



Neutral Citation Number: [2025] EWHC 3334
Case No: HP-2025-000043

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)
PATENTS COURT

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL
19 December 2025

Before:
MR. JUSTICE MEADE

Between:

(1) AMAZON.COM, INC.
(a company incorporated in the
State of Delaware, USA)
(2) AMAZON DIGITAL UK LIMITED
(3) AMAZON EUROPE CORE SARL
(a company incorporated in Luxembourg)
(4) AMAZON EU SARL
(a company incorporated in Luxembourg)
(5) AMAZON TECHNOLOGIES, INC.
(a company incorporated in the
State of Nevada, USA)

Claimants

- and -

(1) INTERDIGITAL VC HOLDINGS, INC.
(a company incorporated in the State of Delaware,
USA)
(2) INTERDIGITAL, INC.
(a company incorporated in the
State of Pennsylvania, USA)
(3) INTERDIGITAL MADISON PATENT
HOLDINGS SAS
(a company incorporated in France)
(4) INTERDIGITAL PATENT HOLDINGS, INC. (a
company incorporated in the
State of Delaware, USA)
(5) INTERDIGITAL CE PATENT HOLDINGS SAS

(a company incorporated in France)
(6) THOMSON LICENSING SAS
(a company incorporated in France)
(7) VANTIVA SA
(a company incorporated in France)

Defendants

Hearing dates: 3 and 4 December 2025

APPROVED JUDGMENT

ANDREW LYKIARDOPOULOS KC and LIGIA OSEPCIU (instructed by **Hogan Lovells International LLP**) appeared for the **Claimants**.

MICHAEL BLOCH KC and THOMAS JONES (instructed by **Bird & Bird LLP**)
appeared for the **First to Fifth Defendants**.

Remote hand-down: This judgment will be handed down remotely by circulation to the parties or their representatives by email. It is subject to typographical corrections but is not embargoed and is public immediately. It will be released to The National Archives as soon as possible after any typographical corrections are made. A copy of the judgment in final form as handed down should be available on The National Archives website shortly thereafter but can otherwise be obtained on request by email to the Judicial Office (press.enquiries@judiciary.uk).

Mr Justice Meade:

Introduction.....	4
Overview of my reasoning and conclusions	5
Brief background	7
Overview of the Jurisdiction Challenge.....	8
Applicable legal principles	8
Service in and service out – general principles	8
CPR r.63.14	10
The gateways.....	11
Case law in the (F)RAND context	12
Brownlie I and II	26
Amazon's claims in more detail	26
The Patent Claims	27
The RAND Claims	27
The Competition Claims	30
InterDigital's undertakings and arbitration offer	33
Undertakings not to assert UK patents	33
Arbitration and standstill offer	35
Undertakings to accept/comply with RAND terms set in alternative fora.....	36
No guarantee RAND terms will be determined.....	37
Arbitration generally	38
Litigation strategy	39
Applicability of CPR r.63.14	40
Permission to serve out	40
Analysis – Forum non conveniens stay	40
Availability of alternative fora	40
Connecting factors.....	41
Place of the obligation or where parties carry on business.....	42
Domicile.....	42
Applicable law	42
Competition law claims	43
Practicalities for witnesses and documents.....	43
Experience and expertise of the court / tribunal	44
Timing of relief.....	44
Disclosure and expert evidence	45
Open justice	45
Previous conduct.....	46
Conclusion on <i>forum non conveniens</i>	46
Case management stay	46
Interests of justice and international harmony	47
Conclusion	47

INTRODUCTION

1. This is my judgment on the First to Fifth Defendants' ("InterDigital") CPR Part 11 application challenging the jurisdiction of this Court to hear certain aspects of these proceedings (the "Jurisdiction Challenge"). I have set out the procedural background very briefly below, but a fuller explanation can be found in my recent judgment in these proceedings dated 2 December 2025 ([2025] EWHC 3170 (Pat)).
2. Mr Lykiardopoulos KC appeared for the Claimants ("Amazon") leading Ms Osepiu. Mr Bloch KC appeared for InterDigital leading Mr Jones. I am grateful for the help of all the advisers on both sides.
3. Amazon's action seeks determination by this Court of global reasonable and non-discriminatory ("RAND") terms for licences in respect of certain of InterDigital's patents. They include patents declared essential to standards ("SEPs") promulgated by the International Telecommunications Union Standardisation Sector (the "ITU-T"). H.264/AVC and H.265/HEVC are the video coding standards of the ITU-T that are material for the purposes of these proceedings.
4. As is common ground between the parties, declarations made by patent owners to the ITU-T give rise to a Swiss law contract for the benefit of third parties – the "RAND Commitment".
5. There is a dispute between Amazon and InterDigital (not for resolution now) as to the nature of the RAND Commitment under Swiss law: whether it entails an obligation to actually offer a RAND licence (as Amazon says), or whether it just entails an obligation to negotiate in good faith (as InterDigital says).
6. There is also a dispute between the parties (also not for resolution now) as to what patents/claims are to be included in a licence granted on RAND terms. A facet of that dispute is whether declarations made to the ITU-T standards cover not only *decoding* claims but also *encoding* claims. For present purposes, it suffices to say that the "InterDigital Video Portfolio" encompasses decoding and encoding SEPs, and also certain patents which are not contended to be essential to the above video coding standards ("NEPs"). Amazon says that InterDigital is obliged to license encoding patent claims either because the contractual RAND Commitment requires it on its proper interpretation, or because it would be an abuse of a dominant position under competition law not to do so. Amazon says that the obligation to license the NEPs arises because InterDigital habitually includes them at no extra cost in portfolio licences so it would be discriminatory not to include them.
7. Amazon and InterDigital agree that these are all matters to be treated as arguable at this stage of proceedings.
8. The nub of what Amazon seeks through these proceedings is for this Court to declare that it is entitled to a licence to four UK SEPs (the "Challenged Patents", said to relate to encoding and/or decoding) on RAND terms covering the whole InterDigital Video Portfolio (or alternatively just SEPs), to declare what those terms are, particularly as to price, and to order specific performance so that

InterDigital must offer such a licence to Amazon. Amazon says such a licence will be global, will cover encoding and decoding patent claims and NEPs, and will be useful for a variety of reasons explored below, although both parties agree, for different reasons, that InterDigital will not be able to get an injunction against infringement of the Challenged Patents.

9. With the exception of the Patent Claims (defined below), InterDigital contends that service of these proceedings within the jurisdiction was invalid and ineffective and that permission to serve out of the jurisdiction was wrongly granted and so should be set aside. Alternatively, InterDigital seeks a stay of these proceedings.
10. The Sixth Defendant (“**Thomson**”) and Seventh Defendant (“**Vantiva**”) are companies that made declarations to the ITU-T in relation to certain patents prior to the transfer of those patents to InterDigital. Thomson and Vantiva are not challenging jurisdiction and were not represented at this hearing.
11. The parties relied on following evidence at this Jurisdiction Challenge hearing:
 - i) As to fact evidence, two witness statements of Richard Vary (partner at Bird & Bird; solicitors for InterDigital) dated 7 November 2025 (“**Vary 2**”) and 28 November 2025 (“**Vary 3**”), and two witness statements of Paul Brown (partner at Hogan Lovells; solicitors for Amazon) dated 17 September 2025 and 21 November 2025.
 - ii) As to Swiss foreign law evidence, InterDigital relies on two reports of Simon Holzer dated 7 November 2025 and 28 November 2025. Amazon relies on the report of Lara Dorigo dated 21 November 2025.
 - iii) As to US foreign law evidence, InterDigital relies on two reports of Kelly Farnan dated 7 November 2025 and 28 November 2025. Amazon relies on the report of Jorge Contreras dated 21 November 2025.

OVERVIEW OF MY REASONING AND CONCLUSIONS

12. Amazon purported to serve these proceedings in this jurisdiction as of right pursuant to CPR r.63.14 (claim form relating to a registered IP right), and also obtained permission to serve out, relying on a number of the Practice Direction 6B gateways, most significantly gateway 11 (property within the jurisdiction). InterDigital challenges both.
13. A significant line of authority going back to *Unwired Planet v. Huawei* [2020] UKSC 37 (“**UPSC**”) has held that claims such as Amazon’s are to be characterised not as contractual claims for global (F)RAND licences but as relating to the obtaining of a licence to the UK patents in issue, albeit such a licence would, on the evidence in those cases, be global. Based on that characterisation, CPR r.63.14 and gateway 11 (and others) have been repeatedly held to be applicable to such claims, and the same characterisation has contributed heavily to the failure of jurisdiction challenges/stay applications based on *forum non conveniens*.

14. The same line of authority has repeatedly held that this Court may have jurisdiction when the claim is initiated by implementers (as in this case) or by the patentee.
15. I accept the submission by InterDigital that a number of the judgments in question have been *obiter* in material parts, but the reasoning in my view has been considered, clear and consistent on all the necessary points and I am not near to being persuaded to depart from it. I think it is correct.
16. Against this very unpromising background, InterDigital raises basically four matters:
 - i) That the above line of authorities should be revisited because it has turned out to be a wrong path, especially for claims by implementers.
 - ii) InterDigital has given an undertaking not to enforce its relevant UK patents which changes the characterisation of the dispute.
 - iii) The present situation is fundamentally different from any that has gone before because InterDigital has offered international arbitration on attractive terms relating to availability and terms of a global licence.
 - iv) There are other better fora available, including not only arbitration but also Switzerland (the home of the ITU-T and the applicable law of the RAND Commitment) and Delaware (where some of the main parties are incorporated).
17. InterDigital helpfully made clear that it ordered the alternative fora as follows in terms of the strength of its arguments and preferences: first, arbitration, then Switzerland, then Delaware.
18. My main conclusions are as follows.
19. First, as I have already said, I reject InterDigital's point i) because I will not depart from the principles decided in the previous cases.
20. Point ii) fails because InterDigital's non-enforcement undertaking is not to grant a licence, which is what Amazon claims. There are material differences.
21. The court's approach to other fora and the standard and allocation of the burden of proof depends on whether they are considered as part of an application to set aside permission to serve out, as a challenge to service in as of right, or in the context of a *forum non conveniens* stay.
22. In the present case, I conclude that Amazon was entitled to serve in as of right under CPR r.63.14, which would mean that InterDigital would have to show an available alternative forum that was clearly and distinctly more appropriate than this jurisdiction.
23. As to iii) I find below that an offer of arbitration does not transform the position and rather that InterDigital's proposal would be calculated to force Amazon into arbitration, which ought only to be a consensual process.

24. As to iv) I find that the particular arbitration proposal made by InterDigital and the characteristics of litigation in Switzerland and Delaware mean that InterDigital has not shown an alternative, available forum that is clearly and distinctly more appropriate.
25. On the contrary, to the extent that the dispute has a natural forum, the UK is the most appropriate. The reasons for this vary somewhat depending on which other forum is under consideration.
26. Although not essential to my decision, the competition claims brought by Amazon make it particularly clear that this Court is the appropriate forum.

BRIEF BACKGROUND

27. These proceedings were issued on 29 August 2025 by Amazon.
28. On 1 September 2025, the Claim Form, Particulars of Claim (the “**PoC**”), and Grounds of Invalidity were delivered by hand to the First Defendant at the registered UK address for service listed in respect of EP 1,872,587, EP 2,105,025 and EP 3,267,684. Amazon contends that this constitutes good service of all aspects of the claim (save in relation to EP 2,449,782; see further regarding Challenged Patents below) pursuant to CPR r.63.14 as at 3 September 2025 (the “**First Defendant Service Date**”). On 5 September 2025, Amazon provided further particulars in the form of the RAND Statement of Case, served on the First Defendant at the aforementioned registered UK address for service.
29. On 17 September 2025, Amazon made an application seeking an order under CPR r.6.36 and r.6.37 for permission to serve the Claim Form, PoC, Grounds of Invalidity, RAND Statement of Case and any other documents in these proceedings out of the jurisdiction on the Defendants. Master McQuail granted permission by an order dated 18 September 2025 (the “**Service Out Order**”).
30. Following the First Defendant Service Date and the Service Out Order, InterDigital consistently indicated that it intended to make the Jurisdiction Challenge and agreed with Amazon by when such an application would be made and when a hearing would take place (subject to this Court’s availability).
31. Since then, there have been several intervening events in these proceedings resulting from anti-suit injunctions granted by the Munich Regional Court I on 26 September 2025 (corrected on 1 October 2025) and the UPC Mannheim Local Division on 30 September 2025 and an anti-anti-suit injunction granted by this Court on 20 October 2025. I have already set out the background to the circumstances in which these injunctions came about in my recent judgment dated 2 December 2025 continuing the anti-anti-suit injunction in these proceedings: [2025] EWHC 3170 (Pat). I say nothing further here about these intervening events, save to note that at a case management hearing on 9 October 2025, I ordered InterDigital to set out promptly an outline of the grounds on which it intended to challenge jurisdiction, which it duly did so on 10 October 2025.

32. On 31 October 2025, on an application by Amazon, I granted expedition of this Jurisdiction Challenge hearing, as well as the trial to hear Amazon's claim for final RAND relief (starting, subject to the outcome of this Jurisdiction Challenge, on 15 September 2026).
33. On 7 November 2025, InterDigital made its Jurisdiction Challenge application.

