Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Düsseldorf Local Division
UPC_CFI_249/2026
UPC_CFI_2542/2026

Order
of the Court of First Instance of the Unified Patent Court
issued on 25 November 2026
concerning EP 3 349 412

CLAIMANT:

Koninklijke KPN N.V., represented by its CEO Joost Farwerck, Wilhelminakade 123, 3072 AP Rotterdam, The Netherlands

represented by:	Attorney-at-law Axel Verhauwen, Attorney-at-law Jens Künzel, KRIEGER MES Partnerschaft mbB, Bennigsen-Platz 1, 40474 Düsseldorf, Germany
supported by:	Patent attorney Dipl.-Ing. Matthias Waters, Patent attorney Dr Martin Rütten, COHAUSZ & FLORACK Patent- und Rechtsanwälte Part mbB, Bleichstr. 14, 40211 Düsseldorf, Germany
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DEFENDANTS:

1. **Guangdong OPPO Mobile Telecommunications Corp. Ltd.**, NO.18 Haibin Road, Wusha, Chang'an Town, Guangdong Province, 523860 Dongguan, China

2. **OROPE Germany GmbH**, represented by its Managing Director Runyu Yang, Graf-Adolf-Platz 15, 40213 Düsseldorf, Germany

Defendants 1 and 2 represented by:	Attorney-at-law R. Broekstra MSc LLM, Attorney-at-law J.S. Santman, Attorney-at-law E.A.I. Lots, Patent attorney I. Lummer, Patent attorney L. Zhang, Vossius & Brinkhof UPC Litigators, Grote Bickersstraat 74-78, 1013KS, Amsterdam, The Netherlands
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PATENT IN SUIT:

EUROPEAN PATENT NO. EP 3 349 412

PANEL/DIVISION:

Panel 1 of the Düsseldorf Local Division

DECIDING JUDGES:

This order was issued by Presiding Judge Thomas, legally qualified judge Dr Schumacher acting as judge-rapporteur and legally qualified judge van Peursem.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT: R. 333 RoP – Review of case management orders

SUMMARY OF THE FACTS:

1. The present case is part of a broader conflict between the parties.

2. In two related proceedings before the LD The Hague (UPC_CFI_565/2024 and UPC_CFI_2246/2025), the judge-rapporteur held a case management hearing discussing the exchange of licenses and a confidentiality club.

3. On 28 May 2026, he issued an order following the case management hearing. The operative part of this order reads as follows:

> *'1. Ultimately within five weeks after this order, Claimant will grant access to external counsel to Defendants and any external experts hired by Defendants all Claimant's licenses for smartphone manufacturers since 2015, including earlier licenses in case of a renewal of such license in the period since 2015, to the extent not already provided following the Order […], including in particular any license agreement with […] (hereinafter together: "the Materials");*
>
> *[…]*
>
> *14. In the event that in the proceedings concerning EP 3 349 412 before the LD Düsseldorf of the UPC (UPC_CFI_249/2026) allows the use of the Materials in those proceedings, the parties agree that the disclosure and confidentiality arrangements in these proceedings shall apply to such use.'*

4. In accordance with this order, the Defendants' external counsel have been granted access to the confidential material (third-party licence agreements) referred to in the order.

5. On 5 June 2026, the Defendants requested that the LD Düsseldorf allow the use of the confidential material as defined in the order of the LD The Hague in the present proceedings.

6. They stated that, in order to substantiate their entitlement to a FRAND defence in the proceedings at hand, they need to be able to rely on the contents of licences granted by the Claimant to third parties. Furthermore, they pointed out that allowing the use of the confidential material in the present proceedings would not give new people access to the material, as their external counsel already have it in their possession.

7. The Claimant requested that the Defendants' motion be denied.

8. It argued that the Defendants are not entitled to raise a FRAND defence, primarily because the patent in suit is not an SEP. According to the Claimant, therefore, the production of third-party licence agreements is of no use to the Defendants.

9. In response, the Defendants pointed out that the question of their entitlement to a FRAND defence should be decided in the main proceedings. However, they stated that allowing the use of the confidential material is precisely what enables them to raise that defence and present the relevant facts to the Court.

10. By an order dated 13 October 2026, the judge-rapporteur postponed the decision on the Defendants' request dated 5 June 2026 regarding the use of confidential material until at or after the oral hearing.

