism until litigation thus risks being precluded.[66]

Moreover, of growing practical importance, the LD Mannheim has confirmed that the UPC's jurisdiction extends beyond the defensive setting to the implementer's *FRAND counterclaim* for the judicial determination of a global license, anchored in Art. 32(1)(a) UPCA (see Section VI).[67]

4.2 The structural divergence

Where the LD Mannheim parts company with the LD Munich – and also with the German national courts – is on a single but decisive question: whether the SEP owner's offer must *always* be reviewed for FRAND conformity once the implementer has shown willingness, or whether the court may first examine whether the *implementer* has met its own obligations – in particular, providing adequate security – and reject the objection without reaching the offer.

ECLI:NL:GHDHA:2019:3537, paras. 4.167 et seqq. – *Philips v. Wiko*; Gerechtshof Den Haag, Decision of 24 December 2019, Zaaknr. 200.233.166/01, ECLI:NL:GHDA:2019:3535, paras. 4.146 et seqq. – *Philips v. ASUS*.

61. LD Mannheim, UPC_CFl_210/2023, paras. 188 et seqq. – *Panasonic v. Oppo;* LD Munich, UPC_CFl_9/2023, GRUR-RS 2024, 35919, paras. 296 et seqq. – *Huawei v. Netgear*; LD Dusseldorf, UPC_CFI_135/2024, UPC_CFI_477/2024 – *Dolby v. Beko*, paras. 452 et seqq., 472.
62. LD Mannheim, UPC_CFl_210/2023, para. 190 – *Panasonic v. Oppo;* LD Munich, UPC_CFl_9/2023, GRUR-RS 2024, 35919, paras. 298 – *Huawei v. Netgear;* Critical of this in general *Leistner*, GRUR 2025, 193 (201 et seqq.); LD Dusseldorf, UPC_CFI_135/2024, UPC_CFI_477/2024 – *Dolby v. Beko*, para. 500.
63. LD Dusseldorf, Ibid, para. 489 et seqq. – Dolby v. Beko.
64. LD Munich, UPC_CFI_9/2023, GRUR-RS 2024, 35919, para. 307 – *Huawei v. Netgear*, endorsing LD Mannheim, UPC_CFI_210/2023, paras. 202, 223 – *Panasonic v. Oppo.*
65. LD Dusseldorf, *Ibid*, para. 201, 223 – *Panasonic v. Oppo*; agreeing LD Munich, *Ibid*, para. 307 – *Huawei v. Netgear*, both with reference to FCJ, GRUR 2021, 585, para. 71 – *FRAND Einwand II*; Karlsruhe Higher Regional Court, Decision of 2 February 2022, Case 6 U 149/20, GRUR 2022, 1145, paras. 152 et seqq. – *Steuerkanalsignalisierung II*.
66. See also *Burger*, GRUR-Prax 2025, 75.
67. LD Mannheim, UPC_CFl_210/2023, paras. 237 et seqq. – *Panasonic v. Oppo*; recently confirmed LD Mannheim), Decision of 29 April 2026, UPC_CFI_850/2024, paras. 42 et seqq. – *ZTE v. Samsung*; agreeing LD Munich, UPC_CFl_9/2023, GRUR-RS 2024, 35919, para. 317 – *Huawei v. Netgear.*

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The LD Mannheim insofar aligns with the EC and takes the former view, pointing to the significant risk that the required review of the offer made by the SEP owner – who is bound by antitrust law – would be omitted entirely or, at best, conducted only cursorily, thereby "failing to do justice to the CJEU's judgment".[68]

Remarkably, the LD Munich explicitly acknowledges this concern as "correct" but holds the outcome consistent with *Huawei v. ZTE*, paras. 66–67.[69] It refers the implementer to alternative routes – a separate antitrust or contract action, or a FRAND counterclaim before the UPC (citing *Panasonic v. Oppo*). Drawing on paras. 65–67 and 71, the LD Munich reads the CJEU framework as primarily concerned not with *how* a FRAND royalty is calculated, but with the prior question whether the SEP owner has abused its dominant position by suing without complying with the two conditions of para. 71.[70] Even where the offer is not FRAND, an implementer continuing to use the patent and making a counteroffer must – once that counteroffer is rejected – nonetheless provide adequate security and render accounts.[71] The accounting allows financial evaluation of the counteroffer; the security ensures the SEP owner can ultimately recover royalties or damages.

It follows that before examining FRAND conformity of the offer, the court must regularly first ask whether the implementer has satisfied the preconditions entitling it to that examination.[72] Where security or accounts are missing, the objection is rejected without any review of the offer – a gate-keeper logic placing the LD Munich markedly closer to the Munich Higher Regional Court than to its LD Mannheim counterpart.