OVERVIEW OF THE JURISDICTION CHALLENGE

34. InterDigital contends that the RAND Claims and Competition Claims (both described below) cannot be served pursuant to CPR r.63.14 as they are contractual or competition claims not concerned with or related to registered rights or property in the jurisdiction. Consequently, InterDigital contends that service within the jurisdiction on the First Defendant by Amazon was invalid. For similar reasons as to claim characterisation, InterDigital contends that the RAND Claims and Competition Claims cannot fall within the gateways relied on by Amazon and consequently the Service Out Order must be set aside.
35. InterDigital has also put forward international arbitration (for which it has made an offer; see further below), the Swiss courts, and/or the Delaware courts as alternative fora and seeks a *forum non conveniens* stay. Alternatively, InterDigital seeks a case management stay. At the hearing counsel for InterDigital clarified that the request for a case management stay is only pressed if I were to find that international arbitration is not technically a forum for the purpose of *forum non conveniens*.
36. Into this mix, by the end of the hearing, InterDigital has made two sets of undertakings – one to say that it will not assert UK video streaming patents for a period, and the other to say that it accepts and will comply with a rate set in the Swiss or Delaware courts. The former set of undertakings are relied on by InterDigital to purport to remove a UK jurisdictional hook for these proceedings, while the later set of undertakings are relied on by InterDigital to support its *forum non conveniens* arguments by making the courts in those places “available”.
37. InterDigital has made clear that if I were to find that any of the First to Fifth Defendants have been validly served with any of the claims comprising the RAND Claims or Competition Claims, then it takes no separate point on the other aspects of those claims or other defendants coming in through e.g., gateways 4A, 3, and/or 9. InterDigital does however maintain a forum challenge in those circumstances.
38. InterDigital has not taken any point on full and frank disclosure.

APPLICABLE LEGAL PRINCIPLES

Service in and service out – general principles

39. General principles concerning service in and service out are now well settled. However there initially appeared to be some disagreement between the parties as to the time at which various aspects of the tests should be assessed (i.e., the date

of service in/permission to serve out or the date of the determination of the jurisdiction challenge at this hearing), as well as which side bears the burden for establishing relevant matters at those time points. Getting this clear is important in this case as the undertakings and arbitration offer relied on by InterDigital were only given well after the First Defendant Service Date and the date of the Service Out Order.

40. Fortunately, by the end of the hearing, the parties were in agreement on these timing and burden points. I set it out in brief.
41. With service in, a claim can be validly served within the jurisdiction as of right pursuant to CPR r.63.14, if it applies. Whether a claim falls within CPR r.63.14 is assessed as matters stood at the date of purported service (i.e., in this case, 3 September 2025). The burden of establishing that a claim falls within CPR r.63.14 lies with the claimant.
42. Where there has been valid service in, the defendant may nonetheless apply for a *forum non conveniens* stay. However, the burden is then on the defendant to satisfy the Court that there is an alternative (i) available forum that is (ii) clearly or distinctly more appropriate to try the claims than the courts of England and Wales. This *forum non conveniens* analysis is to be done having regard to the circumstances at the time of determining the stay application. If the defendant discharges their burden in their *forum non conveniens* application, the burden then shifts to the claimant to show that there are circumstances by reason of which justice requires that the trial should nevertheless take place in England and Wales.
43. As to service out, the three-step test is as set out by Lord Collins of Mapesbury JSC in *Altimo Holdings and Investment v. Kyrgyz Mobil Tel* [2011] UKPC 7 (“*Altimo*”). Albeit framed as a test for permission to serve out, it is equally applicable when assessing whether to set aside an order granting permission to serve out (with one additional consideration at stage 3 identified below):
 71. ... First, the claimant must satisfy the court that in relation to the foreign defendant there is a serious issue to be tried on the merits, i.e. a substantial question of fact or law, or both. The current practice in England is that this is the same test as for summary judgment, namely whether there is a real (as opposed to a fanciful) prospect of success: e.g. *Carvill America Inc v Camperdown UK Ltd* [2005] 2 Lloyds Rep 457, para 24. Second, the claimant must satisfy the court that there is a good arguable case that the claim falls within one or more classes of case in which permission to serve out may be given. In this context good arguable case connotes that one side has a much better argument than the other: see *Canada Trust Co v Stolzenberg (No 2)* [1998] 1 WLR 547, 555-557, per Waller LJ affirmed [2002] 1 AC 1; *Bols Distilleries BV v Superior Yacht Services (trading as Bols Royal Distilleries)* [2007] 1 WLR 12, paras 26-28. Third, the claimant must satisfy the court that in all the circumstances [England and Wales] is clearly or distinctly the appropriate forum for the trial of the dispute, and that in all the circumstances the court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction.

44. As made clear in the above passage from *Altimo*, the burden of satisfying the three-step test lies with the claimant. The additional consideration that enters *Altimo* step 3 in the context of a set aside application is that the defendant can argue that an alternative forum for the claims is available. The defendant has the burden of proving that such an alternative forum is available, but the claimant retains the burden of establishing that notwithstanding this proven alternative available forum, England and Wales is clearly or distinctly the appropriate forum for the trial of the dispute. The set aside application is assessed as matters stood at the date on which permission to serve out was in fact granted (i.e., in this case, 18 September 2025).
45. Where the Court declines to set aside a service out order, the defendant may nonetheless apply for a *forum non conveniens* stay. The burden is then again on the defendant to satisfy the Court that there is an alternative (i) available forum that is (ii) clearly or distinctly more appropriate to try the claims than the courts of England and Wales, and this analysis is done having regard to the circumstances at the time of determining the stay application.
46. Where these timing points fit in is that InterDigital has made several undertakings and an arbitration offer in this case which it wants me to take into account in my analysis of CPR r.63.14, the gateways, and appropriate forum. The earliest of these undertakings was 10 October 2025. Therefore, given when they were made, the only aspect of the analysis in which I can take the undertakings and the arbitration offer into account is when considering whether to grant a *forum non conveniens* stay (and in the alternative a case management stay in the limited scenario raised by InterDigital). I cannot take them into account when deciding whether the claims fall within CPR r.63.14 and/or the gateways, and when deciding on *Altimo* step 3. Further, InterDigital, when relying on those undertakings and the arbitration offer, will have to satisfy me that the alternative fora are not only available but also clearly or distinctly more appropriate to try the claims than the courts of England and Wales.

CPR r.63.14

47. I set out the CPR Part 63 provisions that I was taken to during the hearing.
48. r.63.14(2)

A claim form relating to a registered right may be served –

- (a) on a party who has registered the right at the address for service given for that right in the appropriate register at—
 - (i) the United Kingdom Patent Office;
 - (ii) [omitted]

provided the address is within the United Kingdom; or

(b) in accordance with rule 6.33(1) or 6.33(2) on a party who has registered the right at the address for service given for that right in the appropriate register at—

- (i) the United Kingdom Patent Office
- (ii) [omitted]

49. r.63.1

(1) This Part applies to all intellectual property claims including –

(a) registered intellectual property rights such as –

- (i) patents;

...

(2) In this Part –

...

(e) ‘patent’ means a patent under the 1977 Act ...

The gateways

50. I set out the gateways that I was taken to during the hearing.

51. Gateway 11

The subject matter of the claim relates wholly or principally to property within the jurisdiction, provided that nothing under this paragraph shall render justiciable the title to or the right to possession of immovable property outside England and Wales.

52. Gateway 16A

A claim is made for a declaration that the claimant is not liable where, if a claim were brought against the claimant seeking to establish that liability, that claim would fall within another paragraph of this Practice Direction (excluding paragraphs (1) to (5), (8), (12D), (15D), (17), (22) and (24) to (25)).

53. Gateway 4A

A claim is made against the defendant which—

(a) was served on the defendant within the jurisdiction without the need for the defendant’s agreement to accept such service;

(b) falls within CPR rule 6.33; or

(c) falls within one or more of paragraphs (1A), (2), (6) to (16A) or (19) to (23), and a further claim is made against the same defendant which arises out of the same or closely connected facts.

Case law in the (F)RAND context

54. In the (F)RAND context, a series of cases over the last few years have considered (a) how claims such as the present are properly characterised, (b) the applicability of the gateways including gateway 11, (c) the applicability of CPR r.63.14, and (d) *forum conveniens*. They refer back to earlier cases including in particular *UPSC* and *Conversant v. Huawei* [2019] EWCA Civ 38 (“*Conversant*”).
55. I address them chronologically.
56. I start with *Vestel v. Access Advance* [2021] EWCA Civ 440 (“*Vestel*”) where the Court of Appeal was considering gateway 11. Albeit *obiter*, Birss LJ considered that if a party claimed to be entitled to be offered a FRAND licence under UK SEPs, he was prepared to accept that such a claim was one which related wholly or principally to property within the UK, notwithstanding that the licence would also involve licensing foreign patents:

70. Although the point was not taken before us, I would interpret the reference to a “claim” in gateway 11 (CPR PD6B para 3.1(11)) as a reference to a legal claim. In other words it refers to a claim concerning a legal right of some kind and in some way. It may be a claim for which the only remedy sought is declaratory e.g. so as to vindicate a claim to possess some property right. That remedy may be framed in a positive way but could also be a negative declaration such as to the absence of a legal right or non-liability in some way. However there must be a legal claim of some kind.

71. I am prepared to accept that if Vestel did claim to have a legally enforceable right against a patentee or a licensing agent of a patentee, whereby Vestel were entitled to be offered a FRAND licence under the UK SEPs in the HEVC Advance pool, then the subject matter of that particular claim would be the UK SEPs. The question that claim would be concerned with is the licence terms which are available to license those UK rights. The fact that the only licence of the UK patents which is FRAND would also involve licensing foreign patents does not alter the subject matter of the claim. The fact that UK patents in the FRAND licence were only 5% or less of the patents licensed by it would make no difference. I would hold that such a claim was one which related wholly or principally to property within the jurisdiction and therefore fell within gateway 11. If I am differing from the judge below in this respect it may be because in the court below Vestel never clearly narrowed its claim to the extent it now does.

57. Vestel’s problem was that it had not pleaded a legal entitlement to a FRAND licence.

58. In *Nokia v. OPPO* [2022] EWCA Civ 947, the Court of Appeal, in the context of assessing the appropriate forum, dealt further with the characterisation of the dispute where the relief is in terms of a global FRAND licence. Both *Altimo* step 3 and *forum non conveniens* were in issue:

30. The starting point is the proper characterisation of the dispute for which the appropriate forum is to be determined. For this purpose the court must have regard to the totality of the dispute between the parties: see *VTB Capital Plc v Nutritek International Corp* [2013] UKSC 5; [2013] 2 A.C. 337 at [57] (Lord Mance), [90]-[91] (Lord Neuberger of Abbotsbury) and [192]-[193] (Lord Clarke of Stone-cum-Ebony).

31. As the Supreme Court explained in *Conversant*:

“94. Leaving aside questions as to the burden of proof, at common law the *forum conveniens* doctrine requires the English court to decide whether its jurisdiction or that of the suggested foreign court is the more suitable as a forum for the determination of the dispute between the parties. The traditional way in which this question has been framed speaks of the ‘forum in which the case can be suitably tried for the interests of all the parties and for the ends of justice’ The requirement in complex litigation to define, at the outset, what is ‘the case’ to be tried runs the risk that the court will by choosing a particular definition prejudge the outcome of the *forum conveniens* analysis, as the Court of Appeal decided had occurred at first instance in *Harrods (Buenos Aires) Ltd, Re* [1992] Ch. 72. Harman J had characterised ‘the case’ as a petition under the English Companies Act for relief for unfair prejudice in the conduct of the affairs of an English registered company, which made it ‘blindingly obvious’ to him that England was the appropriate forum. But the company carried on business entirely in Argentina. The matters complained of all occurred there, where there was a parallel jurisdiction to provide relief under Argentinian legislation. So the Court of Appeal preferred Argentina as the appropriate forum. Like the Court of Appeal in the present case, we therefore prefer for present purposes to identify the dispute between the parties as the matter to be tried, lest reference to ‘the case’ should introduce undue formalism into the analysis of a question of substance.

95. The question how the dispute should be defined has been the main bone of contention between the parties, both in this court and in the courts below. Is it, as the appellants say, in substance a dispute about the terms of a global FRAND licence, or is it, as the respondent maintains, both in form and in substance about the vindication of the rights inherent in English patents, and therefore about their validity and infringement, with FRAND issues arising only as an aspect of an alleged contractual defence? Thus far the respondent has had the better of that argument, both before the judge and the Court of Appeal. At the heart of the analysis which has thus far prevailed is the recognition that the owner of a portfolio of patents granted by different countries is in principle entitled to

decide which patents (and therefore in which country or countries) to seek to enforce, and cannot be compelled to enforce patents in the portfolio granted by other countries merely because a common FRAND defence to the enforcement of any of them raises issues which might more conveniently be determined in another jurisdiction than that which exclusively regulated the enforcement of the chosen patents.

