

UPC CFI, Local Division Munich, 27 May 2024, NEC v TCL

See also:

[IPPT20240509, UPC CFI, LD Munich, NEC V TCL](#)

**NEC**  
v  
**TCL**

PATENT LAW – PROCEDURAL LAW

Extension of deadlines for defendants 1), 3), 4) and 6) to file Statement of Defence:

- [wrong Annexes were provided with the Statement of Claim; non-compliance with Rule 13.2 RoP](#)

According to the jurisprudence of the Court of Appeal ([UPC CoA 320/2023](#); [APL 572929/2023](#)) it is sufficient to constitute a reasoned request by a defendant for an extension of the terms for lodging the Statement of defense, if a claimant did not upload the Annexes simultaneously with the Statement of claim in the CMS and thus did not comply with [Rule 13.2](#), and as a consequence these Annexes have not been available when the representative of the defendant accessed the CMS.

This case law applies equally if *wrong* Annexes were provided with the Statement of Claim.

Source: [Unified Patent Court](#)

UPC Court of First Instance,  
Local Division Munich, 27 May 2024

(Zigann)

UPC\_CFI\_498/2023

ACT\_596658/2023

App\_24843/2024

**Order**

of the Court of First Instance of the Unified Patent Court delivered on 27/05/2024

**Claimant**

NEC Corporation,

Represented by Dr. Müller

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Defendants 1), 3), 4), 6)

TCL Deutschland GmbH & Co. KG

TCT Mobile Germany GmbH

TCT Mobile Europe SAS

TCL Operations Polska Sp. z.o.o.

Represented by: Dr. Nack

**Grounds for the Order**

The Statement of Claim was served on Defendant 1) on February 23rd 2024. The Statement of Claim was served

on Defendants 3), 4), 6) on March 23rd 2024. Service on the rest of the Defendants is currently pending.

**Claimant requests to**

**shorten the deadline** of Defendants 3), 4) and 6) for filing the Statement of Defense to May 23rd 2024.

Claimant argues that Defendants 3), 4) and 6) are all represented by the representative of Defendant 1) who has been aware of the Statement of Claim since February 23rd 2024 and been able to prepare and coordinate the Statement of Defense with the other Defendants since having been instructed by Defendant 1). Furthermore, all Defendants belong to the same group of companies, their infringing acts relate to the same products as the infringing acts of Defendant 1) and they coordinate their defense strategy. From the point of view of the Claimant therefore it is justified to shorten the deadlines for Defendants 3), 4) and 6) for filing the Statement of Defense.

**Defendants 1), 3), 4), 6) request to**

set filing deadlines of Defendants 1), 3), 4) and 6) for the Statement of Defense to July 8th 2024.

Defendants argue that Claimant's request to shorten the deadline was improperly filed, because the request was submitted by Mrs. Ronja Schregle, who is not appointed as representative for the Claimant in the CMS. In the view of the Defendants it would be a discrimination and violation of the right to be heard, if defendants, who have been served on different dates, are treated with an identical deadline to prepare their defense. Furthermore Defendants complain about the fact that Claimant with its Statement of Claim submitted the *AVC standard* and not the 2014 version of the *HEVC standard*, which is referred to in the Statement of Claim.

The relevant standard was submitted on May 15th 2024 (Exhibit BP 6\_corrected).

**Claimant requests to**

reject the Defendants request to extend the deadline for the filing of the Statement of Defense to July 8th 2024.

Claimant argues that all references to the standard that are made in the Statement of Claim address the relevant sections in this document (Exhibit BP 6\_corrected) and all of these references are correct. In the view of the Claimant the fact that the standard version ITUT H.265 (10/2014) has been superseded and that the most recent version was released in September 2023 is irrelevant for the proceedings. Furthermore, the Defendants were provided with the relevant HEVC standard version 10/2014 in several other HEVC infringement cases.

According to the jurisprudence of the Court of Appeal ([UPC CoA 320/2023](#); [APL 572929/2023](#)) it is sufficient to constitute a reasoned request by a defendant for an extension of the terms for lodging the Statement of defense, if a claimant did not upload the Annexes simultaneously with the Statement of claim in the CMS and thus did not comply with [Rule 13.2](#), and as a consequence these Annexes have not been available when the representative of the defendant accessed the CMS.

This case law applies equally if *wrong* Annexes were provided with the Statement of Claim.

The following order is therefore issued.

**Order:**

The deadline for Defendants 1), 3), 4) and 6) to file a Statement of Defence is extended to July 8 th 2024.

The Claimant's requests are rejected

Dr. Zigann Presiding Judge and Judge-rapporteur

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