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In this issue:

Also: Our latest insights from the UPC, including re-establishment of rights, realistic starting point for inventive step and UK High Court and UPC diverge. Biotech and UPC webinar invitations. G 1/24 and claim interpretation. The hidden value in AI (infrastructure, innovation and IP).

Data in space
The laws that apply when processed data returns to earth

Full Story Page 02

Editorial

The newsletter this month includes a variety of articles in technical and legal areas. The UPC continues to be a hot topic and we are actively monitoring case law and procedure developments as set out in edition. We also discuss new technologies being deployed into the harsh environment of space. A number of articles explore the opportunities for tech companies and how intellectual property can add value to those developments. We also explore developments in software and the pharmaceutical fields with articles from our software and chemistry/ biotechnology teams. We hope you find the content useful.

Anthony Albutt, Editor

Events

Lisbon Patents & Standards Conference
Lisbon Portugal, 18-19 June 2026
Attending: Rachel Bateman, Jonathan Jackson and Arun Roy.

BIO International Conference
San Diego USA, 22-25 June 2026
Attending: Antony Latham, Simon O'Brien, Jennifer O'Farrell and Tom Pagdin.

PJS Metals of Life: Transforming Health, Energy and Environment
University of Warwick UK, 04-08 July 2026
Attending: Charles Harding and Catherine Keetch

One Nucleus ON Helix: Disrupting Bio
Cambridge UK, 09 July 2026
Attending: Samuel Smith

European Biotech Patent Case Law
Webinar, 9am, 12pm & 5pm, 14 July 2026
Presenting: Tom Pagdin and Simon O'Brien

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AI / space tech

Data in space
The laws that apply when processed data returns to earth

The use of artificial intelligence is booming globally. With the rise of generative AI, artificial intelligence has evolved from specialised use in niche areas of technology to wide-spread, personal use for a range of applications. The generative AI platform ChatGPT is now the fifth most visited website, surpassed only by Google, YouTube, Facebook and Instagram. According to the International Energy Agency, the growth of electricity consumption by data centres is more than four times faster than the growth of total electricity consumption from all other sectors, and is expected to double by 2030.

As the demand for data centres required to support artificial intelligence systems exponentially rises, the environmental effects of such data centres are becoming increasingly difficult to ignore. Data centres require huge amounts of power and water to run, with some data centres consuming as much power and water as an entire city. On top of this, large amounts of land are required to house the data centres, which run 24 hours a day, 7 days a week, producing a constant stream of noise, air and light pollution.

To avoid further damage to the planet, there is a growing need to find new ways to support data centres using less power, less water, and with less disturbance to the surrounding environment.

> "Anything you can do in a terrestrial data center, I'm expecting to be able to be done in space."
> Starcloud CEO Philip Johnston

Why space?

Most of the energy consumed by data centres goes towards running the servers, however a significant portion of the energy is used for cooling the various components to allow them to function effectively. Conventional data centres use up to 40% of their total energy on cooling alone.

Cooling systems in conventional data centres also require vast amounts of water. As the number of data centres is rapidly growing, data centre hubs are moving to rural areas where land is cheap and readily available, such as desert areas in Arizona and Nevada. The low humidity of the desert is beneficial for the lifetime of the electrical equipment and increases the effectiveness of evaporative cooling, and the cool desert nights further help to dissipate heat from the components. However, large amounts of water are still required to cool the components, which may put further strain on drought-prone regions.

Other locations have been considered, where the environment provides a natural heat sink. One of these locations is under the sea, where 40–60% reductions in cooling power can be achieved through passive heat transfer to the surrounding water. However, using the surrounding water as a natural heat sink undeniably has an effect on the ocean environment. The constant noise, light and water pollution from underwater data centres may potentially cause further damage to already struggling marine ecosystems.

Space appears to be an exciting possibility; the environment is extremely cold, concerns over availability of resources such as water and land are effectively eliminated, and green energy (solar power) can be used to power the servers.

The benefits

One of the main benefits of locating data centres in space is that it is extremely cold (around -270 °C), providing an effective natural heat sink for the electrical equipment. Through the use of passive cooling instead of active cooling, the energy usage of space data centres can be dramatically reduced, without requiring any water.

In addition, solar energy (which may be used to power the servers) is more effectively harnessed in space than on Earth. The solar panels of a space data centre will experience no day and night cycle, no seasons, no weather, and the sun's rays will not be disrupted by the presence of an atmosphere. For these reasons, a solar array in space can generate over five times the energy as the same array on Earth.

Useful links

International Energy Agency (IEA), Energy demand from AI:
dycip.com/iea-energy-ai

CNBC, "Greetings, earthlings" - Nvidia-backed Starcloud trains first AI model in space as orbital data center race heats up:
dycip.com/cnbc-starcloud-data

Starcloud:
dycip.com/starcloud

BBC, The plans to put data centres in orbit and on the Moon:
dycip.com/bbc-data-moon

United Nations Office for Outer Space Affairs, 2222 (XX1)/ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, Article VIII:
dycip.com/un-space-treaty-art8

Rest of World, Data centers are racing to space - and regulation can't keep up:
dycip.com/data-centers-regulation

Axiom Space, Orbital Data Centers:
dycip.com/axiom-data-centers

SpaceX applies to launch a million satellites into orbit:
dycip.com/bbc-spacex-satellites

Data Reportal, Digital around the world:
dycip.com/data-report-mobile-global

We are social, Digital 2026 global overview:
dycip.com/digital-global-overview

Solar energy is more effectively harnessed in space than on Earth

Another benefit of locating data centres in space is that there is no known life that could be affected by the pollution produced, and there is no concern over land usage. As a result of these factors, a space data centre is likely to produce significantly less greenhouse gas emissions than a data centre located on Earth, as concluded by a recent study by the European Commission.

As well as the environmental effects, there are other beneficial effects of locating data centres in space, such as enhanced security. With the use of space data centres, data will not need to be routed through terrestrial networks: it can be transmitted directly from the data centre in space to the ground location. The data centre is effectively harder to access, and therefore harder to hack and physically disrupt.

Further considerations

Putting data centres in space may appear to solve some of the problems faced on Earth, but there are obvious questions over how to get them there. While data centres in space (once up and running) are likely to produce less carbon emissions than Earth data centres, significant amounts of energy are required to launch them into orbit, not to mention the cost.

To combat this, data centres can be designed and launched in a modular fashion and assembled in space. However, costs and emissions associated with rocket launches still remain significant, with each kilogram that is sent into space costing thousands of pounds alongside the environmental impact.

There are also considerations around potential damage from collisions with the ever-growing amount of space debris, as well as the cost and complexity of repair missions. While robotics and automation can assist in remote repairs from Earth, there is currently a limit as to the kind of repairs that can be done remotely.

As described in Starcloud's White Paper of September 2024, collisions can be avoided with the use of state-of-the-art space-object tracking systems, and by ensuring highly responsive spacecraft manoeuvrability. Damage by orbital debris can also be mitigated by placing the data centres in underutilised orbits, where there are fewer objects for them to interact with. In addition, as the data centres will be powered using solar energy, a large portion of their surface area will be solar panels, which are not significantly affected by collisions with small debris.

That said, locating data centres in space (and getting them there) will expose them to a wide range of space-related risks and conditions which are not faced on Earth, such as the effects of space radiation and the extreme conditions experienced by components during launch.

There is also the aspect of the speed of data transmission. While locating data centres in space may provide enhanced security, the data has to travel further. This causes an increase in data transmission times and an increase in latency, although this may only be a minor effect on the millisecond scale.

Lastly, data sovereignty is also an important consideration: on Earth, digital data is subject to the laws and governance structures of the country or region where it is collected, stored, or processed. According to the 1967 Outer Space Treaty, no nation can claim sovereignty over any part of space, and nations instead retain jurisdiction and control over objects (that is, spacecraft) which they register, regardless of where they are in space. There is, therefore, currently jurisdictional ambiguity and a lack of regulation surrounding the collection, storage and processing of data in space.

Current projects

As of 2026, there are no commercial, full-scale data centres operating in space.

In January 2026, SpaceX filed a request with the US Federal Communications Commission (FCC) to launch one million satellites into Earth's orbit to be used as data centres for AI computing. There are (unsurprisingly) doubts as to the viability of this project.

However, there are currently smaller scale, experimental edge-computing data units currently in orbit. In late 2025, Axiom Space deployed its Data Center Unit-1 (AxDCU-1) on the International Space Station (ISS), and Starcloud (formerly known as Lumen Orbit) launched its data centre prototype, Starcloud-1, with both companies having further launches planned in the future. Despite the obvious technical and financial challenges associated with putting data centres in space, ambitions appear to be high.

The technology of placing satellites into orbit is well understood but this new technology, deployed in space, creates a range of technical complications. This creates a significant opportunity for businesses which may find their technology becomes critical to the effective and reliable operation of technologies such as AI data centres in space. Those companies are likely to need to consider how IP can protect their investment and technologies in a new marketplace.

Further advice can be obtained by contacting D Young & Co.

Authors:
Molly Guy-Hickson & Robert Kelly

Protecting bee populations with AI
Recent inventions in the apiculture sector

Useful links

EPO Insight Report, digital agriculture, September 2025 (PDF):
dycip.com/epo-digital-agriculture

WO2021202065A:
dycip.com/beehive-monitoring

WO2022120496A1:
dycip.com/epo-id-record-beehive

EP4417045A1:
dycip.com/epo-pollen-learning

EP4276700A1:
dycip.com/epo-track-pollen

Climate change is increasingly affecting the natural world; weather conditions are becoming more extreme, biodiversity has decreased, and the natural cycles of the planet are being disrupted. The agriculture industry is directly affected by these changing conditions, from issues with soil degradation and unpredictable crop yields to an increase in pest and diseases. In the face of these challenges, agritech is rapidly evolving. New technologies and methods of farming are being developed which focus on sustainability, with the aim of improving productivity in the current climate, without causing further damage for future generations.