96. Were it necessary to choose between the rival characterisations of the substance of the dispute, we would have agreed with the choice made by the courts below.”

32. At first instance ([2018] EWHC 808 (Pat); [2018] R.P.C. 16) at [73]) Henry Carr J characterised Conversant’s claim as “a case which concerns allegations of infringement of UK patents, and for relief in terms of a global FRAND licence.”

33. The Court of Appeal ([2019] EWCA Civ 38; [2019] R.P.C. 6) endorsed this characterisation for the reasons given by Floyd LJ in a passage which merits quotation almost in full:

“96. I accept Mr Layton’s submission, supported by Mr Bloch, and not contested by Mr Speck, that in characterising the claim one does not look simply at Conversant’s claim: one must look at the overall dispute between the parties. That may involve looking at how the claim is to be answered insofar as that is known That consideration alone does not assist the appellants, because the dispute characterised as a whole still involves ... the questions of essentiality, infringement and validity of the UK patents.

97. It is clear that one may get different answers to the *forum conveniens* questions depending on the level of generality at which one characterises the dispute. It is possible to define the dispute both in a way which is too specific and in a way which is too general. Thus, to define a dispute in a way which focuses on the relief which would be granted in the English court was to define it too specifically: see *Re Harrods (Buenos Aires)*. On the other hand, to define the dispute in so general a way that the claimant is left to pursue a claim based on a different property right and different underlying facts in the foreign forum is, in my judgment, likely to define it too broadly.

98. The way in which claims of the type which Conversant wishes to bring are to be analysed was considered in some depth in *Unwired CA*. The points which emerge from that judgment which are relevant to this appeal are the following:

(i) At [52] the court pointed out that it was accepted that there was no such thing as a global portfolio right, and that the court in this country will only determine disputes concerning infringement and validity of UK patents or European patents

designating the UK. Moreover, if a UK patent is found valid and infringed the relief by way of injunction and damages will relate only to acts of infringement of those patents within that territory.

(ii) At [53] the court contrasted the territorial nature of patent rights with the position in relation to the FRAND undertaking given to ETSI. The undertaking, like the standard to which it relates, was of international effect, applying to all patents which belong to the same family irrespective of the territory in which they subsist. This was necessary in order to protect implementers whose equipment may be sold in a number of different jurisdictions and then used by members of the public who may travel with that equipment from one jurisdiction to another.

(iii) However, just as it was necessary to protect implementers by giving them global protection in this way, it was necessary to protect SEP owners from the need to negotiate patent licences on a country by country basis, and the need to litigate on such a basis. As the court pointed out at [55], Huawei's witness had accepted that the costs of such litigation to the SEP owner would be impossibly high.

(iv) Thus, the court pointed out at [56], in such circumstances it was possible, depending on the facts, that a global licence could be FRAND.

(v) Where a SEP owner brings proceedings for infringement against an implementer in one jurisdiction in respect of the SEPs which it owns there and makes good its case, two outcomes might follow. First, if the evidence establishes that a willing licensor and a willing licensee in the position of the parties would agree a FRAND licence in respect of that jurisdiction but the SEP owner refuses to offer it such a licence then no injunction should be granted. If on the other hand, the implementer refuses to enter into the FRAND licence for that jurisdiction then the SEP owner can properly seek an injunction to restrain further infringement there. Secondly, however, if the evidence establishes that a willing licensor and a willing licensee in the position of the parties would agree a global FRAND licence, that such a licence would conform to industry practice and that it would not be discriminatory but the SEP owner refuses to grant such a licence to the implementer then once again it should be denied an injunction. If on the other hand, the implementer were to refuse to enter into such a licence then the SEP owner should be entitled to an injunction in that jurisdiction to restrain infringement of the particular SEPs in issue in those proceedings: see [57] and [58].

(vi) Were the position otherwise then the SEP owner seeking to recover the FRAND licence monies for all of the SEPs in the same family from an uncooperative implementer who is acting unreasonably would be required to bring proceedings in every jurisdiction in which those rights subsist, which might be prohibitively expensive for it to do. This result would not involve any alteration of the territorially limited characteristics of any SEP; nor would it involve any jurisdictional expansionism. To the contrary, it would amount to a recognition by the court (i) that the SEP owner has complied with its undertaking to ETSI to offer a licence on FRAND terms; (ii) that the implementer has refused or declined to accept that offer without any reasonable ground for so doing; and (iii) that in these circumstances the SEP owner is entitled to the usual relief available for patent infringement including an injunction to restrain further infringement of the particular SEPs in issue in the proceedings.

99. Conversant's claim in the present case is closely analogous to the claim advanced in the *Unwired Planet* case. It is (i) that the UK patents are essential to the standard, (ii) that it has complied with its ETSI undertaking, in that the offers which it has made are FRAND, (iii) that Huawei and ZTE have not so complied without any reasonable ground for so doing, and (iv) that it is therefore entitled to enforce its UK SEPs and obtain the usual relief for infringement, including a FRAND injunction and damages. Conversant also seeks a determination as to the terms which are FRAND for the licensing of its portfolio. Huawei's and ZTE's answer is likely to be (i) that Conversant's patents are neither essential nor valid, and (ii) that Conversant has not complied with its FRAND undertaking and so is not entitled to an injunction even if it establishes that its UK patents are valid and essential. The content of Conversant's FRAND undertaking is thus an inseparable part of the dispute about whether Conversant is entitled to relief for infringement of valid UK patents.

100. I do not accept that this analysis, by referring throughout to the UK patents in Conversant's portfolio, commits the error which the Court of Appeal identified in *Re Harrods (Buenos Aires)*.

101. In the present case, leaving Conversant to seek a remedy in China would be to compel them to advance a case based on different patents. The Chinese patents are not the UK patents viewed through the lens of Chinese law, but are different property rights applied for and registered in China. They are not even in the same families as the UK patents. They will have different claims. Different prior art will be relevant to their validity. The issue of essentiality of those patents will give rise to wholly different technical issues from the issues which would arise on the essentiality of the UK patents. The acts of infringement relied on will be acts in China, not acts in the

UK. I find it impossible to view such a dispute as being the same dispute as that which would arise in the English court.

102. I therefore do not accept it is legitimate to generalise out the claim made in the present proceedings and characterise it as a claim for infringement of a ‘local’ patent. That characterisation suggests that it is a matter of indifference to Conversant which national patents they sue on, when that is plainly not the case. It is a way of characterising the dispute so as to make it suitable for determination in any jurisdiction where Conversant has a patent, no matter how different the scope of that patent may be to the scope of the UK patents in suit. Of the two ways in which the parties seek to characterise the dispute, it seems to me that the appellants’ way is the one which offends against the warnings in *Harrods Buenos Aires* against building the answer into the way in which one formulates the question.

103. It is also not legitimate to characterise the claim as one for enforcement of a global portfolio right. No such right exists, as this court readily accepted in *Unwired CA*. I therefore reject the appellants’ challenge to the way in which the dispute is to be characterised. The question which the judge asked himself was the correct one.

104. If one characterises the case in the way in which the judge characterised it, with which I agree, then it seems to me that the *forum conveniens* question answers itself. The fact that the dispute concerns UK patents is a matter of substance and not of form. Resolution of the dispute will involve determining infringement, essentiality and validity of UK patents. A UK forum is clearly the most appropriate forum, indeed the only possible forum, for this dispute to be tried.”

34. In the present case OPPO contend that the correct characterisation of the dispute is that it is a dispute over the FRAND terms for a global licence of Nokia’s SEP portfolio. The judge did not accept this contention for the following reasons:

“43. I do not accept that the change in the factual context of this case, specifically the newly confirmed jurisdiction of Chinese courts to settle global terms of a FRAND licence, alters the correct characterisation of the present proceedings. Floyd LJ’s reasoning for the characterisation of the dispute in *Conversant* with one qualification applies equally to the dispute in the present case.

44. The qualification arises from Floyd LJ’s paragraph 101. Since the Chongqing Proceedings in which global FRAND terms are to be settled do not involve a determination of the essentiality, infringement or validity of any Chinese patents, it cannot be said that leaving Nokia to seek a remedy in China would be to compel them to advance a case based on different patents. But in this part of Floyd

LJ's judgment he was distinguishing the facts of *Conversant* from those in *Re Harrods (Buenos Aires) Ltd* [1992] Ch. 72. As I understand the judgment, Floyd LJ was making the point that in *Harrods (Buenos Aires)* the underlying dispute between the parties would be the same whether heard in England or Argentina and that this would not be so in *Conversant*. The same applies in the present case. As in *Conversant* there would be an overlap in the form of the dispute as to what constitute FRAND terms for a licence under Nokia's SEPs. Otherwise the present proceedings have less in common with the Chongqing Proceedings than was the case between the two sets of proceedings hypothesised in *Conversant* since the Chongqing Proceedings do not involve any issues of essentiality, infringement or validity of any patent. There may be other differences, which I consider below."

35. OPPO's first ground of appeal is that the judge erred in his characterisation of the dispute. OPPO do not dispute that this claim involves issues of validity, essentiality and infringement of the UK Patents (although OPPO contend that in all likelihood it will never be necessary to determine those issues for reasons I will consider when I come to OPPO's application for a stay on case management grounds). Nor do OPPO dispute that those issues can only be tried in a UK court. OPPO contend, however, that those issues constitute no more than, as counsel for OPPO put it, the tail of an elephant the body of which is the dispute between the parties as to what terms for a global licence of Nokia's SEP portfolio are FRAND.

...

39. I agree that OPPO's acceptance that they need a global licence and their expressed willingness to take one represents a factual distinction between the present case and *Conversant*, where Huawei and ZTE neither accepted the need for a global licence nor expressed a willingness to take one. I do not accept that this is a relevant distinction, however. My reasons are as follows.

40. First, if the dispute was purely about the terms of a global licence, there would be no need for three five-day trials of the validity, essentiality and infringement of the UK Patents (Trials A-C). Nor would there be any need for a trial of whether OPPO can rely upon Nokia's FRAND obligation without undertaking to the English court to take a licence on terms determined by the English court to be FRAND (Trial E). Rather, the parties could proceed straight to the determination of what terms are FRAND (Trial D). When asked whether OPPO were willing to dispense with their challenges to the validity, essentiality and infringement of the UK Patents (which OPPO could do purely for the purpose of this claim and without any admission that the UK Patents are in fact valid, essential or infringed), counsel for OPPO's answer was that OPPO are not willing to do that. On the contrary, OPPO are insistent upon exercising their right to challenge validity, essentiality and infringement of the UK Patents (although, as noted above, OPPO say that it should not be necessary to determine those issues). It follows that only if Nokia prove that at least one of the UK Patents is

valid, essential and infringed absent a licence will it become necessary to determine whether OPPO can rely upon Nokia's FRAND obligation by way of defence and if so upon what licence terms.

41. Counsel for OPPO accepted that this confirmed that the dispute included issues as to the validity, essentiality and infringement of the UK patents, but he argued that this was merely a jurisdictional "hook" which did not detract from the fact that the "meat" of the dispute was over the terms of a global licence. This does not distinguish the present case from *Conversant*, however, as can be seen from the passage from Floyd LJ's judgment I have quoted.

42. Secondly, OPPO's undertaking to Nokia is only to take a global licence upon the terms determined to be FRAND *by the Chongqing court*. OPPO have offered no undertaking to take a global licence upon the terms determined to be FRAND by the English court. Nor have OPPO offered an undertaking to take a global licence upon the terms determined to be FRAND by an arbitral tribunal. In other words, OPPO's characterisation of the dispute is not in truth forum-neutral, but amounts to an attempt by a sleight of hand to build the answer as to forum into the question of how the dispute is to be characterised. As *Re Harrods (Buenos Aires) Ltd* [1992] Ch. 72 establishes, that is an illegitimate approach to characterisation.

43. Thirdly, even if the point about the nature of OPPO's undertaking is put on one side, the question remains as to how Nokia are to enforce their right to obtain compensation for OPPO's exploitation of their portfolio. As explained above, the SEP holder's FRAND obligation operates by way of defence to an infringement claim in order to prevent hold up. Like any SEP holder, the only remedy available to Nokia for preventing hold out by an implementer is an injunction to restrain unlicensed infringement of their patents. OPPO's characterisation of the dispute as being purely about the terms of a global licence ignores this critical dimension of the dispute. The point can be illustrated in this way. Obviously, OPPO have commenced proceedings in Chongqing in the belief that the Chongqing court will set a lower royalty rate or rates than the English court. But the royalty rate which is determined to be FRAND makes no difference to the question of enforcement. What happens if the Chongqing court, contrary to OPPO's expectation, determines a FRAND rate that is higher than OPPO are willing to pay? Unless the determination of the Chongqing court can be directly enforced against OPPO, a question I will return to in the context of considering the appropriate forum, the only way for Nokia to enforce their rights will be to obtain an injunction to restrain patent infringement. Nokia will therefore have to bring claims for infringement of their SEPs in the PRC even if they have not done so before then. Thus Nokia's claim for an injunction to enforce their SEPs is inescapably a key aspect of the dispute between the parties, and since patents are territorial any proceedings in a national court are inescapably founded upon the SEPs asserted by Nokia in that jurisdiction. As the judge put it at [45]:

" ... I do not agree that broadening out the dispute between the parties so that it becomes viewed from a global perspective leads to

the result that it can be correctly characterised as a dispute about FRAND terms. That is only possible if the allegations by Nokia of infringement of its SEPs in the various jurisdictions are brushed aside. Alternatively, if they are included with[in] the overall picture of the dispute, those allegations must be characterised as being concerned with the essentiality, infringement and validity of local patents in their various jurisdictions.”