On the *amount* of security, the LD Munich set the floor at the level of the implementer's counteroffer and left open whether calibration to the (higher) SEP owner's offer is required, since the defendants had provided no security at all. On the *qualified nature* of security, however, the LD Munich aligned with the Munich Higher Regional Court:[73] the implementer must, by a binding declaration accompanying the security, ensure that the SEP owner will receive the secured sum as a license payment should any offer ultimately prove FRAND and infringement be confirmed by final judgment. Though acknowledging that this is not directly derivable from *Huawei v. ZTE*, the LD Munich grounded it – like the Munich Higher Regional Court – in the demand for "appropriate" security apt to secure the FRAND royalty claim (parallel in Section III.2.a).

Where the SEP owner has made two parallel offers – bilateral and pool license – the security corresponds to the offer for which a counteroffer was made, with the securing purpose framed in favor of both patentee and pool.[74] Without such security, a precondition under *Huawei v. ZTE* is missing and the objection fails.[75] On *healing*, the LD Munich – again following the Munich Higher Regional Court – left open whether compliant security together with accounts might cure earlier negotiation deficiencies, since none of these obligations had ever been fulfilled.[76]

68. LD Mannheim, UPC_CFl_210/2023, paras. 198 et seqq. – *Panasonic v. Oppo.*
69. LD Munich, UPC_CFl_9/2023, GRUR-RS 2024, 35919, paras. 317 – *Huawei v. Netgear.*
70. *Ibid*, paras. 314 et seq. – *Huawei v. Netgear.*
71. *Ibid*, para. 316 – *Huawei v. Netgear.*
72. *Ibid*, para. 317 – *Huawei v. Netgear.*
73. *Ibid*, paras. 318 et seq. – *Huawei v. Netgear*, referring to Higher Regional Court Munich, *Hinweisbeschluss* of 30 October 2024, GRUR-RS 2024, 30064, para. 32, 36.
74. *Ibid*, para. 320 – *Huawei v. Netgear.*
75. *Ibid*, para. 321 – *Huawei v. Netgear.*
76. LD Munich, UPC_CFl_9/2023, GRUR-RS 2024, 35919, para. 322, referring to the Munich Higher Regional Court, GRUR-RS 2024, 30064, para. 33; further confirmed in its subsequent decision of 20 March 2025, GRUR-RS 2025, 5771 – *Sprachsignalkodierer.*

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The LD Dusseldorf in late April 2026 left the Mannheim/Munich divergence explicitly open, having already declined initial willingness at step 2 (see above).[77]

4.3 FRAND objection without FRAND commitment?

A further point of genuine interest arises from *Dolby v. Beko*, where – unlike most cases – the SEP owner had given *no* FRAND undertaking at all. The LD Dusseldorf rightly held that this does not affect the applicability of Art. 102 TFEU: a dominant position and the resulting special responsibility derive from the market power the standard confers, not from the formal declaration.[78] The absence of a FRAND commitment thus does not exempt the patentee – at least not from antitrust-law scrutiny.

The LD (and most recently also LD Mannheim in *InterDigital v. Disney*) then briefly raised a more delicate question: whether the FRAND objection – and thus the *Huawei v. ZTE* framework, built on good faith and the legitimate expectations created by a FRAND undertaking – can be transposed *without modification or at all* to a constellation lacking such an undertaking.[79] Rather than answering, both LDs maneuvered around it and ultimately left it open, since the FRAND objection failed anyway.[80]

5 Comparative guide: the nuances at each step

This section sets the German and UPC lines side by side along the five steps of the *Huawei v. ZTE* framework. Steps 1, 2 and 4 are largely settled; the controversy concentrates on the review of the SEP owner's offer (step 3) and on security (step 5).

5.1 Infringement notice

Near-complete convergence. The FCJ, both Munich courts and all three LDs impose only low formal requirements: a claim chart naming the asserted patent suffices, even one covering a family member, and the EC's demand for a self-contained explanatory letter is rejected everywhere. Two refinements stand out: the FCJ confirmed that a staged action for information, accounts and a declaration of liability can itself serve as the notice, removing any premium on formal warning letters; and the LD Munich fixes the relevant moment as the filing of the *specific* patent action, so that earlier deficiencies in other actions remain curable.

