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FRAND Focus – UK Bulletin

FIRST EDITION | Q1 2026

Overview

Welcome to the first edition of our UK FRAND Focus Bulletin, which will provide quarterly updates in respect of UK SEP disputes. The first quarter of 2026 has seen the continuation of significant jurisdictional tensions between the UK and continental Europe (namely the UPC and German courts) and, while English judges have called for de-escalation, there has been little evidence of this being achieved. Meanwhile, there have been two cases in which SEP holders have agreed to an English court determined interim licence pending the final determination of FRAND terms, suggesting that this pragmatic solution may be increasingly accepted by patentees.



Huawei v TP-Link [2026] EWHC 179 (Pat)

- This case marks the first time a SEP holder has willingly sought the determination of an interim FRAND rate.
- Both implementer, TP-Link, and SEP holder, Huawei, had agreed that an interim licence was appropriate and that they would accept the interim FRAND rate set by the English court pending the final UK FRAND determination. The court granted a declaration as to the FRAND rate for an interim licence, with the fee calculated by adopting the mid-point between the amounts proposed by the respective parties for the final FRAND licence.
- This 'midpoint method' has become the standard practice used by the English High Court to calculate interim licence rates. While recognising the midpoint may not be FRAND in every circumstance, the court explicitly rejected the unpacking analysis proposed by TP-Link, recognising the need for a swift resolution that avoids a mini-trial and noting the dangers of getting into the merits at an interim stage.



Warner Bros. Discovery v Nokia HP-2025-000053; Paramount v Nokia HP-2025-000055

- In February, Nokia declared that it was willing to agree to an English court determination of interim and final RAND licensing terms with Warner Bros. Discovery (WBD) and Paramount in respect of its video coding portfolio. This comes despite Nokia previously challenging the English High Court's jurisdiction to determine such terms.
- Nokia's change in approach was revealed in a hearing concerning its jurisdiction challenges and comes on the back of the English High Court's decision to expedite the proceedings ([2026] EWHC 103 (Pat)). It shows Nokia taking a similar tack to Huawei, who recently became the first SEP holder to agree to an English court determined interim licence.
- Despite the change in approach, Nokia reiterated its stance that arbitration is a more effective mechanism to resolve global patent disputes.
- Note also that Nokia continues to appeal against an interim licence declaration granted in favour of Acer, Hisense, and ASUS in December 2025.



Amazon v InterDigital [2026] EWHC 499 (Pat)

- In March, the English High Court agreed to allow Amazon to amend its claim against InterDigital to exclude its request for damages if InterDigital fails to grant Amazon a (F)RAND licence on terms decided by the English High Court.
- This follows a declaration that Amazon was ordered to make to the English High Court by the UPC, after it found in February that this claim had breached the terms of the ASI previously granted by the UPC in September.
- Meade J agreed to the amendment despite "very considerable reservations", noting that InterDigital had repeatedly said to the English High Court that Amazon is not in breach of the UPC ASI and does not object to the English High Court determining final RAND relief. He went on to criticise the approach taken by the UPC to the proceedings and called for de-escalation and better judicial communication.

Apple v Powermat HP-2026-000013

- On 20 March 2026, Apple issued a FRAND action against the Israel-based SEP holder Powermat in the English High Court in relation to the Qi wireless charging standard. It also filed a parallel action in the US.
- The action comes in response to Powermat filing a lawsuit against Apple in the US District Court for the Western District of Texas in February 2026 alleging infringement of five of its patents relating to wireless charging technology.

Coming up

- The UK's fourth first instance FRAND determination trial (in *Samsung v ZTE*) was heard in February. Judgment can be expected in the coming months.
- The UK Supreme Court will hear the appeals in *Tesla v Avanci/InterDigital* (concerning jurisdiction in claims concerning patent pools) from 27-29 April 2026 and in *Optis v Apple* (concerning FRAND determination methodology) from 29 June to 1 July 2026.

Key contacts



Katie Coltart
Partner, London
IP
Tel: +44 20 7456 3681
katie.coltart@linklaters.com



Yohan Liyanage
Partner, London
IP
Tel: +44 20 7456 4623
yohan.liyanage@linklaters.com



Kathy Berry
Counsel, London
IP
Tel: +44 20 7456 5530
katherine.berry@linklaters.com

Evolution of the UK SEP landscape

The following timeline sets out the key decisions of the English courts that have shaped the way that SEPs are litigated in the UK today. It is not intended to be a comprehensive summary of all English SEP case law.