44. I therefore consider that the judge correctly characterised the dispute between the parties in the present case. As Floyd LJ noted in *Conversant* if the dispute is correctly characterised as a claim to enforce UK patents, raising issues as to the validity, essentiality and infringement of those patents and as to a defence seeking to enforce the patentee’s FRAND obligation, there can only be one answer to the question as to which is the appropriate forum in which to try that dispute. OPPO do not dispute this, and accordingly their second ground of appeal challenging the judge’s conclusion as to the appropriate forum is contingent upon the success of their first ground of appeal. I shall nevertheless consider the issue for completeness.

59. Arnold LJ then went on to assess connecting factors to the alternative fora, noting that the starting position in such cases over the terms of a global FRAND licence, where the determination of the dispute will depend very largely upon expert technical and valuation evidence, is that there is no ‘natural’ forum to determine it:

52. OPPO’s second ground of appeal is that, if the judge had correctly characterised the dispute, he should have concluded that the appropriate forum for the determination of the dispute was Chongqing. Nokia contend that, even if the dispute is correctly characterised as a dispute over the terms of a global FRAND licence of Nokia’s SEP portfolio, and even if Chongqing is an alternative forum for the trial of that dispute, England is the appropriate forum. The resolution of this issue requires consideration of the connecting factors between the dispute and the alternative fora. The judge understandably did not carry out this exercise given his conclusion on characterisation.

53. OPPO rely upon seven factors as connecting the dispute more closely with Chongqing than England. The first, sixth and seventh factors can be taken together. The first is that the Chongqing court is an available forum. This is not a connecting factor, however, but a pre-condition for the question as to which forum is appropriate to arise. The sixth factor is that the Chongqing court is already seised of the dispute. This does no more than confirm its availability as a forum, however. The seventh factor is the risk of irreconcilable judgments. This simply arises from the fact that, after the commencement of this claim, OPPO brought duplicative proceedings in the alternative forum. It does not show that the alternative forum is the appropriate forum.

54. The second factor is that OPPO are based in the PRC whereas Nokia are Finnish. This ignores the fact that two of the Defendants are English.

In any event, the domicile of corporate parties is of little weight as a connecting factor (the location of witnesses and documents may be of more weight, but OPPO do not rely upon those factors).

55. Counsel for OPPO placed most weight on the third, fourth and fifth factors, which again can be taken together. These are that most of the devices covered by the dispute are manufactured in the PRC and a significant quantity in Chongqing; the majority of the devices are sold in the PRC, India and Indonesia, with Europe accounting for less than 5% of global sales and the UK less than 0.5%; and the main source of revenue from the putative licence will be the PRC. I am not persuaded that these factors connect the dispute with Chongqing rather than England, however. On OPPO's own characterisation of the dispute, it is over the terms of a global FRAND licence, and in particular the applicable royalty rate(s). The key factor in the assessment will be the value of a global licence of Nokia's SEP portfolio (taking into account the value of a cross-licence of OPPO's SEP portfolio) which will depend on (i) the strength (in terms of validity and essentiality) of that portfolio and (ii) the contribution of that portfolio to the standards in question. As such, the determination of the dispute will depend very largely upon expert technical and valuation evidence taking into account any comparable licences. Thus the dispute over the terms of the licence could be determined by any competent national court or by a supranational arbitral tribunal. It has no real connection with any territory.

...

65. The third factor relied upon by Nokia is that the English court has more experience than the Chongqing court, having tried two FRAND determinations (although judgment in the second case is still awaited) whereas the Chongqing court has not tried any yet. Like the judge in the context of case management, I do not regard this as a factor of any weight in the context of the appropriate forum.

66. In summary, if the dispute is correctly characterised as a dispute over the terms of a global FRAND licence, there is no "natural" forum to determine it and none of the factors relied upon by the parties favours one forum over the other. In those circumstances one answer would be to resolve the dispute by application of the burden of proof, but as noted above neither side advocates that. That being so, it seems to me that the correct answer is that England is clearly an appropriate forum for the determination of the dispute since Nokia have UK SEPs which they wish to enforce in order to compel OPPO to take a licence upon FRAND terms, and Chongqing is at best no more appropriate a forum than England.

60. I think [66] is of significant relevance to my task in this case.
61. In *Alcatel v. Amazon* [2024] EWHC 1921 (Pat), Zacaroli J (as he then was), in the context of gateway 11 and drawing on Birss LJ's *obiter* considerations in *Vestel*, made the following warning (repeatedly quoted since) against confusing the subject matter of the licence that is sought with the subject matter of the claim that is brought:

120. In my judgment, this *obiter* comment of Birss LJ is correct. Nokia's argument confuses the subject matter of the *licence* that is sought with the subject matter of the *claim* that is brought. The claim is one to enforce the contractual obligation of Nokia pursuant to the declarations made in respect of the two UK patents, to grant a licence on RAND terms. That is a claim which relates wholly to property within the jurisdiction, even though the licence sought is one that covers a global portfolio of patents, of which the UK patents are only a small element. The legislative history of the rule does not, in my view, affect that conclusion. I note that Fancourt J in *Tesla Inc v IDAC Holdings Inc* [2024] EWHC 1815 (Ch), at §45, considered that Birss LJ's conclusion on this point was right in principle.

62. There is further support for the above principles of characterising the claims in *Tesla v. InterDigital* [2025] EWCA Civ 193 ("**Tesla**"), where Arnold LJ (dissenting for other reasons) rejected arguments that bear a strong similarity to the 'nakedly contractual' arguments advanced by InterDigital in the instant case against Amazon:

107. Although Tesla only need to establish that they have the better of the argument on the materials before the Court, this is a binary question which does not depend on the resolution of any factual issues. Either the Licensing Claims fall within gateway (11) or they do not.

108. I agree with Birss LJ's reasoning in *Vestel v Access*, and in my judgment it applies to Tesla's Licensing Claims against both Avanci and InterDigital. First, the Licensing Claims are legal claims to declarations because they are founded upon the FRAND obligations of the members of the Avanci 5G Platform. Contrary to Avanci's and InterDigital's submissions, I do not think Birss LJ meant that the obligation in question must be enforceable directly against the relevant defendant; but if he did, I respectfully disagree. In any event, this point would not assist InterDigital, since Tesla can certainly enforce InterDigital's FRAND obligations against InterDigital albeit that Tesla have no claim for specific performance.

109. Secondly, the Licensing Claims relate wholly to property within the jurisdiction because the claims concern UK SEPs. InterDigital argue that the jurisdiction question cannot be determined by what InterDigital characterise as the artificial framing of the declarations sought by Tesla, when in reality the claim on Tesla's own case is a contractual claim to a global licence of SEPs, the vast majority of which are non-UK SEPs. While I appreciate the superficial attraction of this argument, I do not accept it for reasons which should be familiar to students of the English courts' jurisprudence in this field. In short, it is necessary to distinguish between the property on the one hand and the FRAND obligation which affects it on the other hand. Patents are territorial rights, but (i) standards such as the ETSI Standards are global standards which are exploited globally, (ii) the FRAND obligation under clause 6.1 is a global one and (iii) a licence on FRAND terms may well be a global one (meaning that a UK-only licence is not FRAND). Thus a licence to a single UK SEP on FRAND terms can be, and often is, a global licence to all corresponding

SEPs (and indeed other families of SEPs in the same portfolio). In *Nokia v OPPO* this Court upheld the jurisdiction of the English courts in respect of the claim even though the UK represented less than 0.5% of the relevant market (which does not necessarily mean that only 0.5% of the SEPs were UK ones, but nevertheless gives a sense of the order of magnitude). That case concerned an infringement claim, and so the jurisdictional analysis was somewhat different, but nevertheless it illustrates the point. Thus the Licensing Claims relate wholly to UK SEPs even though it is Tesla's case that the FRAND obligations attaching to those UK SEPs carry with them an obligation to grant a licence of global, and not merely UK, extent. Indeed, neither Avanci nor InterDigital dispute that a licence on FRAND terms of the relevant SEPs would be a global one.

63. Specifically on CPR r.63.14, Arnold LJ had the following to say, which again bear on many of the arguments raised by InterDigital in the instant case (including its reliance on *Actavis v. Eli Lilly* [2013] EWCA Civ 517):

208. As explained above, Tesla served the claim form on IDPH within the jurisdiction in reliance upon rule 63.14(2). It is common ground that that was valid service in relation to the Patent Claims. Tesla contend that this was also valid service in relation to the Licensing Claims, and the judge accepted this. InterDigital contend that he was wrong on this point. There is no dispute that rule 63.14(2) is to be interpreted as meaning "a claim form *in so far as* relating to a registered right may be served". The issue is whether the Licensing Claims "relate to" the Challenged Patents. This is not an issue about corporate identity: as noted in paragraph 167 above, InterDigital accept that the FRAND obligations arising from IDH's declarations to ETSI extend to IDPH as IDH's Affiliate. Furthermore, although InterDigital point out that Tesla only purported to serve the claim form on IPDH with respect to the Challenged Patents, the issue would be the same with respect to all of InterDigital's other UK SEPs.

209. InterDigital argue that the Licensing Claims do not "relate to" their UK SEPs for two reasons. First, because they are contractual claims. Secondly, because they relate to all SEPs owned by members of the Avanci 5G Platform worldwide.

210. So far as the first point is concerned, it is true that the FRAND obligation is a contractual one, but it entitles an implementer who is a beneficiary of the obligation to a licence under the relevant SEP(s). Once the implementer has such a licence, they cannot infringe the SEP(s). This is why the FRAND obligation is commonly raised by way of defence to infringement proceedings brought by SEP owners against implementers. Tesla have undertaken to take a licence to (*inter alia*) InterDigital's UK SEPs on the terms determined by the Patents Court to be FRAND, and they seek a determination as to what terms are FRAND. This is in order to ensure that they cannot be sued for infringement of those SEPs (among others). In my view it is impossible to say that that claim does not "relate to" InterDigital's UK SEPs.

211. The second point is a more substantial one. In *Actavis Group HF v Eli Lilly & Co* [2013] EWCA Civ 517, [2013] RPC 37 this Court held that a claim form seeking declarations of non-infringement had not been validly served pursuant to rule 63.14(2) in so far it related to French, German, Italian and Spanish designations of a European Patent as opposed to the UK designation. This is because, once granted, European Patents are distinct national patents even though they are the result of a single application to the European Patent Office. Thus they are commonly referred to as “bundle patents”. A European Patent (UK) is, by virtue of provisions of the Patents Act 1977 which it is unnecessary to set out, a patent under the 1977 Act, but European Patents (DE), (FR), (IT) and (SP) are not.

212. InterDigital argue that this reasoning applies to the Licensing Claims. I disagree. Once again, the point depends upon the proper characterisation of the Licensing Claims. The Licensing Claims seek to enforce the FRAND obligations attaching to InterDigital’s UK SEPs, and thus “relate to” patents under the 1977 Act as explained above. It makes no difference that Tesla contend that a FRAND licence of InterDigital’s UK SEPs is a licence which extends to InterDigital’s non UK-SEPs, and indeed non-UK SEPs of other members of the Avanci 5G Platform.

64. Finally, I set out the relevant findings of Leech J (made in the context of CPR r.63.14) in *MediaTek v. Huawei* [2025] EWHC 649 (Pat):

160. Huawei accepted that the Challenged Patent Claims were validly served under 63.14(2) and MediaTek accepted that this rule could not be used for service of the Asserted Patents Claims. The issue between the parties was whether the FRAND Claims were validly served under the rule and this question turned on whether those claims are claims “relating to a registered right” (the registered right in question being the Challenged Patent).

161. Mr Raphael submitted that Claim (6) was a claim for a worldwide licence over worldwide patents and was not a claim in the sense permitted by *Actavis*. He also submitted that *Tesla* was unsupported by any reasoning but that it could be distinguished on the basis that Claim (6) extended not only to the Huawei portfolio of patents but also to the MediaTek portfolio. The claim relating to the MediaTek portfolio was not related, so he submitted, to the Challenged Patents. Finally, he submitted that Claim (6) was not a claim under the PA 1977 or CPR Part 63 but a claim to enforce a contractual right under the ETSI IPR Policy.

162. I reject those submissions. In my judgment, Fancourt J’s *obiter* conclusion in *Tesla* was correct and I follow it. I do so for the reason given by Zacaroli J in *Alcatel HC*. Mr Raphael’s argument confuses the *licence* claimed by MediaTek as relief with the subject matter of the *claim* itself. The FRAND Claims are brought to enforce the contractual obligations of Huawei pursuant to the ETSI declaration which it has made in respect of the Challenged Patent even though the relief claimed is a licence which covers the worldwide portfolios of both Huawei and MediaTek patents.