5.2 Declaration of (initial) willingness

All courts treat willingness as a continuing state rather than a one-off formula and look to subsequent conduct; a defendant claiming to be "in principle" willing while treating a zero royalty as FRAND does not qualify. *FRAND Einwand III* sharpens this by placing the burden of proof on the implementer – absence of a definitive refusal is no longer enough. The residual

77. LD Dusseldorf, UPC_CFI_135/2024, UPC_CFI_477/2024 – *Dolby v. Beko*, para. 484.
78. *Ibid*, paras. 469 et seq. – *Dolby v. Belko.*
79. *Ibid*, para. 470 – *Dolby v. Belko*; LD Mannheim, UPC_CFl_86/2025, para. 221 – *InterDigital v. Disney* (application to a "de facto" standard: "far from being settled").
80. *Ibid*, paras. 471 et seqq. – *Dolby v. Belko*; *Ibid*, para. 222 – *InterDigital v. Disney.*

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nuance: while partly agreeing with the EC, the LD Mannheim keeps subsequent conduct fully in play as a reciprocal, intensifying build-up to the review of the FRAND offer. Invoking an NDA clause, for example, and refusing to mutually lift confidentiality – thereby preventing the SEP holder from disclosing its offer and negotiation history – leads to "unwillingness".[81] *Dolby v. Beko* shows the possible stakes – two and a half months of silence can end the analysis.[82]

5.3 The SEP owner's offer and its review – the central divergence

The LD Mannheim insists that, once willingness is shown, the offer must *always* be reviewed in its negotiation context – closer to the CJEU's reciprocal design and the EC. The LD Munich and the Munich Higher Regional Court take the opposite, *gate-keeper* model: no review unless the implementer has first furnished qualified security – more efficient but risking to shield an inflated offer from scrutiny (a risk not yet materialized). The Munich Regional Court I reviews the offer, but only after *outer* willingness has been shown through payment and (where applicable) supplementary security. The FCJ rejected the strictly sequential reading – FRAND need not be established before willingness is assessed – but by leaving the amount of security open, declined to resolve which model prevails. This is the single most consequential open question in European FRAND law. The FCJ merely emphasized that the SEP owner's initial offer need not be FRAND in every respect, since licensing offers are complex and serve as "only the starting point" of a reciprocal negotiation and information-gathering process leading toward FRAND.

A subtle but important corollary: for the Munich Higher Regional Court the implementer's *counteroffer is irrelevant* – only the SEP owner's last offer governs the abuse analysis, which is why security too is pegged to that offer. The Munich Regional Court I does the structural opposite, using the counteroffer as the reference point for partial payment.

5.4 The counteroffer

The counteroffer performs several distinct functions, and the courts differ markedly in the weight they attach to it. On *content and timing*, all agree it must engage genuinely and rest on the implementer's *own* disclosed figures rather than third-party market data – for the LD Mannheim's reciprocal approach especially, the counteroffer is a substantial part of the information exchange. The CJEU already required diligent response within a short period and without delaying tactics.[83] For the FCJ (and the Munich Regional Court I) in *FRAND Einwand III*, a counteroffer submitted only some eight months after the SEP owner's offer, combined with inconsistent switching between lump-sum and running-royalty structures, was itself evidence of *unwillingness* – feeding directly back into step 2.

As a *benchmark*, the counteroffer expresses what the implementer itself regards as FRAND. The Munich Regional Court I uses it as the reference point both for the *partial payment* of the undisputed minimum and for the *supplementary security* – the implementer cannot later disown the figure it advanced.[84] The LD Munich uses it to set the minimum amount of security.

81. LD Mannheim, UPC_CFl_86/2025, para. 248 – *InterDigital v. Disney.*
82. LD Dusseldorf, UPC_CFI_135/2024, UPC_CFI_477/2024, para. 487 – *Dolby v. Belko.*
83. CJEU, C-170/13, para. 65 et seqq. – *Huawei v. ZTE.*
84. Munich Regional Court, GRUR-RS 2026, 791, headnote 1, paras. 109 et seqq. – A*SUS I.*

The Munich Higher Regional Court, the outlier, treats the counteroffer as wholly immaterial to the final assessment: only the patentee's *last* offer governs the abuse analysis, which is why security too is pegged to that offer.

5.5 Security – the practitioner's pivotal variable

Here the divergence is sharpest. The Munich Higher Regional Court / LD Munich model demands qualified security at the SEP owner's last offer (LD Munich: at least the counteroffer), accompanied by a binding declaration to accept that offer should it prove FRAND – functioning as a gate-keeper. The Munich Regional Court I model requires instead a partial payment of the undisputed minimum directly to the owner (for liquidity), plus supplementary security where the offer falls below 60 % of the demand and the gap exceeds USD 10 million. The LD Mannheim's *Panasonic v. Oppo* offers little concrete guidance beyond requiring the security to be genuinely insolvency-proof – Oppo's bank guarantee failed on precisely this point, as its terms would have required the insolvency administrator's consent to any drawdown, risking total loss in insolvency.[85] The FCJ confirmed function (proof of willingness plus insolvency hedge) and timing ("promptly"), but left the amount open.