2025

Warner Bros. Discovery v Nokia [2025] EWHC 2888 (Pat) and [2025] EWHC 3248 (Pat)

Category: Jurisdiction & Remedies (Interim licences)

Key points:

- In November 2025, Nokia announced infringement proceedings against Warner Bros. Discovery (WBD) in the US, the UPC, Germany and Brazil. On the same day, WBD sought a FRAND determination from the English High Court.
- In light of the antisuit/anti-interim licence injunctions (ASIs/AILIs) granted by the UPC and the Munich Regional Court in *Amazon v InterDigital* and Nokia's past history of having sought *ex parte* anti-antisuit injunctions in other cases, the English High Court granted an *ex parte* preliminary injunction, described as an anti-antisuit injunction (AASI), in favour of WBD against Nokia.
- The injunction prohibits Nokia from taking any steps in any court or tribunal (wherever situated) to seek any orders, measures or other relief (including, without limitation, antisuit relief) which would, directly or indirectly, prevent WBD from pursuing or enforcing a UK FRAND determination or any part thereof, or an adjustable interim licence.
- The court accepted that giving even short notice risked enabling Nokia to obtain rapid *ex parte* antisuit measures in Germany or the UPC.
- At the point when WBD sought continuation of the AASI, Nokia offered contractual undertakings in lieu.

Samsung v ZTE [2025] EWCA Civ 1383

Category: Jurisdiction & Remedies (Interim licences)

Key points:

- Samsung brought proceedings against ZTE in the English High Court, seeking a determination of the terms of a global FRAND cross-licence. A few days later, ZTE brought proceedings against Samsung for the same purpose in the Chongqing Court in China. The Chinese FRAND trial concluded in October 2025 whereas the English FRAND trial was listed for February 2026.
- The English High Court originally found ([2025] EWHC 1432 (Pat)) that ZTE was acting in bad faith by refusing to sign up to interim licence terms offered by Samsung which provided for those interim terms to be later adjusted by reference to the English court's FRAND determination. ZTE appealed, arguing that this wrongly proceeded on the premise that a FRAND determination by the English court is the default.
- The Court of Appeal held that it does not constitute bad faith for a SEP owner to seek to force an implementer to accept determination of FRAND terms by the SEP owner's preferred court. The fact that the English court was seised first was not a sufficient basis to conclude that ZTE had acted in bad faith.

2025

Amazon v InterDigital [2025] EWHC 2708 (Pat), [2025] EWHC 3170 (Pat) and [2025] EWHC 3334 (Pat)

Category: Jurisdiction & Remedies (Interim licences)

Key points:

- Both the UPC and the Munich Regional Court granted 'anti-interim licence injunctions' ("**AILIs**") in favour of InterDigital, preventing Amazon from seeking an interim licence in the English courts (UPC case ID: UPC_CFI_936/2025 and Munich Regional Court case ID: 21 O 12112/25). In response, the English High Court granted Amazon an *ex parte* anti-antisuit injunction ("**AASI**") to prevent InterDigital from taking any steps in non-UK courts to prevent Amazon from pursuing the FRAND relief it is seeking in the UK (to protect the English court's jurisdiction to determine a contractual FRAND dispute).
- In late 2025, the UPC and Munich courts upheld the AILIs. The UPC also ordered an unusually high penalty of EUR 50 million if disobeyed by Amazon and referred the orders to the competition authorities at the European Commission. The English High Court also continued its AASI, emphasising that this is an exceptional remedy justified only to protect the court's jurisdiction or to restrain vexatious conduct. The English court later also rejected InterDigital's set-aside application.
- The proceedings sparked jurisdictional tensions between the UK and the UPC/Germany. The English High Court has expressed a preference for de-escalation between foreign courts and the use of non-coercive measures, and expressed hope that de-escalation would be a cooperative effort internationally.

Optis v Apple [2025] EWCA Civ 552

Category: FRAND determination

Key points:

- Court of Appeal decision in respect of the UK's third FRAND determination. The Court of Appeal overturned the decision at first instance, rejecting (among other things) the first instance judge's averaging method to set the licence rate and confirming that the correct approach to rate-setting is to adopt a comparables-based approach and to then use a top-down approach as a cross-check.
- The court determined the FRAND rate relying on rates from what it considered to be the best comparables (as unpacked at first instance). It also confirmed, as already decided by the Court of Appeal in *InterDigital v Lenovo*, that payment should be made in respect of all past sales (not only those from the date at which the implementer was approached by the SEP holder) and that interest is payable thereon.
- The resulting determination uplifted the lump sum payable by Apple to Optis by ten times to approximately US$500 million plus interest.