163. Although Zacaroli J was considering Gateway 11 and not CPR Part 63.14(2) the question was essentially the same. Does the claim to a FRAND determination “relate” to the patent registered within the jurisdiction? Indeed, as Ms Stratford submitted, it is easier to satisfy CPR Part 63.14(2) than to pass through Gateway 11 because all that it requires is a relevant relationship between the claim and the registered right whereas Gateway 11 requires a claimant to establish not only a relevant relationship but also that the claim relates “wholly or principally” to the registered patent.

164. In the present case MediaTek alleges in the Particulars of Claim that its FRAND declarations require Huawei to offer a licence for both portfolios based on the principle of reciprocity: see paragraph 129. Huawei disputed whether MediaTek had ticked the box in any of its ETSI declarations making its undertaking “subject to the condition that those who seek licences seek to reciprocate” and it put MediaTek to proof in relation to its own ETSI declarations. But I have determined that issue in MediaTek’s favour and I have also held that the wider question whether MediaTek is entitled to a cross-licence is a matter for the FRAND trial.

165. Mr Raphael’s other principal objection to MediaTek’s reliance upon CPR Part 63.14(2) was that Claim (6) did not expressly refer to the Challenged Patent and was not qualified by wording which made it clear that the Court could only grant such a declaration “insofar” as it relates to the Challenged Patent. In my judgment, this is a pleading point and not one of substance. Claims (6) and (7) have to be read together with Claims (4) and (5) and against the background of *Vestel* and the authorities which follow. When read in that context, it is obvious that Claims (6) and (7) are intended to assert the “claim of right” which Arnold LJ clearly accepted that an implementer is entitled to make in *Panasonic*: see [79].

166. Furthermore, I am also satisfied that Claims (6) and (7) are anchored by Claims (4) and (5) and do not suffer from the vice which Birss LJ identified in *Vestel*. It might have been better if Claim (7) had preceded Claim (6) since MediaTek is not entitled to a licence on FRAND terms unless it is a beneficiary of Huawei’s ETSI declaration in relation to the Challenged Patent. But in any event, the term “**FRAND Commitment**” is clearly defined by reference to all of Huawei’s ETSI declarations: see paragraph 55. MediaTek also pleads in terms that the relevant declarations include the FRAND declarations in relation to both the Asserted Patents and the Challenged Patent: see paragraphs 130 and 131. I, therefore, dismiss this objection.

167. Accordingly, I hold that the First Defendant has been served in the jurisdiction with the FRAND Claims in accordance with CPR Part 63.14(2). The question whether those declarations are an appropriate form of relief must be decided at the FRAND trial unless Huawei is able to persuade the Court (as in *Tesla*) that the declarations in the form of the FRAND Claims would not serve any useful purpose. This is a point to which I return in relation to the application for a case management stay.

65. Mr Bloch rightly accepted that Leech J's judgment on those points was not *obiter*. That does not mean it is binding on me but it does mean that I would only depart from it if I were convinced that it was plainly wrong. I am not so convinced, and I think it was not only right but supported by all the preceding and carefully reasoned decisions.

Brownlie I and II

66. Mr Bloch argued that *Brownlie v. Four Seasons Holdings* [2017] UKSC 80 ("*Brownlie I*") and *Four Seasons Cairo v. Brownlie* [2021] UKSC 45 ("*Brownlie II*") require two different things to be considered: first, is there a sufficient connection to this country so that an English court should assert jurisdiction over the defendant, and, second, is this the proper forum. He argued that the purpose of the gateways goes to the first matter and must not be blurred into the second. He relied in particular on the judgment of Lord Leggatt in *Brownlie II* at [191]-[197] and the point made at [197] that it would be wrong to disregard the gateways, which provide a threshold standard, and leave everything to *forum conveniens*.

67. I accept these principles but they do not go anywhere because none of the cases in the more immediate context of jurisdiction over global FRAND licences based on UK patents overlooked them or is inconsistent with them. They all considered the gateways and/or CRP r.63.14 discretely from *forum conveniens*, and essentially they all decided that the requirement of sufficient connection is met because when properly characterised the dispute is about UK patents. Moreover I note that in *Vestel* Birss LJ had *Brownlie I* specifically in mind (see [18]) and was conscious of the separation between the limbs of the test (see [68]) before moving to the above-quoted passage concerning gateway 11.

68. Relatedly, InterDigital argued that the obiter analysis of Fancourt J and Arnold LJ in *Tesla* cannot be right because (as InterDigital's skeleton said) "[i]t cannot be the purpose and intent of CPR 63.14 to allow claims about the proper construction and enforcement of a contract to be served on a party out of the jurisdiction simply because it owns patents within the jurisdiction on which that contract may have a bearing".

69. I disagree with this. It is no trivial matter for a party to have patents within the jurisdiction. Patentees choose to do so and it makes perfect sense that if they do, then they are subject to the jurisdiction of the courts here when it comes to determining the scope and effect of their monopolies. It is entirely sensible that claims about patents can be served in the jurisdiction as of right and in a broader context it is obviously rational for ownership of a patent in the UK to be regarded as a sufficient connection in the sense in which Lord Leggatt was considering that in *Brownlie II*.

AMAZON'S CLAIMS IN MORE DETAIL

70. Broadly speaking these can be divided into three groups and were largely dealt with in that manner by both parties during the hearing.

The Patent Claims

71. These are captured by Prayers (8) to (11):

- (8) A declaration that the Challenged Patents and each of them are invalid.
- (9) An order that the Challenged Patents and each of them be revoked.
- (10) A declaration that the Challenged Patents and each of them are not essential to the HEVC Standard and/or the AVC Standard as applicable.
- (11) A declaration or declarations that the acts set out in paragraph 79 of the Particulars of Claim would not infringe the Challenged Patents or any of them.

72. InterDigital does not challenge the jurisdiction of this Court to hear these claims and accepts that they have been properly served.

73. As to the Challenged Patents, Amazon characterises them as follows:

- i) EP(UK) 3,267,684 B1 (Decoding only; Declared to HEVC),
- ii) EP(UK) 1,872,587 B1 (Encoding only; Declared to AVC and HEVC),
- iii) EP(UK) 2,105,025 B1 (Encoding, decoding, and storage medium; Declared to AVC and HEVC), and
- iv) EP(UK) 2,449,782 B1 (Encoding, decoding, and bitstream; Declared to HEVC).

The RAND Claims

74. These are captured by Prayers (1) to (6):

- (1) A declaration that Amazon is a beneficiary of the InterDigital and/or the Thomson RAND Commitment.
- (2) A declaration that the InterDigital and/or Thomson RAND Commitment requires the licensing of Encoding SEPs on RAND terms.
- (3) A declaration that Amazon is entitled to be offered, and on acceptance of such an offer, granted a licence to the Challenged Patents, on RAND terms covering the InterDigital Video Portfolio, alternatively the Codec SEPs.
- (4) A declaration of licence terms (including royalty terms) to the Challenged Patents that are RAND as between Amazon and InterDigital (including any such terms that are adjustable pending a full Court determination, if granted before such a determination).

(5) An order that InterDigital offer Amazon a RAND Licence as declared by the Court (and/or on terms that are adjustable pending a full Court determination, if granted before such a determination).

(6) In the alternative to (5), if InterDigital refuses or declines to offer the RAND licence determined by the Court (including any such terms that are adjustable pending a full Court determination, if granted before such a determination), a declaration that InterDigital is in breach of its RAND Commitment and an unwilling licensor, and any damages arising from such breach.

75. InterDigital says that these are “nakedly contractual” claims to a global portfolio licence. Amazon characterises these claims as for a RAND licence to the Challenged Patents on terms that cover the InterDigital Video Portfolio. Given the authorities about characterisation of this kind of dispute, Amazon is clearly right about this. The “nakedly” implies, as I understand it, that Amazon’s claim to a licence is based on its assertion that an implementer has a contractual right to a licence and that that contrasts with claims by patentees where infringement is the gist of the case, so not “naked”. This distinction has failed in the cases considered above.

76. I was taken to paragraphs 83 to 87 of the PoC, which are as follows:

83. It is a reasonable inference from at least the Relevant Declarations, that InterDigital (and each of them) consider the Challenged Patents to be valid, essential and infringed by Amazon and that a licence in respect of each is required. Further, it is a reasonable inference that InterDigital (and each of them) consider that there are other valid and essential patents in the InterDigital Video Portfolio in the UK which are also infringed by Amazon and in respect of which Amazon requires a licence. The size of the InterDigital Video Portfolio in the UK is such that it is impractical to dispute essentiality, infringement and validity of each and every patent alleged to be infringed by use of the Standards in the UK. Accordingly, a willing licensee such as Amazon would undertake to the Court to take a licence on RAND terms to be determined by the Court and a willing licensor would make an offer capable of acceptance in respect of such a licence. In the premises, Amazon has given the undertaking to the Court set out at Section C above and is prepared for the Court- Determined Licence to be determined before the claims relating to the Challenged Patents.

84. Further and in any event, as pleaded above, Amazon is a beneficiary of the InterDigital RAND Commitment and the Thomson RAND Commitment. Amazon is, accordingly, entitled to be offered a RAND licence to the Challenged Patents. As explained further below, the RAND licence to the Challenged Patents would be worldwide in scope and ought to extend to the entirety of the InterDigital Video Portfolio, alternatively to the Codec SEPs in the InterDigital Video Portfolio, both in the UK and globally.

85. Amazon accordingly claims relief from this Court (i) setting and declaring the terms of such a licence (being the Court-Determined Licence) and (ii) ensuring that such a licence is available (including by requiring InterDigital to perform its RAND Commitments by offering the said licence to Amazon).

86. Amazon will rely upon its entitlement to a RAND licence to the Challenged Patents (such licence also covering UK patents in the InterDigital Video Portfolio, alternatively to the Codec SEPs in the InterDigital Video Portfolio) as a defence to the grant of any injunctive relief sought in respect of any patent(s) in the InterDigital Video Portfolio, alternatively to the Codec SEPs in the InterDigital Video Portfolio including the Challenged Patents.

87. If the Court orders specific performance of the RAND Commitment in all the circumstances of this case, Amazon will have a RAND licence to the Challenged Patents (including the InterDigital Video Portfolio, alternatively, the Codec SEPs therein), and such licence will constitute a defence to (a) infringement of any patent(s) in the InterDigital Video Portfolio, alternatively to the Codec SEPs in the InterDigital Video Portfolio and (b) any injunctive relief sought by the InterDigital Group in respect of any patent(s) in the InterDigital Video Portfolio, alternatively to the Codec SEPs in the InterDigital Video Portfolio, including the Challenged Patents.

77. InterDigital said that because Amazon is only relying on the RAND Commitment as a defence to an injunction (see paragraph 86 above), reliance on it, and the RAND claims generally, fall away given that InterDigital has foresworn seeking any injunction. This is wrong in the light of paragraph 87 of the PoC, which asserts that Amazon will have a defence to infringement generally, therefore including any damages claims. Amazon also says, correctly in my view, that such a licence would quantify and limit its financial liability.

78. I was also taken to paragraphs 92 and 93 of the PoC, which are as follows:

92. As a beneficiary of the InterDigital and Thomson RAND Commitments, Amazon is entitled to be offered - and, on acceptance of such offer, granted - a licence on RAND terms to the Challenged Patents, which licence would extend to the InterDigital Video Portfolio (alternatively, the Codec SEPs therein), for so long as the relevant patents are on the register and regardless of whether there are grounds on which it might revoke or not use them.

93. Amazon asks the Court to enforce the InterDigital RAND Commitment and Thomson RAND Commitment against InterDigital by settling and declaring the terms of the Court-Determined Licence, and if InterDigital fails or declines to offer the Court-Determined Licence,

(a) Making declarations that InterDigital is in breach of its RAND Commitment and an unwilling licensor; and

(b) Ordering InterDigital to perform the RAND Commitment by making a licensing offer to Amazon accordingly.

The Competition Claims

79. There are essentially two aspects to Amazon's Competition Claims.

80. The first is focused on whether the RAND Commitment originally undertaken by Thomson passed to InterDigital. Amazon says that if it did not, the assignment of the relevant patents from Thomson to InterDigital was void as a matter of competition law.

81. InterDigital has confirmed, however, that it accepts that whatever RAND Commitment Thomson had, has passed to InterDigital. It should be noted that this is not a concession about the scope of the RAND Commitment, only an acceptance that whatever it was, it binds InterDigital as much as it did Thomson.

82. Given this confirmation I do not think this part of Amazon's competition case has any further impact on jurisdiction, and I strongly suspect it will fall away from these proceedings entirely. InterDigital argued it as a matter of whether Amazon has an arguable case for the purposes of jurisdiction; I think it is just irrelevant in any case and will say no more about it.

83. The second and much more important part of Amazon's Competition Claims is a contention that InterDigital would be abusing a dominant position if it were to refuse to licence Codec SEPs (defined by Amazon as encompassing both decoding SEPs and encoding SEPs). This is a second string to Amazon's bow, in case its argument about the nature and scope of the RAND Commitment fails. It is pleaded generally, but is of special importance on encoding patents given InterDigital's position that those are not covered by the RAND Commitment in any way.