A particular area of technological advancement is in livestock management, in particular animal husbandry. Animal husbandry is the practice of breeding and caring for livestock, focusing on health, welfare and productivity. Animal husbandry not only relates to traditional farm animals such as cows, sheep and pigs, but also, perhaps unexpectedly, to bees.

Bees are essential to agriculture, with more than a third of the world's food crops relying on pollinators to reproduce. Wasps are also important, as they help to naturally control pest populations by feeding on insects which eat the crops. Wasps and bees are currently facing a number of challenges, from colony collapse disorder to the increase in populations of predatory hornets, all of which are depleting their numbers and posing a significant threat to the future of these vital pollinators.

This complex set of challenges and the complex nature of the hives themselves makes their management particularly difficult, but new developments in technology are looking towards mitigating the damage of these challenges to bee populations, from more effective monitoring of hives to actively deterring predators. In particular, AI is proving well suited to analysis of the noisy, multivariate, and sometimes indirect or incomplete data obtained from monitoring hives.

Recent inventions

As outlined in the European Patent Office's (EPO's) Insight Report on digital agriculture, a number of patents have published in the past five years which use artificial intelligence to assist with the management and protection of bee populations.

AI is proving well suited to analysis of data obtained from monitoring hives

Some of these inventions relate to sensing and monitoring systems, which allow farmers to better understand and maintain the health of bee colonies. Patent application WO2021202065 was published in 2021 and relates to a system for beehive health and activity monitoring. The system incorporates a sensor bar into a honeybee frame that slides into a chamber of a beehive. The sensor bar includes a microphone that records sound within the hive and environmental sensors which measure conditions such as temperature and humidity. The sound recorded can be analysed using machine learning models to determine hive activity and other health issues such as the loss of the queen, which is then correlated to the health of the colony.

Similarly, patent application WO2022120496, published in 2022, relates to a system for monitoring and recording beehive status. The system combines sensor data from inside the beehive with human observation data of the beehive to identify health issues using machine learning. The resulting data set is used to train machine learning algorithms so that beehive health states can be identified using sensor data alone, allowing remote monitoring of hives.

Inventions using artificial intelligence to monitor pollination are also emerging. Monitoring pollination is beneficial not only for helping to maximise yield and quality of crops, but also for early identification of health issues within the hive. Patent application EP4417045 was published in 2024 and relates to an apparatus for identifying the presence and quantity of pollen on bees using a deep learning model and video footage of the bees. The model is trained on the characteristics of the morphology and colour of the bees and pollen. Patent application EP4276700, published in 2023, also relates to tracking and monitoring of pollination efficiency for crops. The invention uses machine learning to combine in-colony features (such as colony foraging activity, colony size, and brood status) with out-colony features (such as weather conditions, ambient temperature, crop variety, and crop yield) with ground truth labels which indicate pollination effectiveness.

The future

It is hoped that new technologies will continue to emerge in this field which allow farmers to maintain the health of their bee colonies and to expand bee populations, to reverse some of the damage being done by climate change. As the human population continues to grow and the climate becomes increasingly unstable, food security is a growing concern. Bees, although small in form, have a colossal impact on ecosystems. Their existence is essential, and there is an ever-growing need to find new ways to protect them and ensure their longevity for future generations.

The discussion here illustrates the growing trend amongst existing and new clients in using AI technologies in surprising and new fields. AI is opening the door to new technical functionality and commercial opportunities for clients. If you or your company would like IP advice relating to agritech inventions, or if you have any questions on this topic, please do not hesitate to get in touch with us.

Author:
Molly Guy-Hickson

Computer-implemented inventions
UPC Court of Appeal endorses COMVIK approach

Case details at a glance
Jurisdiction: UPC
Decision level: Court of Appeal
Parties: Abbott Diabetes Care Inc v Sinocare Inc and A Menarini Diagnostics srl
Citation: UPC_CoA_901/2025
Date: 17 April 2026
Decision: dycip.com/upc-coa-901-2025

Related articles
G1/19 - patenting computer simulation invention, 24 March 2021: dycip.com/g119-computer-simulation

The Unified Patent Court (UPC) Court of Appeal has provided highly anticipated clarity on how it will assess inventive step for computer-implemented inventions (CIIs). In the recent decision Abbott v Sinocare (UPC_CoA_901/2025), the court explicitly endorsed the European Patent Office's (EPO) long-standing "COMVIK approach" for mixed-type inventions.

The COMVIK approach explained

Established by the EPO Boards of Appeal in T641/00 (COMVIK) and later affirmed by the Enlarged Board of Appeal in G1/19, the COMVIK framework governs the assessment of inventive step for claims containing both technical and non-technical features.

Under this framework, it is perfectly legitimate for a claim to mix technical and non-technical elements; a common reality for software and digital inventions. However, to acknowledge an inventive step under the European Patent Convention (EPC), there must be a non-obvious technical solution to a technical problem.

Crucially, when assessing inventive step, examiners and judges must evaluate all features that contribute to the technical character of the invention. This includes features that might be deemed non-technical in isolation (such as the presentation of information, mathematical methods, or business rules) but which interact with the rest of the claim to produce a technical effect serving a technical purpose. Conversely, features that solve only a non-technical problem cannot support an inventive step.

The Abbott v Sinocare decision

The dispute in Abbott v Sinocare centred around a patent for a continuous glucose monitoring system configured to process biological data and display a timeline graph screen upon a user actuating an input button.

The Hague Local Division initially bypassed the issue of inventive step, concluding that the patent was probably not infringed. The Court of Appeal, addressing the issue for the first time, took the opportunity to firmly plant the COMVIK framework into UPC jurisprudence. In Headnote 1 of the decision, the court stated: "A claim feature should not be excluded from the assessment of inventive step merely because it is a non-technical feature, i.e. a feature which, on its own, would be considered a "non-invention" under Art. 52(2) EPC. A feature that is non-technical as such may still contribute to the technical character of the claimed invention as a whole by its interaction with the other claim features. Therefore, the interrelationship and functioning of the claim features must be assessed together."

Applying this test to the case at hand, the court found that the disputed timeline graph features were technical measures. They yielded the technical effect of "improved assistance to the user's diabetes control" by allowing users to identify how certain events impacted their glucose levels. The defendants argued that deciding what action to take based on the display was a mental, non-technical act by the user. However, the court held that the fact a user ultimately makes a cognitive decision based on the system's output does not strip the display features of their technical character, as the system generates the relevant displays through technical means and user interaction.

Decision UPC_CoA_901/2025 is reassuring for innovators in softward, AI & digital health

Takeaways for patentees and practitioners

The UPC's explicit adoption of the EPO's approach is a substantial win for legal certainty in the European patent landscape.

By confirming that the COMVIK approach applies in UPC litigation, the Court of Appeal has effectively opened the door for litigants to rely on over two decades of extensive case law developed by the EPO Boards of Appeal. For innovators in software, artificial intelligence (AI), and digital health, this ruling is highly reassuring. It confirms that the familiar strategies used for drafting and prosecuting computer-implemented inventions at the EPO will translate seamlessly into robust, predictable enforcement strategies before the UPC.

Author:
Anton Baker

All due care
Re-establishment of rights at the UPC

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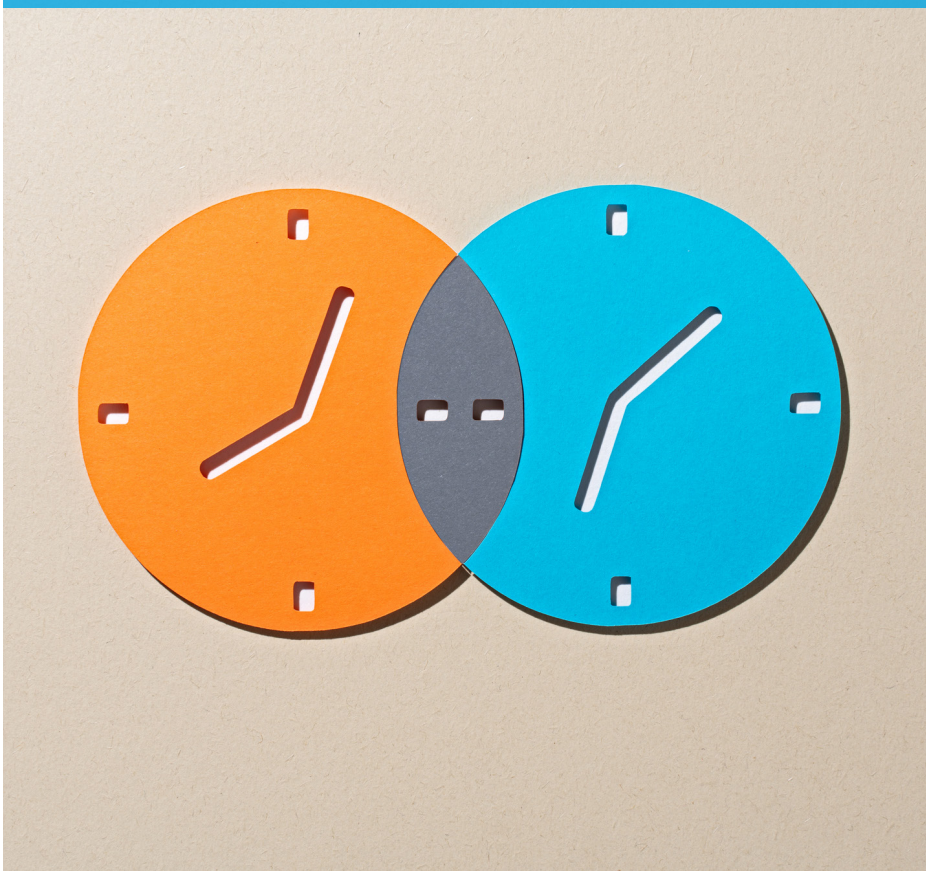
UPC Case Law, Observations & Analysis
Our 17 June 2026 UPC webinar covers news and statistics, claim construction, doctrine of equivalence, jurisdiction, long arm and CJEU referral, and SEPs/FRAND at the UPC. Listen at a time convenient to you:
dycip.com/webinar-upc-jun2026

There have now been a number of cases heard before courts of the UPC concerning missed time limits and subsequent requests for re-establishment of rights.

