

Continued FRAND Divergence: UPC Issues First-Ever Settlement Proposal and Munich Court Grants Injunction in Samsung-ZTE Cellular SEP Dispute

May 13, 2026

In an order dated May 13, 2026, but signed by all the judges on May 8, the Unified Patent Court's (UPC) Mannheim Local Division issued an unprecedented settlement proposal in the global standard-essential patent (SEP) dispute between Samsung and ZTE. The proposal recommended two alternative cross-license structures, either of which the court suggested would resolve the parties' worldwide litigation on a FRAND basis. The development came on the heels of a recent decision by Germany's Munich Regional Court, which—while declining to set a global FRAND rate—found ZTE's offer to be within the FRAND corridor, granted an injunction against Samsung, and, for the first time, provided a detailed account of what global rate it would set if it engaged in global rate-setting. These developments follow the diverging global FRAND rate determinations of the English High Court and the Chongqing Intermediate People's Court, addressed in our prior client alert.¹

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¹Cleary Gottlieb, *Competing Global FRAND Determinations: UK and Chinese Courts Reach Divergent Conclusions in Samsung-ZTE Cellular SEP Dispute* (May 6, 2026), available at <https://www.clearygottlieb.com/news-and-insights/publication-listing/competing-global-frand-determinations>.



I. Background. As detailed in our prior client alert, the English High Court of Justice and the Chongqing Intermediate People's Court of the People's Republic of China each handed down global FRAND rate determinations in the parallel cross-license disputes between Samsung and ZTE. The English court determined that a \$392 million lump sum is FRAND for a five-year cross-license, while the Chongqing court accepted ZTE's \$731 million six-year offer as FRAND. The decisions marked the first occasion on which courts in two jurisdictions issued global FRAND rate determinations in the same dispute, and reached materially different conclusions. In the days that followed, the Munich Regional Court and the UPC's Mannheim Local Division added their own contributions to this already-extraordinary series of developments.

II. The Munich Regional Court Decision.

The Munich Regional Court took a markedly different jurisdictional approach from the English and Chinese courts. Rather than purport to set a global FRAND rate, the German court—consistent with the traditional German approach—addressed the FRAND defense in the context of ZTE's parallel infringement proceedings against Samsung.²

a) *Rejection of Global Rate-Setting.* The Munich court explicitly rejected the view that it should set a global FRAND rate, declining to follow the path taken by the English and Chinese courts and adhering to the German approach of addressing FRAND as a defense to infringement rather than as a freestanding global rate-setting exercise.

b) *ZTE's Offer Within the Frand Corridor and the German Injunction.* Notwithstanding its refusal to engage in global rate-setting, the court found that ZTE's offer fell within the FRAND corridor and that Samsung had not made a FRAND-compliant counteroffer. On that basis, the court granted ZTE an injunction in Germany against Samsung.

c) *Hypothetical Global Rate Analysis.* For the first time ever, the German court provided a detailed account of the global rate it would have set had it engaged in global rate-setting. While this hypothetical analysis does not constitute a binding global determination, it reflects the German court's substantive view of the FRAND value of ZTE's portfolio, and aligns with the figures from the Chongqing court and the UPC, rather than with the English court's \$392 million figure.

The court first found that no reliable comparable licenses were available. The 2021 Samsung-ZTE PLA and the 2020 ZTE-Apple license were rejected on the ground that ZTE had been inexperienced and operating under unfavorable conditions when those agreements were concluded, with the court reasoning that binding a licensor to such terms would perpetuate sub-FRAND outcomes imposed on weaker parties. ZTE's 2024 agreements with Vivo, Oppo, and Xiaomi were rejected because both parties to those agreements were based in China, which the court characterized as the "primary factor precluding comparability" in light of the "socialist market economy in which the state exercises considerable influence." Samsung's in-licenses with Ericsson, Nokia, and InterDigital—rejected as comparables by the English High Court—were not considered by the Munich court at all. Having found no reliable

² Adam Houldsworth, *ZTE-Samsung: UPC Recommends Settlement Rate, German Court Makes FRAND Determination*, IAM (May 12, 2026), <https://www.iam->

[media.com/article/zte-samsung-upc-recommends-settlement-rate-german-court-makes-frand-determination](https://www.iam-media.com/article/zte-samsung-upc-recommends-settlement-rate-german-court-makes-frand-determination).

comparables, the court adopted a top-down approach as its primary rate-setting framework.

The court's top-down analysis assumed an aggregate royalty burden of 8% across the cellular SEP stack, yielding a per-device cellular SEP value of \$13.60 per Samsung device. Dividing by ZTE's assumed 5.7% share of the relevant standard produced a per-unit royalty for ZTE's portfolio of \$0.7752. The court applied that rate to Samsung's projected unit sales over the five-year license period, including past sales, and then adjusted the resulting figure downward by 30% to reflect a bulk discount for Samsung's sales and manufacturing scale, and, notably, upward by 10% to reflect Samsung's conduct during licensing negotiations. The court rejected Samsung's argument for a further geographical adjustment notwithstanding ZTE's China-centric portfolio and Samsung's largely non-China sales footprint.