Lenovo v Ericsson [2025] EWCA Civ 182

Category: Remedies (Interim licences)

Key points:

- Although in this case Ericsson had not given an undertaking that it would enter into a licence on terms to be decided by the English court to be FRAND, Lenovo had done so. The Court of Appeal applied the same reasoning as in *Panasonic v Xiaomi* and granted the equivalent declarations as to an interim licence, overturning the first instance decision in [2024] EWHC 2941 (Pat) (which, despite being handed down after the *Panasonic v Xiaomi* Court of Appeal decision, had still refused to grant an interim licence).
- There have since followed many further cases in which interim licences have been sought and granted.

2024

Panasonic v Xiaomi [2024] EWCA Civ 1143

Category: Remedies (Interim licences)

Key points:

- Marked the first time an English court granted declarations as to an interim FRAND licence, overturning the first instance decision in [2024] EWHC 1733 (Pat). It was also a different outcome to the earlier case of *Lenovo v InterDigital* ([2024] EWHC 596 (Pat)), where a declaration as to an interim licence was refused on the basis that, *inter alia*, it would only be of modest value since it would not compel the SEP holder to enter into a full licence.
- Court of Appeal criticised Panasonic's behaviour of pursuing injunctions in foreign courts despite previously giving an undertaking that it would enter into a licence on terms to be decided by the English court to be FRAND. It granted declarations that a willing licensor in Panasonic's position would enter into an interim licence with the implementer pending the FRAND determination and that Panasonic was in breach of its obligation of good faith under the ETSI IPR Policy in not doing so. It also held that granting the declarations sought would serve a useful purpose in forcing Panasonic to reconsider its position of not entering into an interim licence and pursuing injunctions in foreign courts. It held that the appropriate interim rate would be the midpoint between the parties' proposals.
- This decision was followed by the Court of Appeal in the later decision of *Lenovo v Ericsson*.

2024

InterDigital v Lenovo [2024] EWCA Civ 743

Category: FRAND determination

Key points:

- Court of Appeal decision in respect of the UK's second FRAND determination. The decision provided guidance on setting the terms of FRAND rates, including that the appropriate method is a comparable licences approach with a top-down cross-check (as in *Unwired Planet*), that royalties are payable on sales made before the six-year limitation period prior to commencement of proceedings, and that interest should be awarded on royalties in respect of all past sales.
- Accordingly, the Court upheld the decision at first instance on most grounds. It did, however, increase the lump sum to be paid by Lenovo to InterDigital by almost 30% in light of what it considered to be an internally inconsistent approach by the High Court in respect of the discounting of past sales (the failure to consider that the rate paid by comparable licensee, LG, on previous sales was also discounted for non-FRAND reasons). Although higher than anything offered by Lenovo, the sum remained far below the amount that InterDigital had sought through the appeal.
- The Court also declined to make a declaration as to whether InterDigital was a willing licensor noting that in the circumstances that now prevail, the past willingness or otherwise of both parties is simply irrelevant and that the only question is what sum of money is FRAND.

Tesla v IDAC [2024] EWHC 1815 (Ch)

Category: Remedies (PIs)

Key points:

- The court ruled in favour of Avanci and InterDigital's jurisdiction and strike out applications holding, *inter alia*, that there was no serious issue to be tried against Avanci and that Tesla had failed to identify any independent basis on which Avanci was itself legally required to grant Tesla a FRAND licence.
- The Court of Appeal later upheld ([2025] EWCA Civ 193) the High Court decision declining jurisdiction to determine the terms of a FRAND licence to the Avanci 5G platform of SEPs. It held that, while each SEP owner on the Avanci 5G platform had given a contractual undertaking to license their own SEPs on FRAND terms, that undertaking did not extend to an agreement to license their SEPs on a collective basis with other SEP owners in the Avanci 5G platform. The court explained that Tesla could either take the Avanci 5G platform licence at the offered rate or could negotiate a licence on FRAND terms with each of the SEP owners individually but could not combine both options.

