Germany IP Rulings Clarify 'Willing' SEP Licensee Analysis

By **Matthew Mosteller and Daniel Shim** (July 22, 2026)

Matthew Mosteller

Daniel Shim

Imagine this familiar scenario in global standard essential patent and fair, reasonable and nondiscriminatory, or FRAND, licensing disputes. An SEP-holder/licensor puts an implementer/licensee on notice of infringement relating to the implementer's manufacturing and selling of standards-practicing widgets around the world.

The SEP holder's infringement notice is accompanied by their opening offer, which they insist is provided on FRAND terms and conditions. While the implementer seeks to negotiate in good faith with the SEP holder, the SEP holder grows anxious and soon initiates enforcement actions at the Unified Patent Court, or UPC, and one of the prominent Regional Court Chambers in Munich, Germany. Upon being sued, the implementer scrambles to counteroffer. The SEP holder is unmoved by these gestures and litigation ensues in earnest.

The question remains for the implementer in the common case of an impasse in negotiations: What must the implementer do to minimize the risk of an injunction in Germany and across Europe? That question hinges on whether the implementer is deemed a willing licensee by the tribunal.

A series of judgments this year from the Munich Regional Court's Seventh Civil Chamber in Wilus v. Asus,[1] Broadcom v Renault[2] and ZTE v. Samsung[3] address a key element of the willing licensee analysis: The implementer's obligation to provide adequate security to the SEP holder.[4]

Why It Matters for U.S. Stakeholders

SEP and FRAND disputes are now overwhelmingly global, cross-border campaigns that frequently run through Germany and the UPC.

Any U.S. manufacturers selling products in Europe that incorporate standardized technology can expect to find themselves before a German court or UPC local division, where the threat of a market-foreclosing injunction turns on whether the implementer behaved as a willing licensee.

With faster-moving dockets than most U.S. courts and the potential for injunctive remedies to issue readily upon a finding of infringement, these venues exert leverage far beyond their borders, often dictating settlements negotiated a world away. With globalized SEP disputes now often hinging on Europe, keeping pace with the willing licensee standard developing in Germany and the UPC has become a strategic necessity for U.S. entities and their legal counsel.

The CJEU Huawei v. ZTE framework

Under the seminal framework[5] spelled out in the 2015 Court of Justice of the European Union Huawei v. ZTE case,[6] a FRAND defense is available only to an implementer who, upon reaching an impasse, provides appropriate security and an accounting of past use (i.e., a rendering of accounts) to the SEP holder.

The Evolution in Germany

Germany's highest court — Germany's Bundesgerichtshof, the Federal Court of Justice — expounded on the CJEU Huawei v. ZTE framework in its 2020 Sisvel v. Haier decision.[7] Under this framework, the implementer must act as a genuinely willing licensee, including providing security, even before the courts examine the numbers contained in the parties' offers.[8]

Recently, German courts have taken multiple views on the security requirement.

The most demanding version of the security requirement appears in the Munich Regional Court's March 2025 VoiceAge v. HMD judgment.[9] The Munich court treated adequate security as an important indicator of willingness, and even as a possible way to cure an earlier presumption of unwillingness. However, the court set very strict conditions: The security had to match the SEP holder's latest offer.

In contrast, the Munich Regional Court's Seventh Civil Chamber, starting with an advisory opinion in July 2025 in ZTE v. Samsung,[10] and more recently in January in Wilus v Asus,[11] spelled out a more formulaic approach centered on partial payments and provision of supplemental security. Under that approach, the implementer satisfies its security obligation by paying the SEP holder the uncontested amount, i.e., wiring cash based on the implementer's counteroffer to the SEP holder.[12]

Additionally, if the implementer's counteroffer is less than 60% of the SEP holder's demand and the absolute gap exceeds $10 million, the implementer must provide supplemental security via a bank guarantee.[13] For a lump-sum license, the supplemental security must correspond to a year's worth of royalty based on the total royalty demanded by the SEP holder.[14]