Three further nuances complete the picture. On *healing*, the Munich Higher Regional Court, on the *dolo agit* logic, treats deficiencies at steps 1–2 as cured once the other party proceeds with the next negotiation step; whether qualified security can likewise heal earlier negotiation deficiencies was flagged but left open – similarly by the LD Munich. On *cross-border top-up*, the Munich Regional Court I requires an implementer that has sought a foreign rate determination to secure that foreign amount on top of its partial payment, so that a foreign forum cannot lower its European exposure below its own conceded minimum. On *persistence after the FCJ*: although the FCJ partly disapproved partial payment, the Munich Regional Court I has preserved it by reading the FCJ's conditional wording narrowly – where a minimum amount is offered, it is no longer open *whether* a contract will arise, only *on what terms*.

6 The implementer's offensive routes and forum defense against interim licenses

The FRAND objection is no longer purely defensive: implementers now have strategic options to proactively shift the odds of their FRAND defense. The LD Mannheim has repeatedly – joined by the LD Munich – held the implementer's FRAND counterclaim for a global determination, and for the conclusion of a license, admissible under Art. 32(1)(a) UPCA.[86]

The Frankfurt Regional Court in February 2026, entertained for the first time a free-standing antitrust action for the conclusion of a (true compulsory) license admissible in principle but only where the implementer's own offer sits at the *upper end* of the corridor. Only then is refusal an abuse under Art. 102 TFEU, grounding a removal claim under §§ 33, 33a German Competition Act (GWB).

85. See LD Mannheim, UPC_CFl_210/2023, para. 203, 234 – *Panasonic v. Oppo*.

86. *Ibid*, headnote 6, paras. 237 et seqq. – P*anasonic v. Oppo*; confirmed, UPC_CFI_850/2024, paras. 42 et seqq. – *ZTE v. Samsung;* LD Munich, UPC_CFI_9/2023, GRUR-RS 2024, 35919, para. 317.

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The two routes can collide. In *ZTE v. Samsung*, the LD Mannheim yielded (same patent) to the earlier-seized Frankfurt proceedings on *lis pendens* grounds, applying Art. 29 Brussels Ia Regulation by analogy to concurrent UPC and national proceedings.[87]

For implementers, these developments open a genuinely *offensive* toolkit – particularly where they wish to engage proactively, choose between fora (jurisdiction permitting) and apply pressure on the SEP owner, since there is no clearer way to demonstrate willingness to take a license on FRAND terms. This may also ultimately push toward arbitration.

A final, fast-moving development cuts across the entire framework. Since late 2024, implementers have sought to neutralize (continental) European enforcement by obtaining interim-license orders abroad – from the English courts (*Panasonic v. Xiaomi* and its progeny) and from Chinese rate-setting tribunals (notably the Hangzhou Intermediate People's Court), the latter backed by daily penalties. Whatever their formal label, these orders pressure the SEP owner to accept an unreviewed global rate and thus operate, in substance, as anti-suit injunctions against parallel European proceedings: a SEP owner who proceeds is held in contempt and faces severe penalties in the foreign forum.[88]

The practically significant point is the parallel, mutually reinforcing response of both European systems. On 20 April 2026 – for the second time on the same day – the LD Mannheim (*Nokia v. Geely*) and the Munich Regional Court I issued coordinated *anti-interim-license injunctions* (AILIs), each forbidding the implementer from pursuing the foreign interim license insofar as it touched European territory, and each backed by substantial penalties (up to EUR 50 million before the LD Mannheim; an *Ordnungsgeld* of up to EUR 250,000 before the Munich Regional Court I).[89]

Practical consequences for both sides. For the SEP owner, the AILI has become an important defensive instrument: a patentee facing a foreign interim-license application can obtain rapid, *ex parte* protection in Europe, and the threat of a foreign license defense no longer reliably forces it to the table on infra-FRAND terms. For the implementer, the calculus shifts in two ways. First, forum-shopping through London or Hangzhou to manufacture a global license defense now carries an immediate European cost and risks being characterized as the very bad-faith conduct that defeats *willingness* – feeding back directly into step 2. Second, the *legitimate* offensive routes remain open: an implementer genuinely seeking global determination should pursue a FRAND counterclaim before the UPC or a contract-formation action before a competent national antitrust court, rather than an extraterritorial interim order. The former – regardless of ultimate success (rate should be set low) – can be treated as good-faith engagement and as effective pressure on the SEP owner; the latter as a hostile measure to be enjoined.