Lenovo v Ericsson [2024] EWHC 1267 (Ch)

Category: Remedies (PIs)

Key points:

- Lenovo had applied for a preliminary injunction to prevent Ericsson from infringing its SEP. The PI it applied for, however, would not apply if Ericsson gave an undertaking to enter into a cross-licence or another mutually acceptable regime.
- The court declined to grant the PI on the basis that damages under a cross-licence would be an adequate remedy for Lenovo, and the losses it claimed, resulting from the injunctions against Lenovo in Brazil and Colombia, are not losses which can be caused by the infringement of the SEP in the UK dispute.
- The Court of Appeal later upheld this decision in [2024] EWCA Civ 1100.

2023

Nokia v Oppo [2023] EWHC 1912 (Pat)

Category: Case management/Strategy

Key points:

- Having lost on infringement of a SEP, Oppo argued that, as it had offered to undertake to take a licence on terms decided by the Chongqing Court in China, the position that it would have to choose either to undertake to take a licence on the terms decided by the English High Court, or to submit to an injunction on the UK SEP it infringes, does not apply. Oppo argued that the undertakings it had offered (to take the CN determined licence) changed the position and either meant that it was already licensed under the ETSI IPR Policy, or that it was at least a clause 6.1 beneficiary and was therefore entitled to get a licence in due course and not liable to be injuncted.
- The court held that Oppo is not automatically licensed because clause 6.1 of the ETSI IPR Policy does not automatically grant a licence when an implementer invokes its right to a licence. Rather, it requires the SEP holder to make a FRAND offer that is actually FRAND and capable of acceptance, otherwise the SEP holder and the implementer may have no idea as to the terms of the resulting contractual relationship (the licence). The court also held that Oppo was not a clause 6.1 beneficiary and committing to the result of the proceedings in the Chongqing Court was not enough to make it one. The court emphasised the court has

2023

an obligation to ensure that an effective remedy is given for infringement. It was concerned about setting a precedent where an infringing implementer could stave off any danger of an injunction by opting for a FRAND assessment in a court abroad which might be unacceptably slow or might ultimately not set FRAND terms at all, or might not compel the implementer to enter into a licence.

- Accordingly, it held that the only way for Oppo to avoid an injunction was to commit to take a global FRAND licence on the terms to be set by the English court.

Optis & Unwired Planet v Apple [2023] EWHC 1095 (Ch)

Category: FRAND Determination

Key points:

- In the UK's third first instance FRAND determination (which was ultimately overturned on appeal), the court set the FRAND rate payable by Apple. The Judge rejected both parties' comparable licences analysis, noting that the use of comparables should be evidence and fact led and that comparables are only of value if they are in fact comparable. He then undertook his own top-down analysis:
  - Assessment of the total value of the stack to Apple (broadly by scaling up the lump sum value of each of the Apple comparable licences to assume each licensor held 100% of the stack and then averaging).
  - Then apportioning the price *pro rata* to Optis in accordance with its holding (0.61% of the stack; or 0.38% of the stack in terms of the portion of the Optis portfolio for which Apple needed a licence).
- The court held that the determined rate was payable from when Optis first 'asserted itself' in 2017 i.e., the point at which Optis reached out to Apple to seek to licence their patent portfolio. The court also held that the court's role is to ensure that the FRAND terms do not incentivise hold-out but rather encourage proper but swift negotiations. Therefore, accrual of interest on payments which should have been made is a part of this.
- In the consequentials judgment ([2024] EWHC 197 (Ch)), the court held that it will be rare that a SEP holder behaves so badly during negotiations that it disentitles them from the award of any interest in relation to payments for past releases, and that this was not the case in this dispute. The court revised the interest rate on payments for past releases from 5% to 6%.

InterDigital v Lenovo & Motorola [2023] EWHC 539 (Pat)

Category: FRAND Determination

Key points:

- In the UK's second FRAND determination (which was upheld on appeal), the court held that neither of the parties' offers were FRAND and set the FRAND rate payable by Lenovo. The judge applied a comparable licence approach, relying on a single "closest comparable" between InterDigital and another implementer (LG), and applying some adjustments to reach the FRAND rate with Lenovo. The adjustment ratio largely reflected a differing sales split between developed and emerging markets (LG selling more in developed markets, bringing the per unit rate down for Lenovo as compared to LG). The judge also rejected InterDigital's top-down cross-check.
- The FRAND rate determined by the court applied to past and future sales, and the court held that all past infringements should be paid for, even those outside of the limitation period. It also held that large volume discounts were discriminatory to smaller licensees (assumed discounts applied by IDC were used to artificially inflate the future rates). The only discounts consistent with FRAND were said to relate to time value of money considerations. Removal of limitation period removes principal reasons for heavy discounting (worldwide limitation periods and issues with recovery) so heavy discounting of past sales is unnecessary.
- Interest was awarded on all sums owing for past sales. In the consequentials judgment ([2023] EWHC 1578 (Pat)), the court held that interest should be paid on the lump sum payable by Lenovo at a rate of 4% compounded quarterly.