84. The relevant parts of the pleadings are as follows.

85. Prayers (7) and (12):

(7) If Thomson has failed properly to transfer to InterDigital its RAND Commitment in respect of the Thomson Prior Video Portfolio (including its obligation to license Encoding SEPs and/or the Thomson Non-Discrimination Obligation):

(a) A declaration that the contract effecting the Thomson Video Patent Acquisition is void contrary to the Chapter I prohibition;

(b) A declaration of licence terms (including royalty terms) to the Challenged Patents that are RAND as between Amazon and Thomson (including any such terms that are adjustable pending a full Court determination, if granted before such a determination).

(c) An order that Thomson offer Amazon a RAND Licence as declared by the Court (and/or on terms that are adjustable pending a full Court determination, if granted before such a determination).

(d) In the alternative to (c), if Thomson refuses or declines to offer the RAND licence determined by the Court, a declaration that Thomson is in breach of its RAND Commitment and an unwilling licensor.

(e) In the alternative to (a), specific performance of Thomson's obligation to transfer its RAND Commitment to InterDigital, alternatively damages for breach of the RAND Commitment against Thomson in an amount to be assessed.

...

(12) A declaration that InterDigital has abused their dominant position contrary to the Chapter II Prohibition and any damages arising from such abuse.

86. I think (7) has fallen away for reasons given above.

87. (12), the "Chapter II claim" is supported by Schedule 6 to the PoC:

5. Insofar as the Challenged Patents or any UK patents in the InterDigital Video Portfolio are Decoding SEPs, any undertaking that wishes to manufacture devices capable of decoding a bit stream in accordance with the AVC and/or HEVC Standards ("Relevant Devices") for use in the UK must make use of the technology covered by such patents.

...

10. In those circumstances, there is a separate relevant product market for the supply or licensing of the technology governed by each of the Codec SEPs in the InterDigital Video Portfolio, including each UK Codec SEPs (the "Relevant Technology Markets"). The geographic scope of each Relevant Technology Market in respect of a UK Codec SEP is the UK.

...

Dominance

19. Insofar as InterDigital holds valid and essential Codec SEPs within the InterDigital Video Portfolio, InterDigital has a 100% market share of the Relevant Technology Market for each such patent. A market share of 100% creates a rebuttable presumption of dominance. There are no factors suggesting that the presumption may be rebutted in this case. InterDigital therefore has a dominant position on Relevant Technology Market(s).

20. Amazon offers goods and services on the Relevant Device Market and Relevant Streaming Market.

Abuse

21. By reason of its dominant position on the Relevant Technology Market(s), InterDigital has a special responsibility not to prevent or distort

competition on either the upstream markets and the downstream markets. In particular, InterDigital may not exploit its dominant position on the Relevant Technology Markets by, *inter alia*:

- a. Refusing to license UK Codec SEPs to undertakings wishing to supply products on the Relevant Device Market and/or provide services on the Relevant Streaming Market or engaging in conduct having equivalent effect to a refusal to license. Such a refusal to license would prevent all competition on the downstream markets (at least in the UK) as Codec SEPs are an “essential facility” for participation in those downstream markets;
- b. Offering its UK Codec SEPs for licence on terms that are discriminatory (i.e., terms which differ across equivalent transactions without objective justification); or
- c. Charging undertakings active on the Relevant Device Markets and/or on the Relevant Streaming Market excessive and unfair royalties in respect of its UK Codec SEPs, including by the application of undue commercial pressure having the purpose or effect of forcing undertakings that supply Relevant Devices or provide Relevant Content to accept such excessive and unfair rates for UK Codec SEPs.

22. InterDigital has threatened and continues to threaten to engage in the following conduct amounting to an abuse of its dominant position on the Relevant Technology Markets in breach of the Chapter II Prohibition:

- (a) Failing to recognise its obligation to license Codec SEPs on RAND terms; and/or
- (b) In the circumstances, failing to offer a licence with fair or non-excessive price terms to Amazon for Codec SEPs (including UK Codec SEPs); and/or
- (c) Seeking to impose discriminatory terms on streaming providers, of which Amazon is one, in respect of a licence/rights to use InterDigital’s Codec SEPs (including UK Codec SEPs), in particular, seeking royalties for streaming activities in respect of the Thomson Prior Video Portfolio in circumstances where, it is to be inferred, Amazon’s competitors on the Relevant Streaming Market have obtained and/or enjoyed such rights of use from Thomson on a royalty-free basis; and/or
- (d) Seeking to license the Thomson Prior Video Portfolio on terms less favourable to the licensee than those previously offered by Thomson either (i) at all or (ii) in circumstances where Thomson’s prior offers caused or contributed to the widespread adoption of HEVC by the device manufacturers and/or content providers generally and/or the relevant licensee in particular. As to (ii), a change of licensing principles and/or increase in royalty demands

after widespread adoption of the relevant technology and effective “lock in” to the relevant standards is a particularly pernicious form of abuse as it (1) has the potential to distort the initial choice of technology by participants on the downstream market(s) (e.g. against technically superior alternatives that are more expensive than the dominant undertaking’s initial royalty demand) and (2) exploits downstream market participants once the costs of adoption have been sunk and there is “lock in”.

Effect on trade in the United Kingdom

23. InterDigital’s conduct may affect trade within the UK. There are currently millions of users of Amazon’s video streaming services (Prime, Twitch, Freevee) located within the United Kingdom. Amazon also sells significant numbers of Relevant Devices in the United Kingdom. Were Amazon forced, by the enforcement of injunctive relief, to cease the supply of Relevant Devices and/or the provision of Relevant Content in the UK even for a brief period, this would have an appreciable effect on trade within the UK. Similarly, were Amazon forced to pay an excessive or unfair price for InterDigital’s UK Codec SEPs, this could impact prices on the Relevant Device Market and/or Relevant Streaming Market in the UK.

88. I think it is important that the market in which InterDigital is alleged to be dominant is the UK and that trade is alleged to be affected in the UK. Both points answer InterDigital’s case that Amazon’s position on jurisdiction perpetrates the *Harrods Buenos Aires* fallacy. Amazon is not dressing up a claim where the real centre of gravity is outside the jurisdiction just by framing it in terms of English procedure and remedies. Its Competition Claims relate to actual markets in the UK and events affecting trade in the UK.

INTERDIGITAL’S UNDERTAKINGS AND ARBITRATION OFFER

89. In the lead up to this hearing InterDigital gave undertakings to Amazon not to assert its UK patents. InterDigital says that those undertakings affect the application of CPR r.63.14, the gateways, and the forum analysis such that there is no UK jurisdictional hook for Amazon’s RAND and Competition Claims. InterDigital also made an arbitration and standstill offer, which it deployed as an alternative forum.

90. During the hearing InterDigital also relied on undertakings to accept and submit to the jurisdiction of, and comply with any order or outcomes that are made, in the courts of Switzerland or Delaware if Amazon were to bring the same claims as in these proceedings there.

Undertakings not to assert UK patents

91. These undertakings were first given as part of InterDigital’s outline of its jurisdiction arguments dated 10 October 2025. A revised version was given in Vary 2 on 7 November 2025 and a further revised version was given in Vary 3 on 28 November 2025. That further revised version is the one that was relied on

at the hearing and is as follows (the underline and strikethrough are native to the witness statement, indicating revisions from the 7 November version):

InterDigital will not enforce any of ~~the Challenged Patents or any of~~ its UK-designated patents in the InterDigital Video Portfolio (as defined in paragraph 1(j) of the Particulars of Claim) ~~required for implementation of either of the H.264 or H.265 Recommendations (“UK Designated Codee Patents”)~~ against Amazon and its Affiliates (as defined in clause 1.6 of the Wi-Fi Licence) ~~for a 5 year period, or until such time as the proceedings before the [Arbitration/Delaware/Switzerland courts] are over (including any appeals)~~ and InterDigital has granted Amazon such licences as it has been ordered to do so under its RAND commitment to the ITU-T in respect of the H.264/AVC and H.265/HEVC standards (the “Period”). InterDigital will not later seek damages for infringement of such patents that occurred during the 5 year pPeriod.

Until the end of the ~~5 year p~~Period, InterDigital will notify any assignee or exclusive licensee of any of the UK-designated ~~Codeespatents in the InterDigital Video Portfolio~~ of the existence of this undertaking, and procure that the same undertaking be given by any such assignee or exclusive licensee as a condition of any assignment or exclusive licence.

This undertaking also applies in respect of any claim that could be made in the UK against Amazon and its Affiliates (as defined in clause 1.6 of the Wi-Fi Licence) with regards to procuring and/or acting pursuant to a common design (or being liable as joint tortfeasors in any way) in relation to infringement of any of the UK-designated ~~Codeespatents in the InterDigital Video Portfolio~~ carried out through acts by third parties.

For the avoidance of doubt, this undertaking is not, and is not intended to be, a licence to Amazon in respect of any of any of the UK-designated ~~Codeespatents in the InterDigital Video Portfolio~~ and is without prejudice to InterDigital's ability to rely on those patents as forming part of its portfolio for the purposes of valuation calculations, or in proceedings in other jurisdictions.

92. This undertaking explicitly does not provide a licence, which is what Amazon is claiming in these proceedings. It also only lasts until the end of proceedings in which alternative forum Amazon might have to bring its claims if jurisdiction here is refused (the “**Period**”). Although InterDigital undertakes not to seek damages for acts during the Period, it reserves the right to rely on the UK patents concerned in valuations (for example on a renewal, as Mr Lykiardopoulos pointed out) so the undertaking does not provide the certainty or coverage that a licence would.
93. For these reasons I do not think that the undertaking can be regarded as meeting or matching Amazon's claims in this action. In addition, the complexity of what is offered is troubling and I think if I were to accept it as a basis for declining jurisdiction there is every danger that a later argument about it would reveal more shortcomings, or at least leave open a lasting argument that put Amazon in a

position where it was much worse off than if it had been able to press ahead with these proceedings and get a licence, if it succeeded.

94. The arguments before me were somewhat different from those which Leech J had to consider in *MediaTek v. Huawei*, but I think his approach there, where he refused to treat a similar undertaking as justifying a case management stay, is consistent. In particular, I agree with what he said at [220(6)-(7) and (9)] about the utility of declarations about a licence and the fact that an undertaking would not satisfy the requirement of the ETSI (in that case) FRAND obligation (if such were shown at trial).

Arbitration and standstill offer

95. An offer was made by InterDigital on 7 November 2025. This offer was revised on 28 November 2025 and that is the version that was relied on at the hearing.

96. The offer provides an Arbitration Agreement which includes provision for the parties (the Fifth Claimant and the Fourth Defendant) to enter into a final and binding arbitration to settle issues split between two phases, Phase I and Phase II.

97. Phase I will determine:

- i) The construction of the contractual commitments given by InterDigital to the ITU-T in respect of the RAND Commitment pursuant to Swiss law.
- ii) The scope of the RAND Commitment, including whether it extends to encoding patent claims.
- iii) If the scope of the RAND Commitment does not extend to encoding or other patent claims, whether there is any other obligation on InterDigital to licence encoding or other patent claims (e.g., under competition law).
- iv) What type of relief is available for any breach of the RAND Commitment.

98. As to Phase II (if it proceeds), its scope / issues for determination and procedure are left to be determined by the arbitral tribunal following the Phase I award.

99. The Agreement provides that the arbitration will commence by InterDigital filing a request for arbitration within seven days of the Agreement. The Agreement provides that the arbitration shall take place under the ICC Rules and that the IBA Rules on the Taking of Evidence in International Arbitration shall apply to the taking of evidence.

100. The arbitral tribunal for Phase I is to comprise of five arbitrators. There must be one each of a Swiss, United States, German, Brazilian, and English law practitioner. Each arbitrator must be either an ex-Judge of the courts in the relevant jurisdiction or an experienced arbitrator. The Swiss law arbitrator is to be the president / chair of the arbitral tribunal. If there is to be a Phase II, a new panel of three arbitrators would be selected, which could include arbitrators from the Phase I panel.

101. The Agreement provides that the parties undertake to publish a copy of and comply with the Phase I award, enter into Phase II (if any), and comply with the Phase II award. Other than publication of the Phase I award, the confidentiality of the content of the arbitration and any documents served or disclosed pursuant to the arbitration and any rulings / awards is to be addressed by an order of the arbitral tribunal on application by either party.
102. As currently drafted, there is no provision for an appeal in the Arbitration Agreement.
103. The offer also includes a Standstill Agreement, an effect of which is that during the pendency of the arbitration InterDigital must refrain from enforcing any injunction in all jurisdictions which restrain infringement of patent claims that are alleged to be (or, post-Phase I, determined to be) within the scope of the RAND Commitment.