In January, the BGH[15] reviewed the Munich Regional Court's approach to determining the amount of security. Somewhat surprisingly, it left open whether it is correct to require security equal to the SEP holder's offer, noting that it did not consider the issue critical to the judgment.[16]

However, the BGH appeared to reject even the requirement to pay the uncontested amount.[17] Nevertheless, in February, the Munich Regional Court's Seventh Civil Chamber in Broadcom v Renault found the BGH's latest stance to be obiter dictum that does not override the Munich Regional Court's own case law requiring a payment of the undisputed amount.[18]

Most recently, in the ZTE v. Samsung decision at the end of April, the Munich Regional Court only noted that the defendant had paid the amount based on its counteroffer and provided additional payment and security without further commenting on the propriety of these requirements.[19] It thus ultimately remains to be seen how the courts in Germany, including the Regional Court in Munich, will settle as to both the proper amount and modality — i.e., actual payment vs. bank guarantee or escrow — for meeting the security requirement.

The UPC: Sparse Case Law, but the Same Direction of Travel

The UPC's case law is younger and less settled. The UPC Mannheim Local Division's

November 2024 Panasonic v. OPPO decision, while not defining a standard for adequate security, adopts a somewhat more lenient approach than the strictest German position.[20]

Even so, the Mannheim Local Division deemed both the counteroffer and security provided by the implementer to be inadequate[21] and faulted the implementer for failing to provide actual information on past use, including sales data.[22]

Similarly, the UPC Munich Local Division's December 2024 Huawei v. Netgear decision[23] did not enter into a detailed FRAND assessment, because Netgear was deemed unwilling for failing to provide adequate security and not supplying sufficient information about acts of use after its counteroffer was rejected.[24]

As to the amount, the UPC Munich Local Division left open whether the security must match the SEP holder's latest offer, but required security at least equal to the implementer's counteroffer.[25]

Takeaways for Implementers

A party seeking to preserve a FRAND defense in a German/UPC SEP injunction case needs to build a record of credibility and willingness before the court.

A willing licensee is not just a party that says it wants FRAND terms — it is a party that accounts for its use, makes a serious counteroffer, and provides prompt and effective security upon reaching an impasse. What and how that security is provided will vary.

In the German Regional Courts in Munich, it likely requires actual payment of the uncontested amount. The UPC has not yet settled on a formula of its own, but both the Mannheim and Munich Local Divisions have treated security as a central element in weighing a licensee's willingness, and requiring at least a bank guarantee or escrow deposit for the uncontested amount is the direction the UPC may be headed as well.

Matthew Mosteller is a principal and Daniel Shim is of counsel at Fish & Richardson PC.

Rospatt partner Hetti Hilge and associate Melanie Strobel contributed to this article.

Disclosure: Daniel Shim was previously in-house counsel for Samsung Electronics, and was involved in ZTE v. Samsung, mentioned in this article.

[1] Wilus v. Asus, Regional Court of Munich, the 7th Civil Chamber (case no. 7 O 5007/25), January 8, 2026.

[2] Broadcom v Renault, Regional Court of Munich, the 7th Civil Chamber (case no. 7 O 7655/25), February 5, 2026.

[3] ZTE v. Samsung, Regional Court of Munich, the 7th Civil Chamber (case no. 7 O 64/25), April 30, 2026.

[4] Security in this context ought not be understood as a generic litigation bond. Securities are intended to protect SEP holders at the point of an impasse, and the provision of security is the implementer's commercial assurance that, if the implementer is later found to owe FRAND royalties, the licensor will not be left chasing an unsecured claim.

[5] The negotiation obligations introduced by the CJEU in Huawei v. ZTE were as follows: Infringement notice by the SEP holder → declaration of willingness to take a FRAND license by the implementer → FRAND license offer by the SEP holder → (if offer rejected) FRAND counteroffer by the implementer → (if counteroffer rejected) providing security and accounting regarding past acts of use of the portfolio by the implementer → (potentially) decision by third party to resolve disputes (e.g. arbitration).