Re-establishment of rights is governed by Rule 320 of the Rules of Procedure (RoP) of the UPC. Rule 320.1 RoP reads as follows (emphasis added):

> "Where a party has failed to observe a time-limit set by these rules or the court for a cause which, despite **all due care** having been taken by the party, was outside his [sic] control and the non-observance of this time limit has had the direct consequence of causing the party to lose a right or means of redress, the relevant panel of the court may upon the request of that party re-establish the right or means of redress."

Courts will want to see evidence of an effective deadline management system



All due care

In Heraeus v Vibrantz (UPC_CFI_1510/2025) the Munich Local Division granted a request for re-establishment of rights with respect to the filing of an application for a cost decision (Rule 151 RoP).

In this case the Munich Local Division had issued a decision in which it was decided that the defendant bear 40 per cent and the claimant bear 60 per cent of the costs. While the defendant filed their application for a cost decision in time, the claimant failed to meet the deadline.

The Munich Local Division found the reason for the missed time limit to be credibly presented as being due to an (incorrect) legal assessment by the claimant's representative that, since the claimant was the net payer as a result of the cost ratio, they did not have to submit their own application for a cost decision.

When deciding how to interpret the "all due care" standard the Munich Local Division echoed the Hamburg Local Division's decision in Lionra Technologies v Cisco Systems (UPC_CFI_58/2024) which stated that said standard must be interpreted "autonomously". The Munich Local Division stated that the requirement was, "in principle met if the party had taken all reasonable precautions to enable it to meet the deadline and the deadline was ultimately missed for a reason beyond the party's control".

It thus seems that Local Divisions of the UPC are reluctant to automatically adopt the strict European Patent Office (EPO) test which deems a party to have exercised all due care only if non-compliance with the time limit resulted either from exceptional circumstances or from an isolated mistake within a normally satisfactory monitoring system.

In this case the Munich Local Division was keen to point out that inadequate knowledge of the law would generally not be sufficient grounds for re-establishment of rights. However, exception was taken in this case since the Munich Local Division considered the RoP to be unclear on whether both parties are required to lodge an application for a cost decision within the time limit where a cost ratio has been determined. The Munich Local Division also pointed to the lack of established case law and literature on this particular subject.

An insight into circumstances which may not be considered to satisfy the all due

Case details at a glance

Jurisdiction: UPC
Decision Level: Munich Local Division
Parties: Heraeus Electronics GmbH & Co KG v Vibrantz GmbH
Citation: UPC_CFI_1510/2025
Date: 13 January 2026
Decision (PDF): dycip.com/upc-cfi-1510-2025

Jurisdiction: UPC
Decision Level: Hamburg Local Division
Parties: Lionra Technologies Ltd v Cisco Systems GmbH and Cisco Systems Inc
Citation: UPC_CFI_58/2024
Date: 19 February 2025
Decision (PDF): dycip.com/upc-cfi-58-2024

Jurisdiction: UPC
Decision Level: The Hague Local Division
Parties: Amycel LLC v Szymon Spyra
Citation: UPC_CFI_499/2024
Date: 21 October 2025
Decision (PDF): dycip.com/upc-cfi-499-2024

Jurisdiction: UPC
Decision Level: Court of Appeal
Parties: Angelalign Technology (Europe, France, Germany & Italy) v Align Technology Inc
Citation: UPC_CoA_37/2026
Date: 10 March 2026
Decision (PDF): dycip.com/upc-coa-37-2026

Jurisdiction: UPC
Decision Level: Court of Appeal
Parties: Optopol Technology Sp z oo v Topcon Corporation
Citation: UPC_CoA_56/2026
Date: 28 April 2026
Decision (PDF): dycip.com/upc-coa-56-2026

Jurisdiction: UPC
Decision Level: Court of Appeal
Parties: Hanshow (Technology Co Ltd, Germany GmbH, France SAS, Netherlands BV) v VusionGroup SA
Citation: UPC_CoA_618/2024
Date: 06 June 2025
Decision: dycip.com/upc-coa-618-2024

care requirement was provided in Amycel v Szymon Spyra (UPC_CFI_499/2024).

In this case the deadline for filing a statement of defence was 25 February 2025 but the representative submitted said statement on 04 March 2025, along with an application for re-establishment of rights. The request stated that the representative had fallen ill on the evening of 24 February and was only able to resume work on 28 February. The request also included the argument that no other representative at the firm could have completed the statement due to factors including the length of the statement of claim, the number of exhibits and other representatives of the firm lacking access on UPC CMS.

The Hague Local Division found the representative not to have taken all due care to avoid the possibility that his incapacity would lead to the deadline being missed. It also suggested that the statement of defence was not almost finalised on 24 February 2025 because it was not uploaded immediately after the representative recovered on 28 February 2025, being filed instead several days later, on 04 March 2025.

The Hague Local Division highlighted that the representative had not demonstrated all due care due to the failure to involve other representatives from the firm in the proceedings. It pointed to the team function of the UPC CMS that had been available for more than a year and established EPO case law which dictates that even a one-person office should make appropriate provisions to ensure the observance of time limits in the case of absence through illness.

Whilst these decisions have all been made at first instance, and are thus not binding on other divisions of the UPC, they still provide useful early insights on how the all due care threshold is being interpreted at the UPC.

Re-establishment of rights or extension of a time limit?

Courts of the UPC are also having to consider the applicability of retroactive requests for extensions of time limits (Rule 9.3(a) RoP) as opposed to requests for re-establishment of rights (Rule 320 RoP) in the case of missed deadlines.

In Angelalign v Align Technology (UPC_CoA_37/2026) and Optopol v Topcon (UPC_CoA_56/2026) the UPC Court of Appeal dismissed requests for discretionary review of orders from first instance decisions which had retroactively extended time limits pursuant to Rule 9.3(a) RoP.

In UPC_CoA_37/2026 the applicant had submitted a reply to an objection to application for provisional measures on the day of the deadline, which had turned out to be for the wrong case. The applicant filed the reply in relation to the intended case seven days later when they were alerted to their mistake.

In UPC_CoA_56/2026 the respondent had missed the deadline for filing a reply to the statement of defence, a defence to the counterclaim for revocation, and an application to amend the patent.

Rule 9.3 of the RoP reads as follows: “Subject to paragraph 4, on a reasoned request by a party, the court may: (a) extend, even retrospectively, a time period referred to in these Rules or imposed by the court; and (b) shorten any such time period.”

In both cases the Court of Appeal found that the orders issued at first instance were not “manifestly incorrect”.

Here it was stated that Rule 320 RoP (re-establishment of rights) concerned situations in which a party loses a (substantive) right because of missing a time limit and would therefore be relevant if a time limit was missed that related to completely new proceedings or to applications made after the conclusion of proceedings. However, in cases where failure to meet a time limit does not result in a loss of rights, the extension of a deadline in ongoing proceedings should be governed by Rule 9.3 (a) RoP.

The Court of Appeal also held that the Local Division’s assumption that a retroactive extension of the time limit is also possible even if the request for said extension was submitted after the time period has expired was not “obviously wrong”.

A conclusive assessment of the hierarchy of Rules 320 and Rule 9.3 RoP, for at least the case of a missed deadline for the application for a cost decision, was provided in Hanshow v VusionGroup (UPC_CoA_618/2024). In this case the Court of Appeal made it clear that failure to meet the time limit for application for a cost decision can only be remedied through re-establishment of rights (R 320 RoP).

While the court highlighted that nothing in the RoP precludes the extension of the one-month time limit for applying for a cost decision, Rule 9 RoP “must be understood to apply to pending proceedings”.

Thus, since the substantive right of a successful party to seek a cost decision elapses upon the expiry of the one-month time limit under Rule 151 RoP, Rule 9 RoP must not apply. This finding was confirmed in UPC CoA 380/2025.

Takeaways

It remains to be seen whether the UPC will adopt the same standard as the EPO for the assessment of “all due care”.

It nevertheless seems clear that the courts will want to see evidence of an effective deadline management system and will not accept illness of a representative in and of itself as a suitable reason for a missed time limit.

In situations where a party has lost a substantive right because of missing a time limit, such as the time limit for applying for a cost decision, re-establishment of rights is the suitable approach since the court is only able to extend deadlines (Rule 9.3(a) RoP) during pending proceedings. However, if in doubt it would seem prudent to request both an extension and re-establishment of rights in the alternative.

Author:
Daisy Bethell

UK FRAND decisions
Pushing the boundaries (and finding them?)

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Standard essential patents (SEPs) protect technologies required to implement technical standards. To ensure access, SEP holders declare to the standards setting body that they will license on fair, reasonable and non-discriminatory (FRAND) terms. Determining those terms – often in global disputes – has become a central role of the UK courts following Unwired Planet v Huawei.

> Recent decisions, as discussed in this article, demonstrate both the continued prominence of the UK as a FRAND forum and the emergence of important limits and procedural complexities. Together, they reflect an evolving, rather than settled, structure.

From rights to rates

The UK Supreme Court established in Unwired Planet v Huawei that UK courts can determine the terms of a global FRAND licence as a consequence of enforcing UK SEPs.