After offsetting an undisputed \$134 million attributable to ZTE's use of Samsung's patents, the court arrived at a midpoint estimate of approximately \$726 million for a FRAND cross-license payment. Treating FRAND as a corridor rather than a point, the court added a further 10% upward leeway to set an upper limit of approximately \$799 million; because ZTE's \$731 million offer fell beneath that ceiling, the court found ZTE's offer to be within the FRAND range, rejected Samsung's FRAND defense, and granted the injunction.

The court further indicated that, if it were required to set a binding global rate, it would arrive at approximately \$640 million for a five-year 5G-era

cross-license—reflecting an additional discount for 2024 sales (which the Munich court, in contrast to the English court, concluded were Samsung's responsibility rather than released by the 2021 PLA's covenant not to sue) and a 20% downward adjustment to the value attributed to Samsung's portfolio. That \$640 million hypothetical figure tracks the lower of the UPC's two proposed settlement amounts almost exactly, aligns closely with the Chongqing court's \$731 million six-year determination, and stands more than \$240 million above the English court's \$392 million five-year figure.

III. The UPC's Settlement Proposal. The UPC's Mannheim Local Division issued a first-of-its-kind settlement proposal in a FRAND case, suggesting that the parties resolve their global litigation on the basis of one of two alternative cross-license structures:

a) *The Two Proposed Alternatives.* The proposal offered the parties a choice between two alternative cross-license structures. The first contemplates a cross-license with a lump sum payment from Samsung to ZTE of \$640 million, for a license term ending December 31, 2028. The second contemplates a cross-license with a lump sum payment from Samsung to ZTE of \$730 million, for a license term ending December 31, 2029. Although the UPC essentially adopted the figures from the Chongqing court's determination and the Munich Court's hypothetical global rate analysis, it did not explain its reasoning.³

³ Order of the Court of First Instance of the Unified Patent Court, Mannheim Local Division, UPC_CFI_850/2024 (May 13, 2026) (Settlement Proposal); *see also* *UPC Proposes Terms for ZTE-Samsung Cross-License: \$640M for 5 Years, \$730M for 6; Consistent with Chongqing, Munich; Otherwise*

PMAC Mediation, ipfray (May 13, 2026), <https://ipfray.com/upc-proposes-terms-for-zte-samsung-cross-license-640m-for-5-years-730m-for-6-consistent-with-chongqing-munich-otherwise-pmac-mediation>

b) *Non-Binding Proposal.* The UPC's unsolicited settlement proposal is not binding on the parties in any way. Rather, it was issued under the UPC Agreement, Rule 11.1 of the UPC's Rules of Procedure, and Article 5(1) of the Patent Mediation and Arbitration Centre's (PMAC) Mediation Rules. The court framed the proposal as an attempt to help the parties arrive at an amicable resolution of their conflict without further need for litigation in the cases still pending before the UPC and in other fora. If the parties decline to accept either of the two proposed options, the court suggested that they refer the dispute to PMAC mediation rather than continue litigating.

V. Practical Implications.

a) *The UK an Island?* The Munich court's hypothetical analysis, the UPC's settlement proposal, and the Chongqing court's determination differ drastically from the UK court's global FRAND rate. The UK is emerging as an implementer-friendly jurisdiction, but the weight of its judgments are dwarfed by those of the German, Chinese, and UPC courts, which have jurisdiction over two of the world's three largest economies, and five of the largest ten.

b) *The UPC's Emerging Role in Global FRAND Disputes.* The UPC's settlement proposal signals the court's willingness to engage substantively with global rate-setting questions, even though the UPC's formal jurisdiction does not extend to setting global terms. SEP holders and implementers should now consider the UPC as a meaningful venue (or constraint) in global FRAND strategy, particularly given the UPC's geographic reach across multiple European jurisdictions and its ability to grant injunctive relief on a multi-jurisdictional basis.

c) *Increased Pressure on Implementers.* The combination of the Munich injunction against Samsung and the UPC's settlement proposal—at the upper end of the global FRAND range—materially increases pressure on Samsung to reach a negotiated resolution. The Munich injunction provides ZTE with concrete commercial leverage in Germany, while the English declaration—which is not binding on ZTE—provides Samsung with only declaratory relief. For implementers, an English FRAND determination remains a useful, but not by itself sufficient, tool where the licensor maintains parallel proceedings in multiple jurisdictions and does not undertake to be bound by the English determination.

d) *Forum Strategy.* The four decisions in rapid succession highlight the strategic complexity of modern FRAND disputes. Implementers may find that obtaining a favorable UK determination does not insulate them from materially higher rates determined by other courts, particularly where licensors do not undertake to be bound by the UK determination. Licensors, conversely, are increasingly able to secure favorable global rate determinations—or injunctive leverage—in alternative fora.

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