

STANDARD ESSENTIAL PATENT LITIGATION IN EUROPE: WHAT WILL 2026 BRING AFTER A TURBULENT 2025?

After a year of jurisdictional battles, 2026 could become the year of FRAND rate setting

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As SEP holders have actively asserted across various jurisdictions in 2025 and Defendants have pushed back with various means, 2025 has been a moving year from several perspectives. Not only the UPC picked up speed as an increasingly established court venue, but also the national courts, especially the Munich District Court, continue to receive much attention. With the European Commission intervening as amicus curiae in proceedings, a stopped (at least preliminarily) EU regulation and increasing jurisdictional battles, SEP litigation saw a turbulent year beyond the court rooms.

1. UPC Taking Center Stage, Now Also for SEPs

The UPC has entered its third year of operation and continued to increase case numbers and staff count. It is meanwhile also a venue widely accepted by SEP enforcers, often in combination with (German) national litigation.

In several cases, including for example the Panasonic v Oppo decision of the Mannheim, Local Division of November 2024. Largely as expected, the UPC applies the CJEU framework of Huawei vs ZTE and the “FRAND dance” between parties, the requirement of willingness scrutinizes the parties’ conduct. At current, many key questions remain to be clarified by the CFI and the CoA. However, the UPC has so far not seen the need to refer to the CJEU for further clarification and applies the Huawei vs ZTE framework without notable surprises.

2. Despite UPC Rise, National Court(s) More Popular Than Ever

While the Munich District court has attracted a record breaking number of several hundred patent infringement cases in 2025, also other German District courts are continuing to attract lawsuits despite the advent of the UPC.

The Munich District Court's strict standard of FRAND willingness, which is the central pain Point for Defendants there, was further strengthened by the Munich Appeals Court's *VoiceAge v HMD* decision (docket no 6 U 3824/22 Kart) in March 2025. This ruling set the "pay-to-play" security requirement to refer to the Claimant's latest offer, independent of the amount. The Federal Court of Justice (docket no. KZR 10/25) upheld this decision on January 27, 2026. The written grounds of decision, which could provide further details guiding the lower instances, are not yet published – however, the Federal Court of Justice upholds its established case law and position on willingness and denies a need for referral to the CJEU.

Immediately following the Federal Court of Justice's hearing, the Munich District Court handed down notable guidelines on a number of questions as headlines to the decision in the case of *Wilus (Sisvel) v. Asus* (cf. [ip fray](#)). The court now distinguishes between a security deposit and an actual payment for the undisputed part of the rate. The court rejects an obligation to disclose *all* comparable license agreements and gives those a high relevance. Top-down calculation via aggregate royalties are only considered by way of a control calculation. In summary, the Munich District Court has provided further guidelines on the much-debated question of willingness and given the appeal stages plenty of food for follow-up decisions.

Further headlines was just recently the Munich Regional Court issuing an injunction in the case of *Nokia v. Acer* and *Nokia v. Asus* (docket nos. 7 O 4100/25, 7 O 4102/25) and a preliminary injunction in November 2025 in *Dolby v. Roku* (docket no. 21 O 8296/25), which is uncommon and puts further pressure on implementers.

3. Jurisdictional Warfare

Patent litigators discussed no other decision more in 2025 than the CJEU' shift in *BSH Hausgeräte vs Electrolux*, according to which an invalidity defense no longer stands in the way of an EU court's jurisdiction over patent infringement cases at the domicile of the Defendant – even for patents of foreign territories. The UPC and the national courts have meanwhile picked up and granted “long arm” injunctions going beyond their territory (with the distinction that, unlike national courts, the

UPC's jurisdiction is considered to be limited to European Patents, within and beyond UPC member states).

It did not come as a surprise that other jurisdictions are pushing back: In the ongoing Onesta vs BMW dispute, where Onesta asserted a US patent before the Munich District Court, it remains to be seen whether the BMW convinces US courts to react with anti-suit injunctions or other measures.

Meanwhile the UK courts continued to push the boundaries of SEP jurisdiction with their "Interim License" regime — where a court sets a temporary royalty rate while global litigation is pending — with continental courts reacting accordingly. In the autumn of 2025, we saw the birth of the Anti-Interim-License Injunction (AILI). In *InterDigital v. Amazon*, both the Munich Regional Court and the UPC Mannheim Local Division issued *ex parte* orders blocking Amazon from seeking an interim license declaration in the UK. These "anti-anti-suit" tactics signify a hardening of the broad stance in the EU, protecting the local enforcement of German and European patents against foreign judicial interference.

Also in 2025, SEP owners have expanded their list of litigation venues more than ever before, with a meanwhile significant number of cases decided or pending in Brazil, India, Japan, Colombia, Nigeria and Morocco.

4. FRAND Rate Determination Across Jurisdictions

2026 may spotlight rate setting. Both regarding the global scope of rates and regarding the venue, this has an international dimension:

- The UPC as a Rate-Setter: Litigants are closely watching the UPC, where several SEP holders have requested that the court not only grant an injunction but also set the global FRAND rate as a secondary claim. The UPC is expected to determine a FRAND rate, which will find much attention.
- UK and US courts have set rates in the past years and continue to be optional venues.
- Alternative Venues: China (specifically Chongqing) and India have become increasingly assertive in their desire to set global royalty rates, leading to a "race to judgment" where parties scramble to get a favorable rate in one jurisdiction to use as leverage in others.

5. Political U-Turn and the EU Regulation

The discussions around the proposed EU SEP Regulation peaked in July 2025 with the European Commission's withdrawal of the regulation. Intended to create a centralized register and mandatory FRAND determinations at the EUIPO, the proposal was scrapped following intense stakeholder pushback. However, the European Parliament has recently filed a lawsuit against the Commission at the CJEU to contest this withdrawal, ensuring the political battle will continue into 2026 and beyond.

6. Licensing and Transfer Deal Making

2025 has also been an active year in terms of SEP license deals, portfolio deals and the emergence of new tools.

This includes the advent of licensing negotiation group as a licensee-side counterweight to licensor pools, meanwhile approved by antitrust authorities, the emergence of new assertion entities and the presence of litigation funding.

As standardization efforts and technical developments continue, new waves of licensing are in sight.

7. What to Expect in 2026

The above-summarized 2025 leaves several cliffhangers that already guarantee a vivid 2026. The jurisdictional battles will continue. The open questions are too many to have them all clarified in 2027. Particularly the developments of the still young UPC, of the Munich courts and appeal instances, and reactions of other jurisdictions such as UK and US will deliver news in 2026. As parties of both sides are innovating legal instruments, 2026 will also bring court decisions on legal and procedural developments.