In Optis v Apple, following findings of validity, essentiality and infringement of Optis' SEP rights, the focus shifted to valuation. At first instance, the judge rejected both parties' expert approaches and awarded a (relatively) modest lump sum license fee of $56.43 million plus interest to be paid by Apple to Optis. The Court of Appeal instead adopted a comparables-based methodology, identifying appropriate licences and adjusting them to derive a royalty of $0.15 per unit. This approach produced a substantially higher outcome of $502 million plus interest to be paid to Optis.

The issues raised in this case remain subject to potential clarification by the Supreme Court following appeal by Apple, with the hearing set to begin on 29 June 2026.

Comparables, corrections, and the "broad axe"

The High Court of England and Wales provided in Samsung v ZTE the most detailed recent treatment of valuation methodology. It reinforces that FRAND terms reflect the outcome of a hypothetical negotiation between a willing licensor and a willing licensee, operating free from both hold-up and hold-out (referred to collectively by Meade J as "non-FRAND"). In the judgment, reference was made to the Court of Appeal's decision in Optis v Apple in this respect.

Comparables remain central, but are not determinative. Courts must identify genuinely comparable licences, exclude or adjust licences affected by non-FRAND factors, recognise that FRAND may lie within a range (the "broad axe") rather than at a single point.

Importantly, the decision in Samsung v ZTE demonstrates that entire categories of comparables may be rejected where they are materially affected by non FRAND factors, for example, where agreements were concluded under commercial pressure or imbalance of the parties' bargaining positions. In such cases, the court must proceed without relying on those comparables and instead determine FRAND terms using other evidence and methodologies

Bilateral FRAND meets platform reality

If earlier cases reflect expansion, the case between Tesla v InterDigital and Avanci at the Court of Appeal highlights limits; primarily procedural and structural rather than substantive. In this case, Tesla argued that Avanci (an independent licensing agent offering global licenses across a number of different platforms) was not offering its 5G platform license on FRAND terms. InterDigital, one of the SEP holders, was selected by Tesla as an anchor defendant.

The Court of Appeal's majority proceeded on the basis that the European Telecommunications Standards Institute (ETSI) undertaking is directed to bilateral licensing and does not straightforwardly extend to collective platform licences such as Avanci's; indeed, the court noted that Tesla had actually reached a bilateral agreement with one unnamed SEP holder and member of Avanci's 5G platform. The decision strongly suggests that the FRAND obligation attaches to the conduct of individual SEP holders, rather than imposing a freestanding requirement that platform-level licences themselves be FRAND. At the same time, certain questions about how collective licensing structures interact with ETSI obligations (given that Avanci have made no FRAND commitments to ETSI) remain open.

The outcome instead turned on justiciability and claim structure. Tesla faced difficulties because it sought to determine the terms of a platform licence while suing only a single licensor, even though the licence involved multiple independent parties which were not before the court. In particular, the relief sought could not effectively be granted by the chosen defendant alone.

In April 2026, the Supreme Court heard Tesla's appeal against the Court of Appeal decision. A decision is expected later in 2026.

License now, price later

Acer and Asus v Nokia introduces a further dimension; the interaction between interim licences, arbitration, and court supervision.

While Acer and Asus sought interim licenses, Nokia offered an "adjustable licence", an immediately available interim licence whose financial terms would later be determined (and adjusted) by arbitration. The Court of Appeal held that such a licence is capable of acceptance and may, in principle, satisfy a SEP holder's obligation to offer (F)RAND terms.

The key issue is not whether such licences exist, but whether their specific features – particularly the use of arbitration to determine final terms – are themselves consistent with RAND. This reflects a broader tension. Arbitration is consensual, yet implementers such as Acer and Asus may be required to accept such mechanisms or risk being treated as unwilling licensees.

Related article

Supreme Court confirms English courts able to set global FRAND terms, 18 September 2020: dycip.com/frand-sc-sep2020

Mind the SEP: UKIPO signals upcoming SEP reform 12 May 2026 dycip.com/ukipo-sep-may2026

Useful links

[2020] UKSC 37, Unwired Planet International Ltd & Anor v Huawei Technologies (UK) Co Ltd & Anor, 26 August 2020: dycip.com/uksc37

[2023] EWHC 1095 (Ch), Optis v Apple, 10 May 2023 (PDF): dycip.com/2023-ewhc-1095

[2025] EWCA Civ 552, Optis v Apple, 01 May 2025 (PDF): dycip.com/2025-ewca-civ-552

[2026] EWHC 999 (Pat), Samsung v ZTE, 01 May 2026 (PDF): dycip.com/2026-ewhc-999-pat

[2025] EWCA Civ 193, Tesla v Interdigital, 06 March 2025 (PDF): dycip.com/2025-ewca-civ-193

UKSC/2025/0058, Supreme Court, Tesla v Interdigital, April 2026: dycip.com/supreme-court-tesla-interdigital

[2026] EWCA Civ 564, Acer and Asus v Nokia, 12 May 2026 (PDF): dycip.com/2026-ewca-civ-564

UK FRAND jurisprudence reflects a balance of reach, restraint and procedural complexity

The court clarified that arbitration can be used to determine RAND terms and does not displace the court's supervisory role. However, it left open broader questions about when arbitration-based offers are consistent with FRAND, and how refusal of such offers should be assessed.

The global FRAND race

The UK's role since Unwired Planet v Huawei in determining global (F)RAND rates is becoming increasingly contested.

In the dispute between Samsung and ZTE, parallel litigation is ongoing across multiple jurisdictions, including China, Germany, and the Unified Patent Court (UPC), in addition to the UK.

Chinese courts have demonstrated a willingness to set global FRAND rates, often adopting different methodologies to those used by the UK courts. This indeed was the case in the parallel actions between Samsung and ZTE before the Chinese and UK courts.

German courts remain influential in injunction practice, declining to set a global FRAND rate in Samsung v ZTE but granting ZTE an injunction against Samsung in Germany after finding that ZTE's offer fell within "the FRAND corridor."

> The UPC, which offers attractive pan-European enforcement mechanisms, has yet to set global FRAND rates in any specific case. However, in the dispute between Samsung and ZTE, the UPC's Mannheim Local Division issued a settlement proposal, indicating its willingness to become more involved in FRAND disputes going forward.

Against this backdrop, the UK's strengths remain in its willingness to determine global licences and its detailed economic analysis in doing so. However, and with the caveat that the Supreme Court may settle on a different conclusion than that reached by the Court of Appeal, the restraint shown in Tesla v InterDigital and Avanci may ultimately limit the UK's reach.

By declining to engage with platform licensing, the UK courts risk ceding ground to jurisdictions that are prepared to address the broader structure of SEP markets.

Where does FRAND go next?

UK FRAND jurisprudence is no longer simply expansionist. It reflects a developing balance between reach (global rate-setting), restraint (contractual and structural limits), and procedural complexity (forum choice, arbitration, and interim licensing).

At the same time, the UK's claim to be the natural venue for global rate-setting is increasingly contested. Parallel proceedings and strategic forum choices now regularly engage China, Germany, and the UPC (which has yet to set global rates but is positioning itself to play a larger role).

> The central question is shifting; from what FRAND terms are to how, and by whom, those terms are determined. That shift is likely to define the next phase of the UK FRAND landscape.

If you have any questions relating to SEPs, FRAND rates, or indeed any other IP matter, please contact the author or any member of the D Young & Co team.

Author:
David Al-Khalili

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G1/24 and claim interpretation
Consulting the description/ drawings may broaden a claim

In this article, we discuss how the requirement to consult the description as required by G1/24 led to it being held in T439/22 and T1849/23 that a broader definition of a term in the description/ drawings should be applied to the term in the claims. Consequently, the claims in these cases were found to be broader than an initial reading of the claim would suggest which, in turn, impacted on the relevance of the prior art. Additionally, T439/22 illustrates that when a description definition narrows the claims, the deletion of the definition from the description after grant would be an unallowable extension of protection.

Background

In the now seminal decision G1/24, the Enlarged Board of Appeal held that the claims are the starting point and the basis for assessing the patentability of an invention, but the description and any drawings must always be consulted to interpret the claims for this assessment. This requirement is independent of whether the skilled person finds a claim to be unclear or ambiguous when read in isolation.

For an in-depth review of G1/24, read our related article "G1/24 practice points: clarity on claim interpretation principles", 19 August 2025: dycip.com/g124-claim-interpretation

However, G1/24 provides no specific guidance on how to use the consultation of the description and drawings. This led to initial speculation that the description and drawings can be consulted and disregarded in some circumstances.

In our related article "Claim interpretation - emerging trends on what 'consulting the description/drawings' in G 1/24 may mean" (*dycip.com/g124-claim-interpretation-consult*) we discuss some of the many decisions subsequent to G1/24 in which boards have held that consulting the description generally does not mean that a claim can be construed more narrowly than the wording of the claim as understood by the person skilled in the art

Description and drawings can lead to a broader or narrower interpretation of claim language

would allow, such as by implying the presence of additional features which only appear in a specific embodiment in the description.

T439/22 and T1849/23, discussed below, are examples of cases in which boards considered that the description can in fact be used to broaden the meaning of a claim beyond its literal reading, suggesting that diverging branches of case law may be appearing.

T439/22

G1/24 was the result of a referral from T439/22. Since the referred questions have been answered, the Board of Appeal has now issued its much-awaited decision on T439/22 which concerns an appeal against the Opposition Division's decision to maintain EP3076804.

