Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC_CFI_414/2024

Procedural Order

of the Court of First Instance of the Unified Patent Court

issued on 5 December 2025

<u>CLAIMANT</u>

Centripetal Limited, Galway Technology Centre, Mervue Business Park -7XPF+6C -Galway –IE

Represented by Ralph Nack

<u>DEFENDANTS</u>

1)	**Keysight Technologies, Inc.** (Applicant) - 1400 Fountaingrove Parkway - 95403 - Santa Rosa - US	Represented by Klaus Haft
2)	**Keysight Technologies Deutschland GmbH** (Applicant) - Herrenberger Straße 130 - 71034 - Böblingen - DE	Represented by Klaus Haft

European Patent No. EP 3 821 580

PANEL/DIVISION

Panel of the Local Division in Mannheim

DECIDING JUDGES:

This order was issued by the legally qualified judge Tochtermann as presiding judge and judge-rapporteur, the legally qualified judge Knijff, the legally qualified judge Sender and the technically qualified judge Attali.

LANGUAGE OF PROCEEDINGS: English

SUBJECT-MATTER OF THE PROCEEDINGS: Reopening hearing

SUMMARY OF FACTS AND REQUESTS

1. Claimant, after the closure of the oral hearing, requested with its brief of 24 November 2025, to reopen the oral hearing and set a further date for the oral hearing.

    Claimant further motions, if so required by the Court, to appoint an expert for review of the source code of the Attacked Embodiment and order Defendants to provide that source code.

2. Claimant justifies its request by arguing that it learned from subsequent discussions with an expert, who allegedly had access to the source code of the attacked embodiment in US proceedings, that [cited verbatim hereinafter] "Defendants' UPC representative […] (made) demonstrably false statements … on the lack of gateway and broker functionalities in the source code … in the oral hearing". To support this allegation, Claimant refers to a written statement of its expert. In his statement, the expert refers to User Guide's of Defendants products and alleges – without further details – that certain functionalities were present in the source code. Claimant details that the source code was only available to the expert under strict confidentiality measures and for use in the US proceedings only. Accordingly, Claimant had no direct access to the source code and could not submit it to the Court. Therefore, the auxiliary request to order Defendants produce such source code was justified.

3. Defendants were given the opportunity to comment and apply to reject Claimant's requests.

4. For further details it is referred to the briefs and exhibits.

5. On the instant facts, a reopening of the oral hearing and a call for further evidence was not warranted. This has to be reserved for exceptional cases (R. 114 RoP). R. 114 RoP is applicable only in situations where, during the oral hearing, a specific issue or a specific in-depth investigation is identified as necessary and cannot reasonably be completed within the existing hearing slot. In such a case, the court may postpone the hearing in order to obtain, for example, further testimony or experimental evidence which has proved necessary as a result of what emerged in the oral hearing. It is, however, not a tool to present new infringement allegations after the closure of the oral hearing as suggested by Claimant's arguments.

6. This becomes even more evident, when R. 114 RoP is put into context with R. 245 RoP. Under Rule 245(1) RoP, an application for rehearing may only be lodged by a party adversely affected by a final decision for which the time limit for appeal has expired (or by a party adversely affected by a final decision of the Court of Appeal), and must be brought before the Court of Appeal within narrow deadlines. The grounds on which such a rehearing may be requested are likewise strictly limited. Rule 245(2) RoP and Article 81 UPCA confine rehearing primarily to cases of fundamental procedural defect or to situations involving an act later held to be a criminal offence. Mere errors in the assessment of facts, evidence or law are explicitly not sufficient. The Court of Appeal, UPC_CoA_405/2024, 19 June 2025, Alexion v Amgen confirmed that rehearing is not a second or small appeal, but a truly extraordinary legal remedy available only for the most serious procedural deficiencies. These requirements restrict a rehearing to rare, clearly circumscribed situations that affect the integrity of the procedure itself, not to re-litigate or "supplement" the merits. Claimant's braod reading of R. 114 RoP would therefore also run counter to this exceptional rule.

7. In the case at hand, Claimant does not justify, why it reached out to its expert of the US proceedings only after the closure of the written procedure, the closure of the interim procedure and the closure oral hearing. Rather, Defendants disputed Claimant's various infringement reads with substantiation in their briefs already. That the concrete implementation of the Attacked embodiments is laid down in source code of the respective software solutions should have been apparent to Claimant during the written procedure already, so that it had all reason to submit respective requests during the preparatory written phase and clarify open points with its expert. In this context Defendant correctly refers to the respective written submissions, which should have been reason enough to investigate further well before the oral hearing (on AppStack being only out-of-band: mn. 97, 126 SoD, 190 et seq. RJ, Exhibits HRM 2, mn. 29 and HRM 13, mn. 9; on AppStack's missing logic to determine a CAS: mn. 128, 136 SoD, mn. 188/189, 203 RJ; HRM 2, mn. 64). Defendant further underpinned its denial of Claimant's accusations by setting out in detail that the AppStack Inline functionality was considered as a Beta Version before the patent-in-suit entered into force, but was never implemented and put on the

market and remaining artifacts were removed before the patent-in-suit entered into force.

8. Furthermore, Claimant, in its brief and in the accompanying expert statement, only refers to User Guides of Defendants' solutions and not to concrete implementation in the source code - still to allege that Defendants' counsel engaged in demonstrably false statements during the oral hearing. Claimant, however, did not even describe in an abstract way, why it believes to be able to show, that the factual allegations made in the oral hearing were not true. Its allegations, contained in the Claimant's representatives brief, therefore amount to an accusation of a criminal offence, committed in Mannheim, i.e. within the territory of Germany and therefore in the sphere of applicability of the German criminal code, in the course of the oral hearing into the blue, which runs counter to Sections 2.2, 2.4.2. of the Code of Conduct for Representatives.

9. Even if the source code itself should not be available to restrictive US court orders, which have not been produced in these proceedings so that the question remains open, Claimant could at least have described in a sufficiently abstract way, why it believes Defendants' counsel engaged in fraudulent behaviour. This would have been even more necessary since Defendant points to the fact that the inspection of the source code in the US proceedings took place in 2022, i.e. before the patent-in-suit even was granted.

10. Finally, the new infringement alternatives presented by way of reference to the late-filed expert statement pointing to documents which were already part of the written phase are submitted late and do not give any reason to reopen the hearing.

11. Thus, there is no reason to reopen the hearing, order Defendant produce source code and have it examined after the closure of the oral hearing.

ORDER:

    I.   Claimant's request to reopen the oral hearing and its auxiliary request to appoint an expert for review of the source code of the Attacked Embodiment and to order Defendants to provide that source code are rejected.

    II.   Claimant bears the additional costs of litigation of Defendants connected to the request to reopen the hearing.

NAMES AND SIGNATURES

Tochtermann
Presiding judge and judge-rapporteur

Sender
Legally qualified judge

Knijff
Legally qualified judge

Attali
Technically qualified judge