2022

Kigen v Thales [2022] EWHC 2846 (Pat) and [2023] EWHC 313 (Pat)

Category: Jurisdiction & Case management/Strategy

Key points:

- First example of an implementer successfully starting FRAND proceedings, whereby Kigen sued Thales for patent invalidity (rather than having to wait to counterclaim after being sued for infringement) and sought a declaration that it was entitled to a FRAND licence to be determined by the English courts.
- The court decided that the claim for FRAND declarations would be stayed unless Kigen amended its claim to make clear that it is seeking a licence only to the extent that it is required to do so following a determination on validity and essentiality or it gave an undertaking that it would enter into a FRAND licence for all Thales's relevant essential IPR.

- The case can be distinguished from the earlier *Vestel v Access Advance* case on the basis that Kigen had attached its request for a declaration to a claim for invalidity.
- While the action ultimately settled before trial, it also paved the way for the 'FRAND-first' approach – where the High Court determined in [2023] EWHC 313 (Pat) that it would conduct the FRAND trial prior to the technical trials. Kigen were seeking a FRAND declaration, so holding the FRAND trial first gave Kigen what it sought while still giving it the opportunity to have a subsequent technical trial following the FRAND trial if it saw fit. The FRAND-first approach has been implemented in many UK SEP proceedings since.

2022

Philips v Oppo [2022] EWHC 1703 (Pat)

Category: Jurisdiction

Key points:

- Philips asserted its SEPs, and alleged that Oppo was infringing such SEPs, in the English High Court.
- The court granted a pre-emptive ex-parte AASI in favour of Philips, which was subsequently continued at the return hearing, as the court held that there was an imminent threat of Oppo seeking antisuit relief in the Chinese courts which would be oppressive and prevent a UK court from determining infringement of a UK patent.
- While the AASI prevented Oppo from seeking antisuit relief in the Chinese courts, the AASI did not prevent the Chinese courts from determining a global FRAND rate.
- This case marked the first time that a pre-emptive AASI had been granted in the SEP/FRAND space.

2021

Nokia v Oppo [2021] EWHC 2952 (Pat)

Category: Jurisdiction

Key points:

- Nokia sought a declaration that a number of its patents were essential to the relevant standards and that they were valid and infringed by Oppo. It also sought a declaration that the terms of a global licence that it had offered to Oppo were FRAND.
- Oppo disputed the jurisdiction of the English courts to hear the dispute, as the legal and geopolitical landscape had changed since the position was considered by the Supreme Court in *Unwired Planet* - namely that the Chinese Supreme Court had since ruled that it also had jurisdiction to determine the terms of a global FRAND licence, and that the Brussels regulation no longer applied in the UK following Brexit. Oppo accordingly sought an order to set aside service on the non-UK defendants or, alternatively, a stay of the English proceedings pending the outcome of the proceedings to settle global FRAND terms in the Chongqing Court in China.
- The High Court dismissed the jurisdiction application and declined to stay the proceedings, noting that the FRAND framework had not yet evolved and referring to the potential problem of SEP holders and implementers selecting the jurisdiction most favourable to them when choosing where to bring an action. The UK was the appropriate forum as the dispute was grounded in determining the validity and infringement of UK patents.
- The Court of Appeal later upheld this decision in [2022] EWCA Civ 947.

Optis & Unwired Planet v Apple [2021] EWHC 2564 (Pat)

Category: Case management/Strategy & Remedies (FRAND injunction)

Key points:

- This case established in particular that once a patent has been determined as valid and infringed (in the technical trials prior to the FRAND trial) the patentee is entitled to an injunction unless and until the implementer undertakes to take a licence on the terms subsequently determined by the court to be FRAND. Accordingly, an implementer may be put to election between a FRAND injunction and giving a "blank cheque undertaking" (i.e. an undertaking to be bound by terms yet to be decided by the English court) upon the first finding of SEP infringement. However, the case also established that conduct will not disqualify an implementer from taking a FRAND licence. There is no right to an unqualified FRAND injunction due to conduct – the implementer can change its mind.
- The decision was later upheld by the Court of Appeal in [2022] EWCA Civ 1411.