[6] Huawei v. ZTE, CJEU, (case no.: C-170/13); available in English at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62013CJ0170.

[7] Sisvel v. Haier, The German Federal Court of Justice (Bundesgerichtshof), (case no. KZR 35/17), November 24, 2020; Paragraph 57 ("It is generally not sufficient for the infringer to merely indicate… that it is willing to consider concluding a license agreement or to enter into negotiations … Rather, the infringer must clearly and unambiguously declare its willingness to conclude a license agreement with the patent owner on reasonable and non-discriminatory terms and must also subsequently participate in the license negotiations in a purposeful manner.").

[8] Id. Paragraph 80 ("Whether the filing of a lawsuit constitutes an abuse of the patent holder's dominant market position … must be assessed on the basis of the actual circumstances at the time the lawsuit is filed. If the infringer is already unwilling to license at that point in time, the specific terms and conditions offered by the patent holder for a license agreement at that point in time are irrelevant.")

[9] Voice Age v. HMD, Higher Regional Court Munich, (case no. 6 U 3824/22), March 20, 2025.

[10] ZTE v. Samsung, Regional Court of Munich, the 7th Chamber (case no. 7 O 64/25 and 7 O 2750/25), July 14, 2025.

[11] Wilus v. Asus, Regional Court of Munich, the 7th Civil Chamber (case no. 7 O 5007/25), January 8, 2026; Paragraph 108 ("In summary, whether the license applicant makes a partial payment is considered particularly important for assessing their willingness to license. This partial payment obligation applies in a situation where it is undisputed between the parties that the licensee must make a payment and only the amount is in dispute.");

[12] The 7th Civil Chamber treats that payment as a down payment on the later license fee, not merely refundable collateral.

[13] Id. at Paragraph 110.

[14] For example, if the SEP holder demands $100 million for a five-year license, the supplemental security would have to cover $20 million.

[15] Voice Age v. HMD, The German Federal Court of Justice (BGH), (case no: KZR 10/25), January 27, 2026.

[16] Id. at Paragraphs 92 and 96.

[17] Id. at Paragraph 89 ("As long as it remains unclear whether a license agreement will be concluded and, if so, on what terms, the user cannot be required to make payments to the patent holder. However, it is objectively reasonable that, in view of the fact that he is already using the protected technical teaching, he should demonstrate his willingness to grant a license in the sense explained above by providing security … [T]his ensures that the patent holder does not bear the risk of the user becoming insolvent during the negotiations.").

[18] Broadcom v Renault, Regional Court of Munich, 7th Civil Chamber (case no. 7 O 7655/25), February 5, 2026, Paragraphs 117-120 ("As far as the Federal Court of Justice states in its decision KZR 10/25 in paragraph 89 as an obiter dictum… Not least, the payment of an undisputed portion is also in line with standard practice in the international arena, as evidenced by interim license decisions from the United Kingdom.").

[19] ZTE v. Samsung, Regional Court of Munich, 7th Civil Chamber (case no. 7 O 64/25), April 30, 2026, Paragraphs 112-114.

[20] Panasonic v OPPO, UPC LD Mannheim, (UPC_CFI_210/2023), November 22, 2024.

[21] Id. at Paragraph 231. The Court stated that the license rate offered by the defendants was only a fraction of the rates derived from third-party license agreements submitted by the plaintiff which the Court regarded as comparable.

[22] Id. at Paragraph 233. The Mannheim Local Division reasoned that the SEP holder must be able to assess whether the security covers insolvency risk and is sufficient in view of actual sales.

[23] Huawei v Netgear, UPC LD Munich, (UPC_CFI_9/2023), December 18, 2024.

[24] Id. at Paragraph 139. Netgear was deemed unwilling for not signaling sufficient willingness to take a license; delaying negotiations; failing to provide security and sufficient accounting; and not presenting any substantive arguments as to why the pool-license-based offer, in addition to a bilateral license, did not satisfy FRAND principles.

[25] Id. at Paragraph 137.