The granted claims of EP3076804 related to an article for a "heat not burn" vaping device comprising an aerosol-forming substrate comprising a "gathered sheet" of material (tobacco); the prior art discloses a spirally wound tobacco sheet. At the opposition stage, the patent proprietor argued that if the term "gathered sheet" is assigned its usual meaning in the art then claim 1 is novel. Conversely, the opponent argued that if the term is interpreted in the light of the description, then it would have a broader meaning and claim 1 would lack novelty. The Opposition Division rejected the opposition and held that the term "gathered sheet" had the meaning commonly understood by the skilled person. In particular, it disregarded the broader definition in the description under the principle that recourse to the

Related articles

G1/24 practice points: clarity on claim interpretation principles, 19 August 2025: dycip.com/g124-claim-interpretation

Claim interpretation: emerging trends on what "consulting the description/drawings" in G 1/24 may mean, 31 October 2025: dycip.com/g124-claim-interpretation-consult

Case details at a glance

Jurisdiction: EPO
Decision level: Enlarged Board of Appeal
Parties: Philip Morris Products SA (applicant) and Yunnan Tobacco International Co Ltd (opponent)
Citation: G1/24
Date: 18 June 2025
Decision: dycip.com/epo-g1-24

Jurisdiction: EPO
Decision level: Technical Board of Appeal
Parties: Yunnan Tobacco International Co Ltd and Philip Morris Products SA
Citation: T0439/22
Date: 11 December 2025
Decision: dycip.com/epo-t0439-22

Jurisdiction: EPO
Decision level: Technical Board of Appeal
Parties: Lippert Components Inc and Alois Kober GmbH
Citation: T1849/23
Date: 02 September 2025
Decision: dycip.com/epo-t1849-23

description for claim interpretation was only justified in exceptional circumstances.

In T439/22, the Board of Appeal considered that to correctly apply the conclusion of G1/24, it is necessary to determine what is meant by the expression "to consult" and its implication on the required interpretation approach. Notably, the board held that in interpreting the language used in a claim, "consulting", "referring to", "using" and "taking into account of" the description and figures are synonyms for the act of deriving the necessary information from the patent as a whole to understand what meaning a person skilled in the art would attribute to the terms used in the claim.

The Board of Appeal went on to take the view that claim interpretation is the result of both reading the claims and consulting the description and drawings as a unitary process (a holistic approach). In line with this approach, the board considered that a person skilled in the art reading the claim in the context of the description and figures will try to take a definition found in the description at face value. Further, as long as the definition is technically reasonable and complies with the overall teaching of the claims, description and figures, the skilled person will read terms in the claim in the sense of the definition, taking into account both the broadening and limiting aspects.

The Board of Appeal also highlighted that the fact the patent defines a term indicates that the patent proprietor considered that the term did not have a meaning so commonly accepted and well established that further explanation would be superfluous. The board considered that the definition of the term "gathered" in the specification did not contradict the commonly accepted meaning but rather encompassed it. The board went on to find that the spirally wound tobacco sheet of the prior art was encompassed by the "gathered sheet" of the claims and, thus, the claims lacked novelty.

The patent proprietor had filed a sole auxiliary request in which the contentious paragraph of the description that contained the definition broadening the term "gathered" was deleted; this paragraph additionally referred to the "gathered sheet" being "compressed or constricted substantially transversely to the cylindrical axis of the rod" (a narrowing limitation). The board held that in the absence of the definition, the claims also encompassed aerosol-forming articles which are not rod-shaped and, thus, the scope of protection was extended and therefore the request was not allowable under Article 123(3) EPC.

This decision highlights the importance of accurately defining claim terms in the description since such definitions will be referred to when interpreting the claims, and it may not be possible to simply delete the definition after grant.

T1849/23

T1849/23 concerns EP3166825, the granted claims of which relate to a device and method for detecting and controlling the dangerous swaying of a trailer which uses an angular rate sensor positioned and configured to measure the rate of angular trailer deflection about a hitch pivot point.

The Board of Appeal agreed with the patent proprietor that, when the claim is read in isolation, a literal reading of the claim excluded a simple yaw sensor as the angular rate sensor. However, when the description and drawings are consulted, the board found that the claim must be construed in a broader manner because the only implementation of the sensor in the description, as well as drawings, was a "gyroscope sensor" (a sensor which measures the yaw rate). In view of this broader interpretation, the board held that granted claim 1 lacked novelty over the prior art. Nonetheless, the patent was maintained on the basis of an auxiliary request limited to a method claim.

This decision again highlights the importance of including accurate definitions of key terms in the description as G1/24 continues to generate much debate.

Further referral

As mentioned above, G1/24 was concerned with defining claim terms when assessing the patentability of an invention. Nevertheless, momentum has been gathering in some quarters to determine whether consulting the description and drawings should also be applied to the assessment of added subject-matter, and to what extent. This has culminated in the referral G1/26 from T873/24 (which concerns EP3587104).

The granted claims in T873/24 relate to pre-coated steel strips and the key issue concerns whether the omission of units from claim 1 adds subject-matter. The patentee argued that, in accordance with G1/24, the description should be consulted when interpreting claims and, thus, the skilled person would clearly understand the claim without the need to recite units in the claim itself. Conversely, the opponent argued that G1/24 does not apply to the assessment of added subject-matter. This is certainly a case to monitor.

Practice points

The scope of claims may not be as clear as it initially appears because the description and drawings can, in principle, lead to a broader or narrower interpretation of otherwise clear claim language. The best way to broaden or narrow a claim, however, remains by amending the claim language and not through reliance on the description.

When drafting patent applications, adding a broader definition of an otherwise well-understood feature in the specification could potentially lead to said feature being interpreted in the broader way, which could have implications for patentability.

In addition, particular attention is required so that specific examples do not inadvertently broaden definitions in the description.

Furthermore, when amending the description, care is required such that any amendments do not unintentionally result in an unallowable broadening of the claim scope which may lead to an inescapable added subject-matter trap post-grant.

Author:
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UPC cases TCL v Corning and WIRPLAST v VILPE
Realistic starting point for inventive step

UPC Case Law, Observations & Analysis
Our 17 June 2026 UPC webinar covers news and statistics, claim construction, doctrine of equivalence, jurisdiction, long arm and CJEU referral, and SEPs/FRAND at the UPC. Listen at a time convenient to you: **dycip.com/webinar-upc-jun2026**

In November 2025 in the landmark and coordinated decisions Amgen v Sanofi (UPC_CoA_528/2024) and Meril v Edwards (UPC_CoA_464/2024) the UPC set out its definitive test for the assessment of inventive step.

Related article - Inventive step at the UPC: Court of Appeal sets definitive test, 10 December 2025: dycip.com/upc-inventive-step-test

With respect to the "realistic starting point" the decisions stated: "A starting point is realistic if the teaching thereof would have been **of interest** to a skilled person who, at the relevant date, wishes to solve the objective problem. This may for instance be the case if the relevant piece of prior art already discloses several features similar to those relevant to the invention as claimed and/or addresses the same or a similar underlying problem as that of the claimed invention. There can be more than one realistic starting point and the claimed invention must be inventive starting from each of them."

The breadth of "realistic starting point" had, however, yet to be tested.

Two recent first instance orders from the Munich Central Division, TCL EUROPE SAS v Corning Incorporated (UPC_CFI_337/2025) and WIRPLAST – Więcek Spółka Jawna v VILPE Oy (UPC_CFI_280/2025), shed light on this issue.

TCL EUROPE SAS

TCL EUROPE SAS concerned a patent (EP3296274) to a method for producing alkali-free glass sheets by a downdraw process. The process comprising *inter alia* fining batch materials so that the glass comprised specified compounds at a specified mole percent on an oxide basis. Critically, the fining step is performed using neither arsenic nor antimony. According to the patent's description, the resulting alkali-free glass sheets exhibited desirable physical and chemical properties for use as substrates in flat panel display devices.

A revocation action was brought by TCL EUROPE SAS (the claimant) including inventive step attacks starting from D19 (US 2002/0082158A1; in particular, Example 27), D20 (JP 2004-189535 A; in particular, Examples 15 and 10), and D27 (JP 2001-348247 A; in particular, Example 10).

Both D19 and D20 were considered to be realistic starting points by the court, as they both related to alkali-free glasses. D19 provided aluminosilicate glasses exhibiting desirable physical and chemical properties for substrates in flat panel display devices suitable to be prepared via a downdraw process, and D20 related to the use of alkali-free glass for making displays which requires a good etch resistance, low thermal shrinkage and a high strain point (similar to the patent). The general description of D20 was further noted to disclose downdraw as a suitable process for making the glass, albeit as one of several suitable methods. The skilled person was therefore noted to be "interested" in each of D19 and D20.

However, the court considered it doubtful that D27 was a realistic starting point for the skilled person. It was noted that D27 related only to displays and photographs which do not substantially contain an alkali metal oxide, have a high strain point, a high Young's modulus, a low density and a low expansion coefficient, and are excellent in BHF resistance and acid resistance. Additionally, D27 focused on float methods as a preferred manufacturing process, rather than a downdraw process. The court noted that a "high viscosity, which is required for a downdraw process" was also not mentioned in D27 (paragraph 159).

Notably, the court took a dim view of the claimant relying on specific examples in each of the starting prior art documents. This led to the court concluding that Example 27 of D19 and Example 15 of D20 were not realistic starting points. Example 27 of D19, for instance, included 0.3 mole percent of antimony (III) oxide whereas Examples 22-25 contained neither arsenic nor antimony.

The Munich Central Division summarised its approach to determining a realistic starting point in the headnotes of the decision: "A realistic starting point is typically a prior art disclosure as a whole. Absent a specific reason or pointer in the disclosure itself (or based on common general knowledge) to do so, the selection of a particular example composition as a "starting point", merely because it happens to come "closest" to the claimed subject matter in terms of structural components, bears the risk that such selection itself already involves hindsight."

This appears to contrast with established case law before the European Patent Office (EPO), which considers that each embodiment constitutes an element of the prior art that could equally serve as a starting point for the assessment of inventive step (Case Law of the Boards of Appeal (CLBA) I.D.3.1, citing T 1654/22, and I.D.3.7.1, citing T 787/17).