11. The judge-rapporteur held that the question of whether the disclosure of the confidential material (third-party agreements) can be permitted appears to depend on whether the Defendants are entitled to a FRAND defence. The judge-rapporteur took the view that this cannot be answered at this point in time. Firstly, not all of the written submissions in the infringement action have yet been exchanged. Secondly, the question concerns a complex issue that should be answered by the full panel after assessing the entire case file. The judge-rapporteur reasoned that the fact that the Defendants' external counsel are already in possession of the confidential material does not change this. While it is true that permission to use the material in another proceeding for the sake of procedural efficiency could be considered, provided it does not place an additional burden on the Claimant, this does not seem to be the case.

12. On 28 October 2026, the Defendants requested a panel review of the judge-rapporteur's order of 13 October 2026 (hereinafter: order under review).

REQUESTS:

13. The Defendants request that the Panel

- review the order of 13 October 2026 and make a revised case management order to:
- allow the use of the Materials as defined in the order of the LD The Hague of 28 May 2026 in the present proceedings;
- alternatively, insofar as the Panel does not grant this request, grant leave to appeal.

14. The Claimant requests

- that the Defendants' motion to permit the use of the confidential material be denied,
- auxiliary: to confirm the court order issued on 13 October 2026 that the decision on the Defendants' request dated 5 June 2026 regarding the use of confidential material is postponed until at or after the oral hearing.

POINTS AT ISSUE:

15. The Defendants essentially argue as follows:

16. The confidential material is not only relevant for the substantive FRAND defence, but also for the question whether they are entitled to a FRAND defence. By postponing the decision on their use, the judge-rapporteur effectively prevents them from properly substantiating their FRAND defence before the Panel has even determined whether they are entitled to invoke it. They point out that the postponement means that they cannot rely on the confidential material in their written submission or at the oral hearing, unless/until permission is granted during that hearing. Even if the Panel were to ultimately allow their use at or after the oral hearing, they will not have had the opportunity to develop and present their arguments on the basis of this material. According to the Defendants, they are not asking to determine at this stage whether they can rightfully invoke a FRAND defence, but merely to permit them to rely on the confidential material necessary to substantiate the defence and their entitlement to that defence in the main proceedings.

17. The Defendants refer to their statement of defence (§ 357) and explain their view that the materials are directly relevant to the question of whether they can invoke a FRAND defence as follows: According to the Defendants, they have solid reasons to believe that the Claimant's existing licenses under the KPN SEP portfolio do not only cover standard essential functionality, but extend to any use of the licensed patents (standard-essential or not) within the licensed smartphones or other products. They point out that they intend to furnish proof thereof once they are allowed to rely on the Claimant's disclosed licenses. In the Defendants' view, if the license under its standard essential patents that the Claimant regularly offers to prospective licensees includes non-standard-essential uses of its SEPs, including the functionality attacked in these proceedings, a non-discriminatory treatment of Defendants requires that such non-standard essential use is included in the FRAND license offered to the Defendants as well. They state that an attempt to get injunctive relief against non-standard-essential uses of its SEPs without having offered such a license on FRAND terms then is a breach of the aforementioned contractual obligation and also an abuse of a dominant position under Huawei/ZTE. Therefore, the Defendants consider the scope of the Claimant's existing licences to be directly relevant to assessing whether the Defendants can invoke a FRAND defence.

18. Lastly, the Defendants reiterate that allowing the use of the confidential material would not result in any additional disclosure or prejudice the Claimant's confidentiality interests. They point out that they fail to see what legally justifiable interest the Claimant could have in objecting to such use.

19. The Claimant essentially argues as follows:

20. As the patent in suit is a non-SEP, the Court would still dismiss the Defendants' FRAND defence as inadmissible even if the Court would allow the use of the confidential material. They refer to their reply (mn. 244–261) and assert that the Defendants are not entitled to a FRAND defence based on European antitrust law (Art. 102 TFEU) or on (alleged) contract law (ETSI declaration). As the Claimant sees it, to make this legal assessment, it is not necessary to analyse the confidential material as the FRAND defence is already inadmissible for legal reasons.