2021

Mitsubishi & Sisvel v OnePlus, Oppo & Xiaomi [2021] EWHC 1541 (Pat)

Category: Jurisdiction & Case management/Strategy

Key points:

> Sisvel (an administrator of a patent pool) and Mitsubishi (a licensor in the pool) sought to establish that the terms of a patent pool licence offered by Sisvel were FRAND.

> Even though it had been determined that Sisvel's patent in the pool was non-essential, the court refused to strike out the claim and held that Sisvel was allowed to continue as a claimant, as it was arguable that at trial a patent pool licence would be held to be FRAND and an appropriate licence to take.

Vestel v Access Advance & Philips [2021] EWCA Civ 440

Category: Jurisdiction

Key points:

> After abandoning its competition law claim in the English Courts that Access Advance and Philips had abused their dominant positions by failing to offer Vestel a licence on FRAND terms, Vestel (an implementer of SEPs included in the Access Advance patent pool) contended that the English courts had jurisdiction to consider a freestanding claim for various FRAND declarations.

> Vestel argued that such a claim was analogous to a claim for a declaration of non-liability in the tort of patent infringement. However, the Court of Appeal rejected this argument, noting that the legal basis for the declarations had not been identified as the declarations sought by Vestel did not provide that it had a legal right to a FRAND licence, and it had not pleaded this either. There is no such thing as a freestanding FRAND claim, it needs to be supported by an underlying legal claim e.g., an infringement claim.

2020

Unwired Planet v Huawei [2020] UKSC 37

Category: Jurisdiction

Key points:

> Landmark Supreme Court decision in relation to the English court's jurisdiction to determine global FRAND licensing terms.

> The Supreme Court confirmed that the contractual arrangements created by ETSI under its IPR policy give the English courts jurisdiction to determine the terms, including royalty rates, of FRAND licences on a global basis.

2019

IPCom v Xiaomi & MyTech [2019] EWHC 3074 (Pat)

Category: Remedies (PIs)

Key points:

> IPCom applied for a preliminary injunction in respect of infringement by Xiaomi of IPCom's UK SEP.

> The court held that the fact a PI application arises in the context of a FRAND dispute does not remove it from the usual *American Cyanamid* approach, which must be applied to any application for a PI.

> While the court ultimately dismissed the application on the basis that there would be no irreparable harm to IPCom in the absence of an injunction, the case marked the first time that a PI had been sought in respect of a SEP in a FRAND dispute.

IPCom v Lenovo & Motorola Mobility [2019] EWHC 3030 (Pat)

Category: Jurisdiction

Key points:

> Lenovo had brought proceedings in the US seeking a global FRAND determination for IPCom's SEP portfolio. IPCom then brought infringement proceedings in the English High Court.

> In response, Lenovo filed a motion for an antisuit injunction in the US proceedings which would prohibit IPCom from prosecuting the proceedings in the English High Court. IPCom then filed an application with the English High Court for an anti-antisuit injunction.

> The court granted the AASI, holding that it did not interfere with the substantive proceedings in the US, and not granting the AASI would have deprived IPCom of its right to have infringement and validity of its patent determined in the UK.

> This case marked the first time that an AASI was granted in the SEP/FRAND space in the UK.

2019

TQ Delta v ZyXel [2019] EWCA Civ 1277

Category: Case management/Strategy & Remedies (FRAND injunction)

Key points:

> ZyXel was found to have infringed TQ Delta's SEP which was due to expire shortly. ZyXel waived its right to a FRAND licence, instead submitting to pay the full damages claimed by TQ Delta for past infringement and submitting to an injunction for the remaining three months of the patent term.

> The Court of Appeal held that this waiver is effective, and an implementer can choose to take a UK-only injunction and avoid a global FRAND determination from the English courts.

> The decision overturned the earlier decision of the High Court in [2019] EWHC 1089 (Pat).

2018

Unwired Planet v Huawei [2018] EWCA Civ 2344

Category: FRAND determination & Jurisdiction

Key points:

> The Court of Appeal upheld the FRAND determination set by the High Court at first instance.