WIRPLAST

WIRPLAST concerns a patent (EP2649380) to an exhaust ventilation pipe with an exhaust pipe of a ventilation channel extending through the roof of a building provided *inter alia* with a hat, the upper part of the hat being provided with a conical cup preventing rain water from entering the ventilation channel, further comprising a circular spirit level integrated on the top of the conical cup in the hat.

A revocation action was filed by WIRPLAST (the claimant) including inventive step attacks starting from D1 (DE10118226C1), in combination with the common general knowledge, or any of D2 (JP2002106855A), D3 (US20070167130A1), or D4 (CN2255012Y).

Related article

Inventive step at the UPC: Court of Appeal sets definitive test, 10 December 2025: dycip.com/upc-inventive-step-test

Useful links

EPO Guidelines for Examination, 5.1 Determination of the closest prior art: dycip.com/epo-guidelines-prior-art

EPO Case Law of the Boards of Appeal, 3.1 Determination of closest prior art in general: dycip.com/epo-appeal-prior-art

EPO Case Law of the Boards of Appeal, 3.7.1 General: dycip.com/epo-appeal-general

Case details at a glance

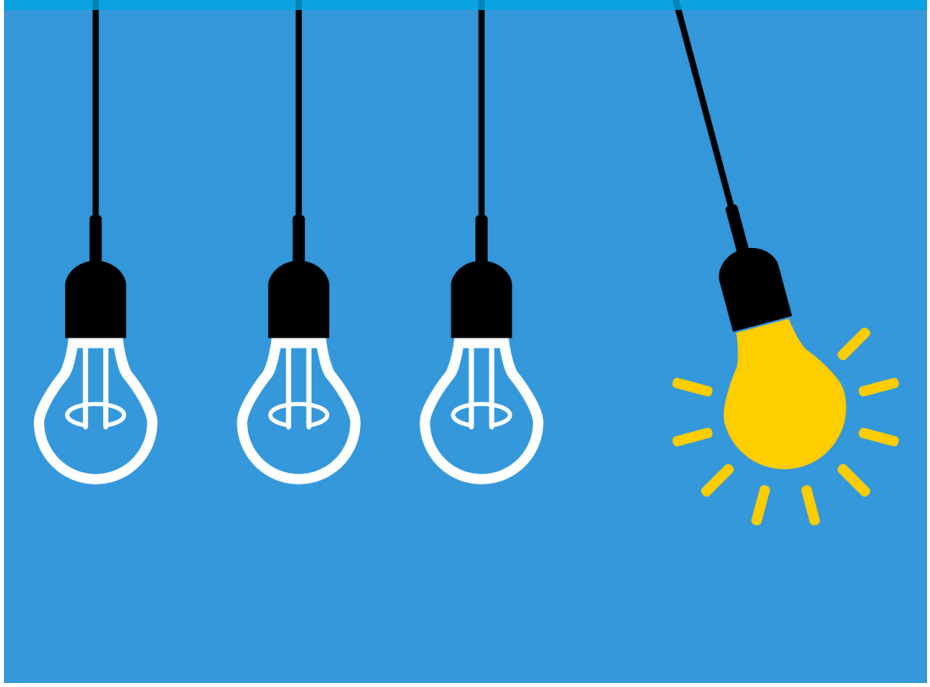
Decision level: Munich Central Division
Parties: TCL Europe SAS (claimant) and Corning Incorporated (defendant)
Citation: UPC_CFI_337/2025
Date: 24 February 2026
Decision (PDF): dycip.com/upc-cfi-337-2025

Decision level: Munich Central Division
Parties: WIRPLAST – Więcek Spółka Jawna (claimant) and VILPE Oy (defendant)
Citation: UPC_CFI_280/2025
Date: 08 April 2026
Decision (PDF): dycip.com/upc-cfi-280-2025

Decision level: Court of Appeal
Parties: Amgen Inc v Sanofi-Aventis Deutschland GmbH, Sanofi-Aventis Groupe and Sanofi Winthrop Industrie SA
Citation: UPC_CoA_528/2024
Date: 25 November 2025
Decision: dycip.com/upc-coa-528-2024

Decision level: Court of Appeal
Parties: Meril v Edwards Lifesciences Corporation
Citation: [UPC_CoA_] 464/2024, 457/2024, 458/2024, 530/2024, 532/2024, 533/2024, 21/2025, 27/2025
Date: 25 November 2025
Decision: dycip.com/upc-coa-meril-edwards

There has been much commentary on "realistic starting point" v "closest prior art"



D1 concerned a roof fan with a fan housing which comprised *inter alia* an upper conical cover. The aim of the invention of D1 was to provide a roof fan which is rainproof, snowproof, and protected against wind influences.

The patentee/defendant (VILPE OY) did not dispute that D1 was a realistic starting point. Instead, it argued that the roof fan of D1 was essentially a different invention than that of the claimed patent because the roof fan of D1 was to be placed on a roof with a base plate, whereas the claimed device comprises a pipe extending through the roof.

The court agreed with the patentee. It further commented that D1 as a whole would have been of interest to the skilled person and represented a realistic starting point. This was because it related to the same technical field as the patent ("ventilation devices") and had several technical features in common with the claimed invention (paragraph 70).

The Munich Central Division summarised its approach in the headnote of the decision:

"Even if a certain prior art document in the same technical field as the patent in suit is considered to be a realistic starting point, it can be relevant for the assessment of inventive step that it relates to a different kind of device and solves a different problem than the invention of the patent."

Comments

In proceedings before the EPO, the closest prior art document is normally a document which: discloses subject matter for the same purpose as the invention; aims to achieve the same objective as the invention; and/or has the most relevant technical features in common with the invention (Guidelines for Examination G.VII.5.1).

The CLBA also indicates that there is no requirement that the prior art contains a pointer to a particular embodiment, nor does the opponent need to justify why the skilled person would select a particular embodiment, for said embodiment to qualify as a starting point in the problem-solution approach. Instead, every embodiment constitutes an element of the prior art that could equally serve as a starting point (CLBA I.D.3.1, citing T 1654/22, and I.D.3.7.1, citing T 787/17).

> There has been a lot of commentary on "realistic starting point" v "closest prior art" but what is interesting from the decisions discussed from the Munich Central Divisions is the UPC's reluctance to start from a specific example without a "pointer" thereto in the document itself.

Such an approach represents further divergence from the EPO in its assessment of inventive step.

In some ways, the UPC's assessment of inventive step may allow a broader approach to the selection of realistic starting points, as long as the prior art is from the same technical field as the invention and has several technical features in common. However, it may be difficult for a party to argue starting from a specific embodiment (in the absence of pointers or justification that the skilled person would have done so) unlike at the EPO. Consequently, inventive step attacks may require significantly more signposts in the prior art to convince the UPC First Instance Divisions that an invention is obvious, than to convince the Opposition Division or the Boards of Appeal of the EPO.

Given the consistent messaging that the EPO wishes to harmonise practice at a European level (for example, at the UPC), such as noted at G 1/24, reason 16, it will be interesting to see how the Boards of Appeal respond to further divergence at the UPC. For parties using both systems, a takeaway message from these two decisions is that there is additional scope for the two jurisdictions to come to contradictory decisions on inventive step.

Author:
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Major reform of EU pharmaceutical legislation
Medicinal products for human use

Following protracted negotiation, significant reform of European Union pharmaceutical legislation is on the horizon. The new package is intended to put patients front and centre and encourage innovation and competition. The legislative reform aims to address modern-day challenges, such as environmental concerns, supply challenges and patient access to medicines across the EU. A new regulation and directive replacing the current framework (Directive 2001/83/EC and Regulation (EC) No 726/2004) were published in March 2026.

In this article we highlight some of the changes.

Data protection periods

The current period of data exclusivity is known as the "8+2+(1)" regime, whereby innovators have eight years of data protection from the date of marketing authorisation, followed by two years of marketing protection and a further one year of protection in some circumstances. This will now be replaced by an "8+1+1+1" model. In this model the marketing protection period is reduced to one year, with the possibility of a one-year extension in certain circumstances to address unmet clinical needs. A further one-year extension is available for drugs with an additional indication. Whilst the overall period available remains unchanged at eleven years, there will be an increased hurdle to obtaining the full period.

Orphan drugs

So-called "orphan" diseases are rare diseases attracting limited funding and research. All orphan products currently benefit from ten years of market exclusivity. Under the new regime all orphan products will be entitled to nine years of market exclusivity, with the possibility of a further two years for products to treat diseases for which no therapy is currently available. A further extension of twelve months may be available for a new therapeutic indication covering a different orphan condition (provided the approval is obtained at least two years prior to expiry of the marketing authorisation). Orphan market exclusivity prevents the approval of all equivalent products, innovator or generic/biosimilar. Authorisation for new orphan products or indications will only take effect after existing exclusivity expires.

Antimicrobial resistance

The new legislation seeks to improve incentives for tackling the issue of antimicrobial resistance. A transferable exclusivity voucher (TEV) has been introduced for priority antimicrobial drugs, wherein the holder of the voucher benefits from twelve additional months of regulatory data protection for any one of their authorised products (not necessarily the antimicrobial drug). The voucher may be sold to other pharmaceutical companies. The introduction of the TEV provides a new financial incentive to pharmaceutical companies to develop antimicrobial products.