Undertakings to accept/comply with RAND terms set in alternative fora

104. This was first addressed in Vary 3:
 16. I have suggested in paragraph 12 of Vary 2 that courts in either Delaware or Switzerland are alternative forums for this action, and each such forum would be better suited to resolve this dispute about Swiss law between two companies incorporated in Delaware. If Amazon were to bring the Contractual and Licence Determination Claims [i.e., the RAND Claims as set out above] in either of these jurisdictions, InterDigital would accept and submit to the jurisdiction, that is, InterDigital would consent to either the Delaware or Swiss Courts hearing the claim. InterDigital would further commit to complying with any orders or outcomes that were made in those proceedings.
105. This was reduced to a formal undertaking at the end of the first day of the hearing:
 1. If Amazon were to bring claims in the courts of Switzerland or Delaware, USA putting in issue any or all the same causes of action as set out in its Particulars of Claim dated 29 August 2025, InterDigital would accept and submit to the jurisdiction of any of those courts to hear such claims.
 2. Without prejudice to any rights of appeal, InterDigital will comply with any orders or outcomes that are made in those proceedings, including but not limited to offering any RAND licence determined in those proceedings.
106. Amazon said that this undertaking does not include acceptance that the foreign national courts may decide global RAND terms. However, InterDigital contends that e.g. as a matter of Swiss law the RAND Commitment only requires negotiation in good faith and those points, which for present purposes I assume are arguable, ought to be open to it in any forum. So this point of Amazon's misses the mark. Further, InterDigital has said during the course of the hearing that even if it were to succeed in arguments on the availability of specific

performance, the above undertakings would have the effect that InterDigital would still offer Amazon a licence on RAND terms if those terms were determined in the Swiss or Delaware proceedings.

107. Amazon further objected that this wording still left it open to InterDigital to make arguments other than what the RAND Commitment means, e.g., as supported by InterDigital's Swiss law evidence, that under Swiss law declarations of fact are not permitted, and RAND terms would be regarded as a question of fact. I accept this, and it means there is a modest doubt over the reach of InterDigital's undertaking to "comply ... with outcomes" if global RAND terms are in fact set in the foreign jurisdictions. But it is a relatively very minor point and in general I accept that these undertakings do make the Swiss and Delaware courts available fora.

NO GUARANTEE RAND TERMS WILL BE DETERMINED

108. A factor that was critical in *UPSC* (see [96] to [98]) and in *Conversant* (see [122] to [126], and in the High Court ([2018] EWHC 808 (Pat)) at [52] to [64]) was that proceedings in the UK would lead to the setting of a global FRAND rate whereas, on the evidence, no other court would do so.
109. Amazon seeks to deploy the same argument now, and it points out that although InterDigital has agreed to submit to jurisdiction in Switzerland or Delaware, it has not agreed to either of those courts, or an arbitral tribunal, setting global rates.
110. InterDigital responds that there is no guarantee that *any* court (or arbitral panel), including this Court, will set global RAND rates.
111. The basis for this argument is InterDigital's position that the ITU-T RAND Commitment is only to negotiate in good faith, not a more concrete obligation actually to offer a RAND licence. If that is accepted, InterDigital says, then RAND terms may not be set, wherever the parties' dispute is decided, be it Switzerland, Delaware, arbitration, or this Court. InterDigital says that it is perfectly fair for it not to agree to global rates being set, because Amazon has no contractual right to have them set.
112. As I have said above, I am proceeding on the assumption that InterDigital's position on the nature of the RAND Commitment is arguable. If it is correct, then I agree with the logic of what InterDigital says should follow. In no court or arbitral tribunal can it be guaranteed that a global rate will be set, so that is not a differentiating factor between them.
113. I agree, however, with the implicit suggestion by Amazon that it might be more likely that this Court would set global RAND rates than a US or Swiss court. For myself I think that is because in the US decisions there has been a general resistance to setting global rates in the absence of consent, which is not dependent on the precise content of the (F)RAND obligation. Swiss courts might go the same way, or not. These are imponderables, though, and I do not think they can form a proper basis as a differentiating factor given the bigger point that no court or arbitral tribunal can be guaranteed to set a RAND rate.

ARBITRATION GENERALLY

114. InterDigital says that international arbitration is an alternative available forum. It argues that in circumstances where the Standard Setting Organisations (“SSOs”) and their rules do not stipulate a dispute resolution mechanism, if (F)RAND cannot be agreed (as Arnold LJ has pointed out in his judgments and extrajudicially), parties should agree to resolve their disputes in a “neutral forum” that (InterDigital says) “allows them to tailor the process to meet the needs of their specific dispute”.
115. InterDigital therefore says that this Court should encourage the parties to use arbitration, in the current dispute, and generally.
116. InterDigital makes a number of points about the details of the arbitration it proposes, which are addressed below and in particular it points to the possibility of having a Swiss member as president given that the RAND Commitment is subject to Swiss law.
117. InterDigital also seeks to make a higher-level point, that there is currently disagreement among courts internationally about the right approach to (F)RAND and that an authoritative arbitration of this dispute by a multi-member panel from each of the different schools of thought might resolve some of the disagreements. So InterDigital says that arbitration is in the interest of comity.
118. Counsel were unable to find any authority about whether arbitration may be treated as an available alternative “forum” for the purposes of jurisdiction disputes such as the present one (in passing, I agree with InterDigital that Fancourt J’s rejection of *mediation* in *Kigen v. Thales* [2022] EWHC 2846 (Pat), while clearly correct, is not on point because mediation is facilitated negotiation and not a way for getting a binding decision). This seems surprising but means that I have to approach the matter from basic principles.
119. I agree that this Court should encourage parties to resolve (F)RAND disputes (indeed, many or most disputes) with careful thought to, and use of, ADR. That includes arbitration. I also agree that it would be welcome if SSOs included a mandatory dispute resolution procedure in their rules, and if that was a suitable form of arbitration then so much the better. InterDigital’s application that is before me, though, is not about a system-level solution. It is about whether this Court is the appropriate forum specifically for the current dispute.
120. A fundamental feature of arbitration is that it is a consensual process. InterDigital’s approach in the current situation is to tailor an arbitration with the specific objective of trying to match, or improve on, the respects in which the parties’ dispute is connected to the UK or might more suitably be tried here. For reasons given below I conclude that InterDigital has not succeeded and the arbitration proposed is less suitable for a number of important reasons. But even if it had succeeded, what it would be doing is creating a forum of its own choosing that would not otherwise exist and thereby preventing Amazon, if this Court declined jurisdiction or stayed, from continuing in the UK when it otherwise could do so. Amazon would be *compelled* to arbitrate if it wanted to carry on its

claims at all (and not only that but to enter into a contractual relationship with InterDigital, for the arbitration, that it did not want). I think that would be wrong.

121. I also reject InterDigital's contention that having a 5-member arbitral panel decide the present dispute would promote international comity by resolving areas of disagreement as to approach between e.g. this Court and the UPC. That would not be its function, for one thing. And in any case, while it is desirable for greater international agreement to emerge, and I think it will, I do not believe a single decision of an arbitral tribunal (where the majority of goings-on will likely not be public) in a single specific case would be anything like as authoritative or persuasive as further decisions of the courts involved, made in the light of each other's case law as part of a dialogue, and especially further appellate decisions.
122. In support of this argument, InterDigital also says that arbitration has "the very major advantage ... that a court judgment cannot offer: a judgment that takes into account international perspectives". This is wrong: the courts of the UK, the UPC, Germany, China, the USA and so on all understand the international perspective, but do not agree about some aspects of the correct legal analysis, although there are many things they do agree about.
123. I do not overlook that InterDigital's proposal includes that an arbitration would, in the event that the RAND Commitment requires the making of an offer, cover all the patents in its portfolio, so that Amazon would not have to win on the points about the RAND Commitment extending to encoding claims, and InterDigital being obliged to include NEPs. By contrast, Amazon would have to fight those points in any national court. In addition, InterDigital offers a standstill along with an arbitration agreement, so that Amazon would not be at risk of injunctions in national courts during the arbitration (Amazon does not accept the effectiveness of the standstill, at least not entirely).
124. These might be important points in making arbitration attractive and inducing Amazon to agree to it if it wanted to, but it does not change my analysis of why compelling arbitration by imposing a stay of these proceedings would be wrong.
125. For reasons which will appear when I consider the connecting factors between this dispute and the various fora, I consider that Amazon's declining arbitration is reasonable. The main one to my mind is that Amazon wants a fully open, timely, and authoritative decision about the scope and effect of the RAND Commitment.

LITIGATION STRATEGY

126. Amazon points out that InterDigital has proposed that the questions of whether Amazon is entitled to be made a RAND offer and on what terms could be determined in arbitration or in proceedings in Delaware or Switzerland, but that it has not brought or offered to bring those issues into any of the infringement proceedings it has brought.
127. I agree with Amazon that InterDigital could have tried to bring rate setting determinations into at least some of the infringement claims, perhaps most

notably the UPC, which has indicated a provisional willingness to consider deciding global terms (in the *Panasonic* litigation).

128. Amazon accepts, however, that it is not necessary for InterDigital to challenge jurisdiction here that it must already have brought its own proceedings covering the same issues somewhere else.
129. I agree with Amazon that the inference to be drawn is that InterDigital does not want rate setting determined anywhere, in case that gets in the way of its obtaining injunctions, and also that it wants rate setting determined as slowly as possible if it is to be decided at all. The exception is that it will agree to a standstill while rate setting is considered in arbitration (see above), but even there it says that it will argue that the RAND Commitment does not entitle Amazon to be made an offer on RAND terms, so it could end inconclusively.
130. Although this is unattractive on InterDigital's part I do not think that on its own it is a significant factor in relation to jurisdiction.

APPLICABILITY OF CPR R.63.14

131. Given the view I have taken of the case law, service in the jurisdiction under CPR r.63.14 was valid.

PERMISSION TO SERVE OUT

132. Again, given the view I have taken of the case law, permission to serve out was validly given because there was no material challenge to there being a serious issue to be tried on the merits and I find that at least gateway 11 was satisfied (it is unnecessary to consider any other gateways separately).
133. At the time permission was given there was no alternative forum (see below). Given that and the proper characterisation of the dispute, Amazon showed that this was the clearly or distinctly appropriate forum.

ANALYSIS – FORUM NON CONVENIENS STAY

134. I move on to InterDigital's application for a *forum non conveniens* stay.

Availability of alternative fora

135. Given my view of InterDigital's undertakings to submit to their jurisdiction, the Swiss and Delaware courts are available fora as of now. It is possible for a defendant to make a forum "available" by agreeing to submit to jurisdiction there: *Lubbe v. Cape* [2000] 1 WLR 1545.
136. It could be relevant to setting aside service under the gateways whether either of them was an available forum at the date when service out was permitted (see paragraph 44 above). InterDigital did not really press this (indeed said it was a "sterile" dispute), and majored on whether they are available now.

137. I will nonetheless decide it in case it should matter on any appeal since in theory it could have the consequence that Amazon would have to show that the UK was the clearly or distinctly appropriate forum.
138. In relation to Switzerland, the relevant provision is the Swiss Federal Act on Private International Law (“**PILA**”).
139. Art. 5 of PILA provides for jurisdiction by agreement. I will accept for present purposes that InterDigital’s undertaking to submit to Swiss Jurisdiction would amount to sufficient agreement by it, and that Amazon cannot prevent availability just by refusing to consent itself, but it is not of relevance to the situation at the time when permission to serve out was given (see paragraph 46 above).
140. InterDigital relied on Art. 113 of PILA as conferring jurisdiction at the time of permission to serve out. That is based on the place of characteristic performance of the contractual obligation (i.e., in this case, characteristic performance of the RAND declaration). Dr Holzer (InterDigital’s Swiss foreign law expert) is of the opinion that the characteristic performance is the issuance of the declaration, and consequently the place of performance is Switzerland (i.e., the seat of the ITU-T). I disagree. I prefer and accept the evidence of Ms Dorigo (Amazon’s Swiss foreign law expert) that what amounts to the characteristic performance of the RAND declaration is the obligation to conclude or negotiate a RAND licence with a third party beneficiary of the RAND declaration. I accept Ms Dorigo’s evidence that a Swiss court would not regard the place of performance of that relevant obligation to be in Switzerland, and that makes sense. None of the parties to this dispute are domiciled in Switzerland, nor is the dispute concerned with performance of a licence to Swiss patent rights.
141. InterDigital also relied on the fact that the ITU-T is domiciled in Switzerland. That is a red herring since the ITU-T is not an actual or prospective party and nothing it does is said to be performance of any relevant obligation.
142. InterDigital tried even less hard to show that Delaware was an available forum at the date when service out was permitted. I accept and prefer Amazon’s evidence that the Delaware court would not entertain a global rate setting claim in the absence of InterDigital’s consent. That is why InterDigital relies on its later undertakings.

Connecting factors

143. In the lead up to and during the hearing, the parties advanced a multitude of arguments in favour of their chosen forum/fora and against the other side’s. These arguments were spread across several pieces of evidence, written submissions, and oral submissions, and were understandably frequently revised given the rapidly shifting nature of this litigation. In order to consolidate matters, I asked the parties to prepare two lists at the end of the hearing. Amazon prepared a list of what it considered to be connecting factors between this dispute and England and Wales, to which InterDigital then provided reply comments. Similarly, InterDigital prepared a list of what it considered to be connecting factors between this dispute and international arbitration, Switzerland, and Delaware, to which

Amazon then provided reply comments. I outline and address the points raised below.