> The only significant area in which the Court of Appeal deviated from the High Court judge's reasoning was that it held that a number/range of licence terms can be FRAND in a given set of circumstances – there is not one single set of FRAND terms. Accordingly, the SEP holder will satisfy its FRAND obligations provided it makes an offer that is within the FRAND range, even if it is at the lowest end.

Conversant v Huawei & ZTE [2018] EWHC 808 (Pat)

Category: Jurisdiction

Key points:

> Conversant claimed that Huawei had infringed its SEPs in various jurisdictions and served proceedings on Huawei in the UK seeking a global FRAND licence. Huawei issued proceedings against Conversant in China seeking to establish invalidity and non-infringement of Conversant's Chinese patents as well as a number of declarations, including a declaration of non-infringement or a determination of a FRAND rate in respect of Conversant's Chinese SEPs.

> Huawei argued that the English court had no jurisdiction to decide claims which concerned infringement of foreign patents or, alternatively, that China was the more appropriate forum.

> The High Court held that the validity challenges that Huawei brought in China did not prevent the English courts from determining a global FRAND rate as part of a UK patent infringement claim. If the Chinese patents were held to be invalid or not infringed, then any FRAND licence would need to provide that no royalties should be payable in respect of them. If the Chinese courts determined a FRAND royalty rate for the Chinese patents which were valid and infringed, the English court could decide to include such rate for China in any global FRAND licence that it determined.

> The Court of Appeal later upheld the decision of the High Court in [2019] EWCA Civ 38.

2017

Unwired Planet v Huawei [2017] EWHC 711 (Pat)

Category: FRAND determination

Key points:

> Landmark case which granted the UK's first FRAND determination for a global licence. Applied a comparable licences approach to determining FRAND terms, with a "top down" cross-check (considering the portion of the entire royalty stack for the standard that is attributable to the SEP holder) to ensure that the rates derived from the comparable licences were appropriate.

> Held that an implementer who refused to take a FRAND licence on terms set by the English court exposed itself to an injunction for infringing the SEP, which would only apply in case a FRAND licence was not taken (a so-called "FRAND injunction").

> In the later remedies judgment ([2017] EWHC 1304 (Pat)), the court granted a FRAND injunction, which was stayed pending appeal, and a declaration that the agreed terms of the licence between the parties represented the FRAND terms in the circumstances between the parties.

2015 / 2013

Vringo v ZTE [2013] EWHC 1591 (Pat) and [2015] EWHC 214 (Pat)

Category: Case management/Strategy

Key points:

> Explained that, in FRAND determination cases, the courts have to decide the rate and terms which would be arrived at following negotiation between a willing licensee and licensor i.e. the determination of what the outcome of a real-world negotiation would be. This set the scene for the FRAND/SEP litigation and case law which followed.

> Considered the situation where both the patentee and implementer make differing offers which can both be FRAND, known as the 'Vringo problem' (this problem was later resolved in *Unwired Planet v Huawei* (Court of Appeal), which held that the patentee's terms prevail – if two different sets of terms are each found to be FRAND then the SEP owner will satisfy its obligation to ETSI if it offers either one of them and if the implementer refuses the FRAND terms offered by the patentee, the implementer faces an injunction, even if the alternative terms offered by the implementer are also FRAND).

2006

Nokia v InterDigital [2006] EWHC 802 (Pat) and [2006] EWCA Civ 1618

Category: Jurisdiction

Key points:

> Nokia sought declarations of non-essentiality against a number of InterDigital's declared patents. InterDigital argued the English court did not have jurisdiction to grant the requested declarations on the basis that Nokia's pleaded complaint was incapable of amounting to an assertion of a claim of right, and that in any event the Court should not exercise its discretion to grant the declarations for a number of reasons, including that there was no finality in the declarations that Nokia sought (since a conclusion that operating a standard does not require infringement of a given patent does not mean that there will be no infringement of that patent), the declarations would be unlikely to have a material effect on licensing negotiations, and that accepting jurisdiction would have the potential to open the floodgates to a mass of similar actions.

> Dismissing the application, the court noted, *inter alia*, that it would be wrong for a member of ETSI who has made a declaration of essentiality to suggest that it is either unprepared or unwilling to have the substance of the declaration tested and that there was not a real possibility that Nokia would infringe the patents even if there was a finding of non-essentiality in respect of them.

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