New EU pharma legislation aims to put patients front and centre and encourage innovation

Useful links

Council of the European Union, directive on the union code relating to medicinal products for human use - analysis of the final compromise text with a view to agreement (PDF): dycip.com/eu-directive-analysis

Council of the European Union, regulation laying down union procedures for the authorisation and supervision of medicinal products for human use and establishing rules governing the European Medicines Agency - analysis of the final compromise text with a view to agreement (PDF): dycip.com/eu-regulation-analysis

Generics and biosimilars

The new legislation also aims to streamline the launch of generic and biosimilar products. For example, there are changes to the data requirements and an expansion of the scope of the Bolar exemption. The Bolar exemption allows the use of generics/biosimilars for studies and trials required for marketing authorisation to be carried out prior to expiry of a patent or SPC without being considered an infringing act. The scope of the exemption is now significantly increased to cover preparatory activities related to marketing authorisation, health technology assessment applications, pricing and reimbursement applications, and participation in public tenders. The exemption now covers acts that would previously have been considered infringing acts (for example submissions for procurement tenders, that is, offering for sale). The changes aim to enable a more expedient entry to the market for generic and biosimilar manufacturers.

Paediatric drugs

A paediatric investigation plan (PIP) is a development plan aimed at ensuring that the necessary data are obtained through studies in children, to support the authorisation of a medicine for children. All applications for marketing authorisation for new medicines must include the results of studies as described in an agreed PIP, unless the medicine is exempt. Under the new legislation PIPs will need to be submitted at an earlier stage with the aim of improving access to paediatric treatments. Furthermore, if the holder of the marketing authorisation withdraws a product from sale, they must give a notice period of twelve months and must ensure that paediatric patients can continue to access the drug (for example by transferring the marketing authorisation to a different manufacturer).

Once formally adopted, the regulation and the directive will enter into force on the twentieth day following their publication in the Official Journal of the European Union. Member states will have 24 months from the directive's entry into force to transpose it into domestic law.

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The hidden value in AI
Infrastructure, innovation and intellectual property

Related article
Toto's pivot - not a flash in the pan, 06 May 2026: dycip.com/toto-ai-patents-pivot

Artificial intelligence is entering a different phase of development. For much of the past decade, discussion around AI focused on software applications, automation tools and the commercial potential of increasingly capable models. Today, governments are beginning to treat AI less as a standalone software market and more as strategic national infrastructure.

Recent UK Government remarks on AI capability, semiconductor resilience and technological independence reflect a broader international trend. Across the United States of America, Europe and Asia, policymakers are increasingly focused not only on AI applications, but also on the infrastructure supporting them.

For businesses in technology sectors, this shift has important implications for intellectual property strategy.

Where future value may emerge

Public attention remains focused on consumer-facing AI platforms. Generative AI systems, productivity tools and automated assistants continue to dominate headlines and investment discussions.

Yet much of the long-term strategic value in AI may reside beneath that visible application layer, within the infrastructure and enabling technologies supporting advanced systems.

Governments and investors are increasingly conscious of technological dependency. Access to computational capacity, semiconductor manufacturing, specialist expertise and secure infrastructure is now shaping industrial policy across major economies. Against this backdrop, the UK's emphasis on domestic AI capability appears part of a wider international repositioning around strategically important technologies.

As a result, attention is shifting towards the technologies that allow AI systems to operate at scale. Semiconductor architecture, distributed computing, model optimisation, low-power processing, cybersecurity infrastructure and AI assurance technologies are likely to grow in strategic importance over time.

Rising energy demands are also reinforcing the importance of reliable, sustainable infrastructure capable of supporting future compute requirements.

At the same time, as AI becomes embedded in healthcare, finance, transport and defence, technologies related to security, robustness and reliability may gain commercial significance in their own right.

This could increase the importance and value of IP in these areas.

Implications for innovative businesses

The UK occupies a strong position within the global AI sector, with strengths in research, engineering talent, higher education and early-stage innovation. Universities such as Oxford and Cambridge continue to play a major role in AI development, while the UK tech sector remains active in producing specialist companies.

As governments seek more resilient and diversified technology ecosystems, opportunities may grow for businesses developing foundational technologies rather than purely consumer-facing products.

From an IP perspective, this distinction is increasingly important. When properly leveraged, IP can support investment, partnerships, technical credibility and long-term positioning.

This is particularly relevant in AI, where competitive advantage can be difficult to sustain without defensible underlying technology. Companies working on computational efficiency, distributed inference, AI security, optimisation methods or hardware integration may find their technologies gaining value as adoption expands.

For smaller businesses and spinouts, this is especially significant, as their innovations often become embedded in larger AI infrastructure over time.

Development of IP landscape

There is also a timing consideration that businesses should not overlook.

During periods of major technological change, IP landscapes often develop quickly. Early participants may secure important positions before markets fully mature and before competition intensifies around foundational technologies.

This does not mean every AI company requires an aggressive filing strategy, nor does it suggest that all infrastructure technologies will ultimately prove commercially valuable.

However, the increasing strategic focus on AI capability does indicate that some businesses may underestimate the future importance of protecting enabling technologies developed today.

As investment shifts towards computational infrastructure, resilient systems and trusted deployment models, IP in these areas is likely to grow in significance.

Conclusion

Artificial intelligence is increasingly being viewed not just as a software market, but as a foundational layer of economic and technological capability.

This matters because infrastructure sectors tend to attract sustained investment, policy support and global competition. They also elevate the importance of foundational IP.

For businesses in the AI sector, the challenge is less about predicting dominant applications and more about identifying where long-term value will emerge.

As governments and industries prioritise resilience, compute capacity and trusted deployment, the IP surrounding these enabling technologies is likely to play an increasingly central role in both protecting innovation and shaping strategic positioning.

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UK High Court and UPC diverge

Contrasting rulings in parallel infringement and revocation actions

On 18 November 2025 the UPC released its decision on an infringement action brought by Advanced Cell Diagnostics Inc , a subsidiary of Bio-Techne, against Molecular Instruments Inc. Molecular Instruments counterclaimed for the revocation of the two European patents that were allegedly infringed, EP1910572 and EP2500439. The UPC found both patents to be valid but not infringed, either literally or by equivalence.

Parallel proceedings were held in the UK High Court in April 2024. In contrast to the UPC ruling, both patents were considered invalid for obviousness. Had the patents been deemed valid, Molecular Instruments would have infringed EP1910572 both literally and by equivalence, but EP2500439 was not infringed.

Background

Advanced Cell Diagnostics' European patent EP1910572 was granted in December 2015 and relates to methods of *in situ* detection of nucleic acid targets within an individual cell.

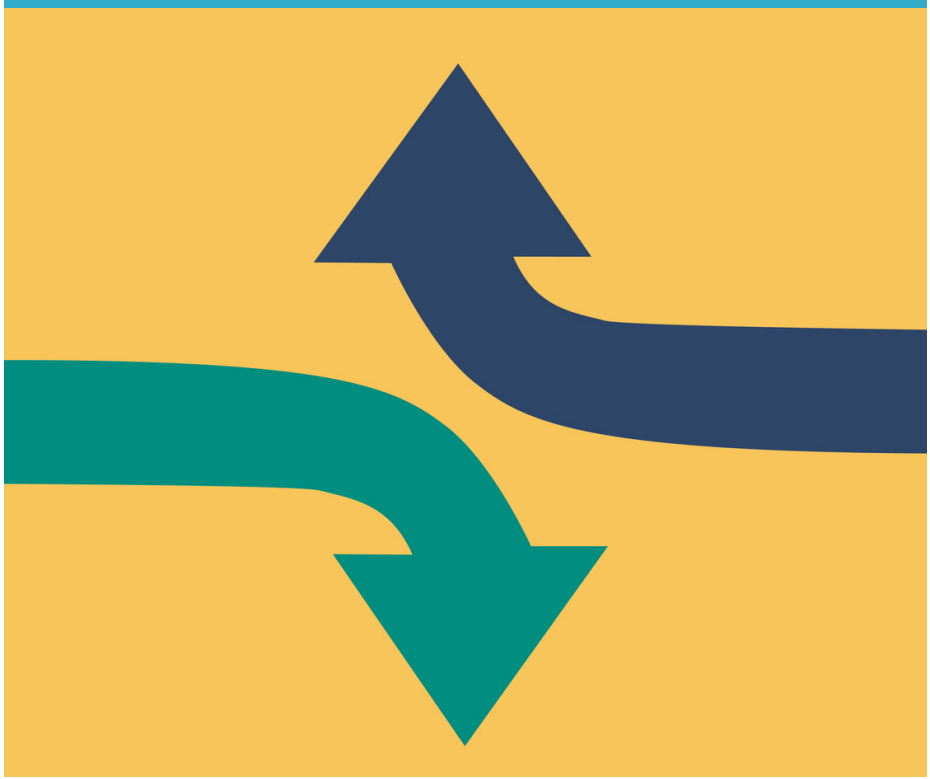
Advanced Cell Diagnostics also filed a divisional from EP1910572 relating to a kit for the detection of nucleic acids in an individual cell. The divisional was granted in August 2014 as EP2500439.

The patents relate to an assay consisting of a multiplex fluorescent and chromogenic *in situ* hybridisation (ISH), capable of detecting and quantifying single molecules of RNA within an individual cell. The method utilises branched DNA (bDNA) as both probes and amplifiers. The bDNA probes and amplifiers do not bind directly to the nucleic acid target. Instead, separate capture probes bind to the nucleic acid target, then the label probe binds either directly to the capture probe, or to an amplifier or a pre-amplifier.

Difference in validity outcome

Both courts found the patents to be novel. Regarding inventive step, the key document in both proceedings was Collins, a scientific paper published in 1997, which describes a bDNA assay for the quantification of nucleic acid target sequences.

The UPC took a narrower, more literal interpretation of the claims and prior art documents



There were two notable differences between Collins and the claimed subject matter. First, Collins relates to in vivo assays instead of *in situ* assays. Second, Collins did not utilise a cruciform design (two capture probes bind the target to one label probe, creating a so-called cruciform structure that reduces "background noise" due to non-specific binding).