7 Conclusion

The comparative survey yields a landscape at once converging and fractured. The common foundation is secure: *Huawei v. ZTE* binds all courts, FRAND is everywhere understood as both a behavioral program and a substantive corridor, and the EC's strictly sequential reading

87. See LD Mannheim, UPC_CFI_850/2024, headnotes 1 and 2, paras. 44 et seqq. – *ZTE v. Samsung.*

88. *Panasonic v. Xiaomi*, [2024] EWCA Civ 1143, paras. 90, 100; on the Chinese practice, LD Mannheim, Order of 22 December 2025, UPC_CFI_936/2025, GRUR 2026, 313, para. 56 – *InterDigital v. Amazon*.

89. LD Mannheim, Order of 20 April 2026, UPC_CFI_1291/2026 – *Nokia v. Geely*; Munich Regional Court I, Order of 20 April 2026, Case 7 O 2968/26, GRUR-RS 2026, 8380.

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has almost uniformly been rejected. *FRAND Einwand III* confirms rather than transforms this picture. Not the groundbreaking change some might have anticipated, it nonetheless consolidates the German line and settles the general understanding of the *Huawei v. ZTE* framework – its real contribution lying in re-centering the analysis on the implementer's continued willingness within a holistic negotiation framework, in shifting the burden of proof, and in its striking conception of the injunction as the *enabler* of licensing. Through its express engagement with other European jurisdictions and the UPC, the decision further signaled a clear positioning against the EC likely to prove durable; since FRAND disputes rarely reach the highest courts.

Yet the courts diverge on the two questions that decide most cases: whether the SEP owner's offer must be reviewed at all (step 3), and how security is to be calibrated and qualified (step 5). The single most consequential strategic decision in European SEP litigation has, to some extent, become the choice of forum. Several caveats frame this picture.

The UPC findings are provisional. The case law analyzed here stems exclusively from the German LDs, whose panels are staffed predominantly by former members of the German national patent-infringement chambers. Their reading of *Huawei v. ZTE* therefore lies, to this point and unsurprisingly, close to the national German understanding.

What unites the courts, in sharp contrast to the English approach, is a shared tendency to avoid a substantive review of the SEP owner's FRAND offer wherever possible – true of the UPC (save the LD Mannheim's middle-ground approach) and the German national courts alike. The emerging exception is the Munich Regional Court I, which, through increasingly elaborate calculation models and a growing readiness to approach rate-setting,[90] has placed itself at the center of German FRAND litigation and is likely, due its high success rates, to remain there.

The Munich Regional Court I also continues largely undeterred. Despite *FRAND Einwand III*, the 7th Civil Chamber has preserved its partial-payment doctrine by reading the FCJ's conditional wording narrowly. The open flank is conceptual: it remains difficult to see when, in the court's view, the "*whether*" of a license – especially over a large SEP portfolio – could ever genuinely be in doubt, which is precisely what would trigger the FCJ's restriction. The 21st Civil Chamber's recent decision – the *first successful FRAND objection in the court's history* –[91] raises whether this is an outlier (cross-licensing) or signals a divergence from the 7th Chamber's line.

Finally, what will *not* resolve the open questions is a further reference to Luxembourg. The FCJ's refusal to refer made that clear: the CJEU can give only general principles, not the case-by-case calibration of the endless variety of portfolios and markets demands. The likeliest source of coherence is the UPC Court of Appeal. Until it speaks, the European FRAND landscape will continue to reward those who understand not only its rules but the strategic geography of the courts in which they apply – and the very different consequences of being litigated before the 7th Chamber in Munich, before the LD Mannheim or LD Munich, or before the Frankfurt Regional Court. For implementers, however, the practical message after *FRAND Einwand III* is unambiguous: requirements in Germany are high, the burden of proving willingness rests on them, and their obligations – which may *intensify* over the negotiation and vary by forum – must be met early, attentively and swiftly.

90. Munich Regional Court I, GRUR-RS 2026, 8886, para. 170 et seqq. – *Kanalqualitätsanzeige* (indicating the Chamber's willingness to approach a rate determination)

91. Reported by *Mueller, ZTE makes standard-essential patent HISTORY as first-ever defendant to prevail on FRAND defense in Munich (against Samsung)*, *ip fray*, 26 March 2026.

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