144. However, I have noted the observation of Arnold LJ in *Nokia v. OPPO* that disputes of this kind may be seen as having no natural home. Were that the case, InterDigital would lose because it bears the burden of showing that there is another forum which is clearly or distinctly more appropriate than this Court. So in a sense I am assessing the parties' asserted factors in the alternative. I must also, though, bear in mind the reliance that Amazon puts on the Competition Claims; Arnold LJ was not considering those, and it must be considered whether they have a closer connection with this jurisdiction.

Place of the obligation or where parties carry on business

145. Amazon relies on its position that the RAND Claim is for a licence to the Challenged Patents (i.e., UK patents) and concerns the amount that must be paid to work the standards in the UK. Amazon also argues that the claim requests declarations of non-infringement of the Challenged Patents. InterDigital's reply is effectively the same as its argument to do with characterisation of the claims for the purpose of CPR r.63.14 and the gateways. However, counsel for InterDigital accepted at the hearing that if InterDigital has lost the argument on the characterisation of the claims at an earlier stage of the analysis, it cannot be reargued in this context.

146. Amazon further argues that given that certain acts of encoding are undertaken in the UK for Prime Video for both the UK and for many European countries, and given that the Second Claimant, Amazon Digital UK Limited, is the key entity in the Amazon group for the Prime Video business across Europe, a licence to the Challenged Patents or a licence to the encoding claims in the UK directly affects Amazon's substantial UK business. I agree with this, and this factor has some weight.

147. InterDigital counters the above argument on Amazon's business by pointing to the fact that Amazon's trade in the UK is dwarfed by its trade in the USA, which InterDigital contends is Amazon's largest market. This balances the scales when comparing with Delaware but has no relevance to Switzerland.

Domicile

148. InterDigital points out that a number of the parties are US corporations and three are registered in Delaware. In some cases domicile is important but in the present case I do not consider that it has any practical significance and although some of the parties are US corporations, others are not.

Applicable law

149. InterDigital runs two positive cases. First, it contends that an arbitration would not be applying foreign law, as the president of the arbitration will be a Swiss legal expert. Consequently, it says, this would be an advantage over England and Wales which would require evidence of Swiss law to interpret the ITU-T RAND Commitment (a Swiss law contract). Second, similarly, it contends that the Swiss

courts would be applying their own national law when interpreting the ITU-T RAND Commitment.

150. As to arbitration, Amazon makes the point that pursuant to the arbitration offer, Phase I (where the interpretation of the ITU-T RAND Commitment would be decided) provides for a panel of five arbitrators, only one of which is a Swiss law expert. Thus, evidence of Swiss law would still be required. Moreover, the panel would also require evidence of UK competition law, as only one of the five arbitrators would be an English law expert.
151. As to the Swiss courts, Amazon says that the Swiss law points are relatively discrete, and the interpretation of the ITU-T RAND Commitment is currently being considered by the English Court in *Acer, ASUS, and Hisense v. Nokia*, in which judgment is awaited on jurisdiction and interim licence matters. Amazon also makes the point that the Swiss courts would have to apply English law to the related UK competition law claim.
152. As to the Delaware courts, InterDigital does not run any positive case on applicable law as a connecting factor. Instead, it runs a defensive point that both the Delaware courts and English courts would be applying foreign law and thus this factor is neutral in that respect. Amazon disagrees and makes the point that while that may be true as far as Swiss law and the ITU-T RAND Commitment are concerned, that is not true when it comes to the UK competition law claim, where the Delaware courts would be applying foreign law and the English courts would be applying national law.
153. I do not think that foreign law being applied is a very strong factor either way, but I agree with Amazon that establishing Swiss law would be a fairly minor task in the UK, and that dealing with UK competition law in any other forum would be an appreciably bigger task for that forum. So overall this is a modest factor in favour of this jurisdiction.

Competition law claims

154. Apart from the issue of the applicable law, there are factual issues to the competition law claims. Amazon has specifically pleaded markets in the UK, and effect on trade in the UK. I do not doubt that a foreign forum (including an arbitral tribunal) *could* assess these issues, but they have a really material connection to this jurisdiction. So I assess this as a significant factor in favour of this jurisdiction.

Practicalities for witnesses and documents

155. InterDigital advances this as a positive factor in favour of the Delaware courts. InterDigital says that principally US based witnesses would not have to travel for the litigation. Amazon however contends that there is no evidence that relevant individuals are in Delaware (or even on the East Coast of the US). Amazon also contends that the witnesses, disclosure, and evidence about encoding practices in the UK (relevant in particular for the Competition Claim) are likely to be from the UK and consequently this factor favours England and Wales.

156. As to arbitration, InterDigital says that Amazon can choose the law and place of the arbitration as between Paris, Geneva, and London, and can therefore be presumed that the availability of witnesses and documents and the language of the proceedings will be maximally advantageous to Amazon, and at least no less convenient than London as one of the options. The parties seem to be agreed that this is a neutral point.
157. As to Switzerland, Amazon contends that there is no evidence that any of the documents or relevant witnesses in this case are written in or speak French, German, Italian or Romansh (the official languages of the Swiss courts), and are instead highly likely to be written in or speak English. Having these proceedings conducted in a non-English language is a disadvantage to these particular parties according to Amazon. InterDigital acknowledges that this is a disadvantage over litigation in the UK for witnesses for whom English is the first language, but an advantage for witnesses for whom French is the first language.
158. I do not think there is a factual basis for thinking that any of these points make much difference as between the various fora, except that I think it would be a non-trivial inconvenience for the case to be heard other than in English. So that is a point against Switzerland.

Experience and expertise of the court / tribunal

159. Amazon advances a positive case about the fact that the English courts have substantial experience of addressing (F)RAND issues, including numerous interim applications and case management decisions in both ETSI and ITU-T contexts, including relatively substantial experience of FRAND valuations.
160. InterDigital primarily takes a defensive position on this matter for all its proposed fora, saying that these are not relevant factors absent a suggestion that the experience of the court/arbitral tribunal would mean that substantial justice cannot be done. I agree with this and I think that the judges or arbitrators who would hear the dispute can be assumed to be experienced at complex valuations, even if not (F)RAND ones. I note that Arnold LJ expressed a similar view in *Nokia v. Oppo*.

Timing of relief

161. Amazon takes the point that this Court is able to hear the trial on Amazon's claim to final RAND relief (starting 15 September 2026, subject to this Jurisdiction Challenge) before (or shortly after) decisions are delivered in InterDigital's injunction actions abroad (Germany, UPC, Brazil). Thus Amazon says that if successful in its claim for final RAND relief it may have a defence in those infringement proceedings abroad. At the very least, Amazon says, it can be a matter that may be considered by those foreign courts in considering whether or not to grant an injunction and/or can assist settlement negotiations. Amazon says that a stay of the proceedings in this Court would potentially jeopardise any RAND determination ever taking place.
162. Initially, InterDigital primarily took a defensive position on this matter for all its proposed fora, saying that this is not a relevant connecting factor absent a

suggestion that the timings of the proceedings would mean that substantial justice cannot be done. But in oral submissions, Mr Bloch accepted, correctly I think, that this was a relevant advantage of the UK.

163. As to relative delay and arbitration there is an additional nuance: InterDigital takes the point that there is a standstill offer as outlined above. Amazon however responds with a rather technical point that while the Standstill Agreement as currently drafted prohibits the enforcement of any injunctions pending the Phase I Award, after the Phase I Award, the offer provides that injunctions cannot be enforced on the basis of any patent claims that have been determined in the Phase I Award “to be within the scope of the ITU-T RAND commitment”. This wording, Amazon says, means that InterDigital is free to enforce any injunctions prior to a Phase II Award on the basis of encoding claims held in Phase I to not be covered by the RAND Commitment but should nonetheless be licensed for other reasons, such as UK competition law. Since I see no reason why the arbitral tribunal could not consider all the issues if it were to take on the dispute, this point is at best a weak one, so the timing point only bites in relation to the Swiss and Delaware courts, where InterDigital does not offer a standstill.
164. I do however note that the structure of the proposed arbitration is overly complex, consisting of two phases as outlined above, with two different panels having to be constituted (a 5-member and a 3-member) at the beginning of the phases. This structural complexity will likely be coupled with several interim procedural skirmishes. All of this will no doubt introduce significant delay to instituting the arbitration and final resolution of the underlying dispute.

Disclosure and expert evidence

165. Amazon relies on the fact that English courts provide for disclosure of comparable licences. Amazon argues that these are particularly essential in (F)RAND determination cases, as they are crucial to ensure fairness and to ensure that the non-discriminatory principle can properly be put into effect.
166. InterDigital again primarily takes a defensive stance, that the point only matters if it is a basis for thinking that substantial justice could not be done in another forum.
167. On the evidence, I do not think there is any reason to suppose that adequate disclosure of comparables would not be available in arbitration or in Delaware.
168. As to the Swiss courts, InterDigital acknowledges that while disclosure and expert evidence are available in Swiss litigation, Swiss courts do not compel disclosure but rather form adverse inferences from non-provision of relevant documents. I have some doubt whether an inference could substitute for appropriate disclosure, but not enough to think that a Swiss court could not provide substantial justice. So this factor is not a differentiating one for any forum.

Open justice

169. Amazon relies on the fact that English courts operate on open justice principles, meaning that the default position is that hearings are conducted in public and

judgments are public. Amazon says that this is important in respect of the nature of the ITU-T obligation, the scope of any licence (including whether it covers encoding claims) and the appropriate rate setting methodology for streaming services.

170. InterDigital argues that litigation in Switzerland and Delaware is no less cognisant of open justice, and Amazon seems to accept that this factor is neutral in this respect.
171. As to arbitration, at the hearing, InterDigital relied on the fact that the arbitration offer provides for the Phase I Award to be made public. In the latest round of documents received, InterDigital made clear that it would agree to the Phase II Award being made public as well subject to confidentiality redactions. Amazon, in its reply, takes the point that having the awards public is not the same as having the proceedings undertaken in public and would still mean that significant documents, decisions, and key reasoning of the tribunal would not be open. In addition, it cannot be assumed that the redactions in an arbitration would be no greater than redactions to a court judgment. I note that InterDigital has *not* committed to agree that the arbitration would, overall, be as public as proceedings in this jurisdiction. I think Amazon is entitled to fully open justice if it wants, and its point that it is especially important to have public decisions on ITU-T RAND with the most transparent proceedings towards them is reasonable and legitimate.
172. Therefore this factor significantly disfavours arbitration.

Previous conduct

173. Amazon also relies on the fact that InterDigital has previously invoked the jurisdiction of this Court (in a different (F)RAND case). Amazon says this evidences this Court's suitability for a case of this nature. This is a second-order consideration and I think I should directly and objectively address the relative characteristics of the various fora.

Conclusion on *forum non conveniens*

174. There is an array of considerations. Some apply generally and some to different fora differently, but overall for each alternative forum it is less appropriate than this jurisdiction. The factors positively favouring Switzerland and Delaware are trivial and in each of those cases the factors favouring this jurisdiction are, I consider, appreciably stronger. I have rejected arbitration at the outset because it should only be a consensual process and would be less authoritative than court determinations, but even if that were not so the various factors against it (in particular the open justice and complexity points and the need to deal with UK competition law and facts) are significant.

CASE MANAGEMENT STAY

175. InterDigital only ran this faintly and as a hedge against my potentially finding that although arbitration was otherwise attractive it was not "technically" an

available forum so that jurisdiction could not actually be declined in its favour. Since that is not the basis on which I have rejected arbitration, case management stay does not arise.

176. In any event, although the precise characterisation of the test for a case management stay might be debated (as to whether the standard is “rare and compelling”), at the very least significant factors in favour would need to exist and in the present case they do not, especially given that no arbitration even exists at the moment, that instituting one would take considerable time, and that Amazon has a real and reasonable desire for a decision sooner rather than later.

INTERESTS OF JUSTICE AND INTERNATIONAL HARMONY

177. InterDigital makes a couple of final overarching points that it submits are relevant factors when considering exercise of jurisdiction.
178. The first it says is that as a matter of interests of justice I should factor in the “slew of implementer led claims before the English court”. It says that such claims are taking up a lot of court time and that must be a pressure both on the court and other court users, particularly because so many of them are the subject of orders for early trials or expedited trials. InterDigital relies on what Bright J said at [12] in *Magomedov v. TPG Group Holdings* [2025] EWHC 59 (Comm), to put forward a proposition that that is a factor to take into account when considering jurisdiction. As I said at the hearing, I think what Bright J was referring to there was that particular case being enormous. I do not think that he was talking about a category of litigation placing a burden on the court such that it should take a particular view on jurisdiction on that basis. Nonetheless, as Bright J noted in that same paragraph “[i]f this court has a responsibility to decide claims, it will do so, no matter how challenging that may be.”
179. The second is really a comity point and I have already addressed comity at paragraph 121 above.

CONCLUSION

180. InterDigital’s Jurisdiction Challenge fails. Service as of right under CPR r.63.14 and permission for service out were each appropriate; a *forum non conveniens* stay is not appropriate and nor is a case management stay.