The UK High Court found that the use of a cruciform design was taught in Kern, a research paper from 1996, and this teaching would be combined with Collins.

Validity proceedings in the UK boiled down to whether taking an in vitro method and adapting it for *in situ* use was part of the common general knowledge of the skilled person.

The High Court stated that, in view of a research article by Player, the prospect of success would be assessed by the skilled person as not only reasonable, but good. The judge stated that, even though Player did not provide an explicit disclosure of the use of a cruciform design *in situ*, it would nonetheless provide additional confidence that bDNA would work *in situ*. The judge concluded that Player was CGK, and with it the use of bDNA *in situ* was also CGK.

The High Court found that both of Advanced Cell Diagnostics' patents were invalid in view of Collins with Kern.

Conversely, the UPC found that Collins, alone or in combination, did not prejudice the inventiveness of either patent.

The UPC stated that the use of a cruciform design *in situ* was not part of the CGK: Player, was not discussed at length in the decision of the UPC.

Case details at a glance
Jurisdiction: UPC
Decision level: The Hague Local Division
Parties: Advanced Cell Diagnostics Inc v Molecular Instruments Inc
Date: 18 November 2025
Citations: UPC_CFI_187/2024 and UPC_CFI_507/2024
Decision: dycip.com/upc-cfi-187-2024

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Therefore, it appears that the UK High Court was willing to rely upon a probability of success provided by a combination of documents, rather than requiring a single document that discloses all features of the claim, the approach taken by the UPC.

Difference in infringement outcome

The infringement decision in both proceedings came down to the interpretation of complementarity between the label probes and initiators.

The regions of complementarity between the label probes and initiators of Molecular Instruments' assays have between 1 to 4 nucleotides overlap.

Both of Advanced Cell Diagnostics' patents specify: "the L sections are complimentary to **nonoverlapping** regions of the label probe [or (pre)amplifier]".

The UPC's approach to claim interpretation was set out in Nanostring v 10x Genomics (UPC_CoA_335/2023). The approach states that the description and drawings must always be used as explanatory aids for claim interpretation, not only to resolve claim ambiguities. Furthermore, the claim should include all embodiments from the description but not extend beyond that which is supported in the description. This results in a rather literal approach to the claim language with reference to the description and drawings as an "interpretation aid".

Following this approach, the UPC considered the contents of the patents as a whole and found no teachings or embodiments in the patents to support a non-literal interpretation of the claims. Thus, the UPC held that both of Advanced Cell Diagnostics' patents require that there is no overlap at all between the respective complementary regions on the label probe.

For this reason, the UPC declared that both patents were found to not be literally infringed.

The UPC also ruled that there was no infringement by equivalence for three reasons:

1. The UPC stated that it was difficult or even impossible to construe how much nucleotide overlap would be deemed equivalent.

2. While the UPC found the patents to be valid, it also stated that they do not form a very significant step forward in the development of *in situ* assays as "all the ingredients of the claimed inventions were already known, just not in combination". The UPC ruled that fair protection of the patentee does not require a finding of equivalence. (This point is especially interesting given that it is, in essence, the reasoning for the High Court's decision to find the patents obvious in view of the prior art).

3. The UPC accepted the defendant's explanations that the 1 to 4 nucleotide overlap results in an increase in specificity and is therefore not simply a workaround to avoid infringing Advanced Cell Diagnostics' patents.

Accordingly, the UPC found that neither patent was infringed, either literally or by equivalence.

By contrast to the approach taken by the UPC, the UK High Court considered the issue of claim interpretation in detail and applied a purposive claim construction, in accordance with established UK case law.

The purpose of the feature at issue (the complementarity between the label probes and initiators) was identified as increasing specificity by having two probes so that non-specific binding is reduced. The judge considered that a small amount of overlap did not undercut this purpose and therefore found that "non-overlapping" did not mean "**completely** non-overlapping". The judge further stated: "the key thing is to form two stable duplexes, and while the simplest way to achieve that is to have no overlap, **it may be all right and indeed necessary to have a small overlap** if there is a positive reason for it, and the key goal is not lost."

The judge stated that the specification did not support the requirement for a literal interpretation of the claim and that the skilled person would think that the most straightforward approach was to have no overlap but that some overlap would be all right.

The High Court concluded that Molecular Instruments' invention achieved substantially the same result in substantially the same way, and that this would have been obvious to the skilled person.

Molecular Instruments assisted customers in the UK to troubleshoot their products. Accordingly, the High Court stated that EP1910572 would have been infringed, **if the patent had been found valid**. EP2500439 was not found to be infringed as it consisted of method claims.

Summary

These parallel proceedings highlight that diverging decisions can arise through differing interpretations of prior-art documents and the claims.

> In this case, the UPC took a narrower, more literal interpretation of the claims and prior art documents, whereas the UK High Court took a more purposive approach, considering how the skilled person would interpret the prior art and claims and whether they would consider there to be a probability of success.

This divergence in approaches and the resulting lack of legal certainty across jurisdictions is an uncomfortable position for any UPC user to deal with.

If you are considering initiating a legal action within the UPC and want more information on how the assessment of inventive step at the UPC may affect such action, please contact your usual D Young & Co representative for further information.

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High-altitude pseudo-satellites (HAPS) Development, feasibility, and future potential

Useful link
Aerospace Global News - Sceye completes 12-day flight as stratospheric telecom moves closer to real-world use: dycip.com/sceye-12-day-flight

High-Altitude Pseudo-Satellites (HAPS) are emerging as a promising technology positioned between conventional aircraft and orbiting satellites. Operating in the stratosphere at altitudes of 20 to 50 kilometres, HAPS are typically unmanned aircraft or airships designed to remain airborne for extended periods while delivering communications, surveillance, environmental monitoring, and data services. As demand grows for persistent connectivity and lower-cost aerial infrastructure, HAPS technology is attracting increasing attention from governments, aerospace companies, and telecommunications providers.

What are HAPS?

Unlike satellites orbiting the Earth, HAPS remain within the atmosphere and maintain relatively fixed positions over a target area. Most concepts rely on lightweight structures powered by solar energy, supported by high-efficiency batteries or fuel cells to sustain night-time operation. The appeal of HAPS lies in their ability to combine some of the coverage advantages of satellites with the flexibility and accessibility of aircraft. A single platform can potentially provide broadband connectivity, remote sensing, disaster response support, or border surveillance across large geographical regions.

Recent developments in HAPS technology

Advances in materials science, solar panel efficiency, battery storage, and autonomous flight systems have significantly improved the feasibility of long-duration stratospheric flight Several aerospace and telecommunications companies have conducted successful test flights demonstrating impressive endurance, including a recent 12-day, 6,400-mile stratospheric flight from New Mexico to waters off Brazil. Modern HAPS designs increasingly focus on ultra-light composite airframes, intelligent energy management systems, and autonomous navigation capabilities capable of handling challenging stratospheric conditions.

The growth of 5G and future 6G communications networks has also accelerated interest in HAPS as a complementary infrastructure layer. In remote or underserved regions where terrestrial towers are impractical, HAPS may offer a faster and less expensive alternative to laying extensive ground infrastructure. Governments are likewise exploring military and civil applications, particularly for intelligence gathering, maritime monitoring, wildfire detection, and emergency communications during natural disasters.

Advantages of HAPS

Lower deployment costs: compared with launching satellites into orbit, HAPS can be developed, tested, repaired, and redeployed at significantly lower cost. Maintenance and upgrades are also more practical because the platforms can return to Earth for servicing.

Persistent regional coverage: HAPS can remain over a defined area for prolonged periods, providing stable coverage for communications or surveillance applications. This makes them particularly valuable in regions with limited infrastructure.

Reduced latency: because HAPS operate far closer to Earth than satellites, communication signals experience lower latency. This can improve performance for broadband services, real-time monitoring, and emergency response systems.

Flexibility and rapid deployment: HAPS systems can often be launched and repositioned more quickly than conventional satellite-based infrastructure. This flexibility is attractive for temporary deployments during humanitarian crises, major events, or military operations.

Environmental monitoring: the high-altitude perspective of HAPS makes them well suited for atmospheric analysis, climate observation, agricultural monitoring, and disaster assessment.

Challenges and limitations of HAPS

Energy storage constraints: although solar technology has advanced considerably, maintaining continuous operation through night-time periods remains a significant engineering challenge. Efficient and lightweight energy storage systems are critical to commercial viability.

Weather and atmospheric conditions: while the stratosphere is generally more stable than lower altitudes, HAPS must still withstand strong winds, temperature extremes, and seasonal atmospheric variations. Long-term durability remains a technical hurdle.

Regulatory complexity: HAPS occupy an unusual operational space between aviation and space activities. Regulatory frameworks governing airspace access, telecommunications licensing, and international operations are still evolving in many jurisdictions.

Payload and capacity limitations: compared with traditional satellites or larger aircraft, HAPS platforms often have restricted payload capacity. This can limit the sophistication or scale of onboard equipment.

Operational reliability: achieving months-long or continuous autonomous operation requires extremely reliable systems. Even minor failures in propulsion, energy management, or communications can jeopardise missions.

Outlook and patent trends

HAPS technology is steadily moving from experimental demonstration toward commercial and governmental deployment. Continued improvements in battery density, autonomous systems, and lightweight materials are likely to enhance endurance and operational efficiency.

Rather than replacing satellites or terrestrial networks, HAPS are more likely to serve as part of a hybrid communications and monitoring ecosystem. Their unique position in the aerospace landscape allows them to fill capability gaps where conventional solutions are either too expensive, inflexible, or technically unsuitable.

As the sector matures, companies developing HAPS technologies may increasingly focus on protecting innovations relating to energy systems, autonomous control, communications architecture, and platform design. Patent protection for such innovations is therefore expected to become an increasingly important aspect of competition within this rapidly evolving field.

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