GROUNDS FOR THE ORDER:

21. The Defendants' request for a panel review is admissible, but unsuccessful on the merits.

1. Admissibility

22. Pursuant to R. 333.1 RoP, case management decisions or orders made by the judge-rapporteur shall be reviewed by the panel, on a reasoned application by a party. R. 333.2 RoP states that the application shall be lodged within 15 days of service of the order and shall set out the grounds for review and the evidence, if any, in support of the grounds.

23. These requirements have been met.

24. The order under review is a case management order, which is subject to review by the panel. The Defendants have also justified their request and thus submitted a 'reasoned application'. The deadline specified in R. 333.2 RoP has been met.

25. The fact that the Defendants' request was not rejected but merely postponed does not preclude its admissibility. An application under R. 333 RoP does not require a party to be adversely affected by the order under review. Unlike R. 220.1 RoP ('An appeal by a party adversely affected may be brought …'), R. 333 RoP does not mention such a requirement (see UPC_CFI_807/2024 (LD Düsseldorf), Order of 14 October 2025, para. 17 – Wonderland Nurserygoods v Cybex). This is also consistent with the broad scope of an application under R. 333 RoP (see UPC_CoA_651/2024, Order of 14 January 2025, par. 13 – Total Semiconductor v. Texas Instruments).

2. Decision on the merits

26. The Panel exercises its discretion in the same way as the judge-rapporteur.

Use of confidential material for substantiating the FRAND objection on the merits

27. In FRAND cases, it is common practice to request the submission of licence agreements in order to discuss the FRAND defence in detail. This may concern, for example, whether the patent holder's offer satisfies FRAND conditions, such as whether licence applicants are treated equally. The Defendants do not dispute that, in this case, it has not yet been clarified whether these issues even arise.

28. In this case, it is disputed, at the very least, whether the patent in suit is a standard-essential patent (SEP). While the parties seem to disagree on whether the patent is essential to the 4G and 5G telecommunications standard, it is undisputed that the alleged infringement is not the result of compliance with the 4G or 5G standard.

Use of confidential material for substantiating the entitlement to raise a FRAND objection

29. However, the Defendants assert that they require the licence agreements in order to demonstrate that they are entitled to raise a FRAND defence in the first place.

30. In this regard, the Defendants essentially argue that if the licence for standard essential patents, which the Claimant regularly offers to prospective licensees, includes non-standard essential uses of the SEPs — including the functionality under attack in these proceedings —

then the Defendants must be offered a FRAND licence that includes such non-standard essential uses.

31. However, this is not a legally binding conclusion that the Defendants could rely on by invoking established case law. Rather, a comprehensive legal examination by the full panel is required. In other words, even if the Defendants' factual assertions are correct and they can substantiate it with confidential material (licence agreements), this does not necessarily imply that they are entitled to a FRAND objection.

32. Consequently, the question of whether the use of the licence agreements should be permitted must first be examined on the merits.

33. Should the Panel, having regard to all the submissions made by the parties, conclude that the use of the confidential material should be ordered, the Rules of Procedure provide for an appropriate procedural remedy in the form of the possibility of adjourning the hearing (R. 114 RoP; see UPC_CFI_558/2025 (LD Düsseldorf), Order of 22 September 2026, para. 3 – SAP v Celonis; see also UPC_CoA, Order of 24 September 2024, para. 54 et seq. – Oppo v. Panasonic).

34. Should an order permitting the use of the confidential material be made, it goes without saying that the Defendants will also be given the opportunity to present their case in this regard. Therefore, postponing the decision will not put the Defendants at an unreasonable disadvantage.

No leave for appeal

35. Given the discretion of the Court of First Instance on procedural matters and because the order is closely connected to the specific circumstances of this case, the Court sees no reason to grant leave to appeal.

ORDER:

The judge-rapporteur's order dated 13 October 2026 is upheld.

Issued in Düsseldorf on 25 November 2026

NAME AND SIGNATURE

Presiding judge Thomas	Digitally signed Thomas Ronny 2026-11-25 10:55:51 +0100 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet
Legally qualified judge Dr Schumacher	Digitally signed Schumacher Jule Kathrin 2026-11-25 11:33:00 +0100 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet
Legally qualified judge van Peursem	Digitally signed Van Peursem Gerard Robert Bernard 2026-11-25 11:24:33 +0100 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet