

ARTICLE

INTERDIGITAL V AMAZON: THE UPC PUSHBACK AGAINST ASI-EQUIVALENT INTERIM LICENSING IN A POST-BREXIT LANDSCAPE

Patent Law | 09/01/26 | Grégoire Desrousseaux Candice Dupin

In a post-Brexit context falling outside the scope of EU Regulation No 1215/2012 (Brussels I bis), the Local Division of Mannheim the UPC, in its Order of 22 December 2025 (UPC_CFI_936/2025), confirmed in full its *ex parte* order of 30 September 2025, rejecting Amazon's application for review.

The dispute arises in a global SEP/FRAND conflict between InterDigital (owner of a large SEP and non-SEP portfolio) and Amazon (implementer), involving parallel proceedings before the UPC (Mannheim), the Munich Regional Court, the UK Patents Court, as well as actions in Brazil and the US.

Before the UK High Court (Patents Court), Amazon started proceedings on 29 August 2025, relying on contractual FRAND/RAND rights under ITU-T declarations governed by Swiss law and seeking wide-ranging "Final Relief". In parallel, *interim* or *adjustable* licensing mechanisms were raised in the pleadings as part of the FRAND framework, prior to any final determination. Following the *ex parte* anti-interim-licence injunctions issued by the UPC and the Munich Regional Court, Amazon applied without notice for interim anti-suit relief, obtaining an AASI from UK Court on 20 October 2025, expressly restraining InterDigital from seeking foreign measures capable of hindering the UK proceedings.

Against that background, the Local Division of Mannheim held that, in the specific procedural and factual context of this case, the interim-licence mechanism relied upon by Amazon constituted a measure equivalent to an anti-suit injunction, as it was "*exclusively directed against the Applicants enforcing their IP rights in foreign jurisdictions and therefore also before the UPC*" (§35), and had the effect of "*directly or indirectly ... prevent[ing] the Appellants from pursuing their Patent rights before the UPC*" (§38).

The Court stressed that it is irrelevant whether the foreign measure is described as "*interim*", "*adjustable*" or otherwise, if its de facto effects deter or penalize access to the UPC.

The Court anchored its reasoning in EU *ordre public*, referring expressly to Article 17(2) of the EU Charter (protection of intellectual property) and Article 47(1) of the EU Charter (right to an effective remedy and access to a tribunal), read together with the recognition that EU competition law forms part of EU *ordre public* (§53–54). On that basis, the Court held that the interim-licence mechanisms at issue, invoked in the present case to produce effects beyond the territory concerned, are incompatible with EU *ordre public* and thus not enforceable within the UPC Contracting Member States (§66).

The Court made clear that foreign courts may pursue final FRAND/RAND determinations only insofar as the effects of such determinations are strictly limited to the territory concerned and do not attach any negative consequences whatsoever to the exercise of patent enforcement actions before the UPC (§71). The order therefore does not call into question UK jurisdiction as such, but rejects any extraterritorial deterrent effects impacting access to the UPC.

This approach must be read in the context that the dispute involves a third country and falls outside the scope of Brussels I bis. As a result, no EU jurisdictional coordination mechanism applies between the UPC and the UK. The outcome would likely have differed had the interim licence been sought not only in the EU, but also in Switzerland, where the Lugano Convention provides jurisdictional coordination.

The Mannheim Order further strengthens its effectiveness through a clear and severe warning mechanism, providing for potential penalties of up to EUR 50 million, and EUR 500,000 per day in the event of continued non-compliance (more than in the *ex-parte* order), thereby underlining the Court's determination to ensure strict compliance with its protective measures. This escalation reflects the Court's clear intention to ensure that no ASI-equivalent measure is used, directly or indirectly, to prevent access to the UPC.



Thus, while respecting foreign FRAND proceedings as such, the UPC makes clear that procedural instruments producing extraterritorial deterrent effects on access to the UPC will not be tolerated, grounding its intervention in EU *ordre public* and fundamental rights.

There remains a number of interesting questions. Notably :

What if the FRAND setting proceedings happen to be in a country other than the UK ? Notably, what if FRAND setting is in the EU or in Switzerland ?

On FRAND rate-setting by the UPC: to what extent, if any, may the UPC engage with the determination of FRAND licence terms, and under what procedural and territorial limits?

Recent UPC proceedings, including Sun Patent Trust v Vivo (Local Division Paris, UPC_CFI_361/2025, order of 30 October 2025, appeal ongoing, hearing scheduled on March 9, 2026), show that SEP holders are now expressly pleading claims inviting the UPC to assess or declare whether proposed licence terms are FRAND. It remains unclear whether the UPC may go beyond assessing FRAND compliance and determine licence terms, and even more so whether it could set a global FRAND rate. This issue was not addressed in the Mannheim Order.
