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Claim No. HP-2023-000036

**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

Date: Thursday, 13th March 2025

**Before:**

**MR. JUSTICE MEADE**

**Between:**

**(1) LENOVO GROUP LIMITED**  
**(2) LENOVO (UNITED STATES) INC.**  
**(3) LENOVO TECHNOLOGY (UNITED**  
**KINGDOM) LIMITED**

**Claimants**

**(4) MOTOROLA MOBILITY LLC**  
**(5) MOTOROLA MOBILITY UK LIMITED**  
**- and -**

**(1) TELEFONAKTIEBOLAGET LM ERICSSON**  
**(publ)**  
**(2) ERICSSON LIMITED**

**Defendants**

**MR. THOMAS HINCHLIFFE KC** and (instructed by **Kirkland & Ellis International LLP**)  
appeared for **Lenovo**.

**MS. SARAH ABRAM KC, MR. EDMUND EUSTACE** and **MR. ALASTAIR**  
**RICHARDSON** (instructed by **Taylor Wessing LLP** and **Pinsent Masons LLP**) appeared for  
the **Defendants**.

**Approved Judgment**

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**MR. JUSTICE MEADE :**

1. Pursuant to an earlier order of the court (the Order of Jonathan Richards J of 3 July 2024), granting a degree of expedition, starting in a floating window from 29th April this year, I am going to determine the FRAND licence applicable between these parties. There have been a number of earlier judgments of the High Court and the Court of Appeal in this litigation and details of the overall shape of the litigation can be found there, most recently in the decision of the Court of Appeal in [2025] EWCA Civ 182, concerning the interim licence, which concluded that Ericsson is in breach of the obligation of good faith under the ETSI policy. Ericsson subsequently decided not to make an interim licence, and that has led to a declaration that they are an unwilling licensor. Ericsson has said that they intend to appeal that to the Supreme Court, for which permission, of course, will be required.
2. Ericsson's declining to agree to commit to give the licence, which I will determine in the summer (a slightly different point from that considered by the Court of Appeal in relation to the *interim* licence but nonetheless important) is of long-standing. It was partly in the context of Ericsson's attitude to the UK proceedings, which he deprecated at the time, that Jonathan Richards J made the order that he did for the FRAND trial to which I have referred. He made some comments in the context of that judgment about why it was manageable to grant expedition. He emphasised the importance of a good, clear FRAND statement of case from Lenovo.
3. What I have to deal with today is an application by Lenovo to amend its FRAND pleadings -- I need not set out precisely which documents, they are multiple, but I can just say its FRAND pleadings -- to raise four disputed points. Those points emerged from a combination of Lenovo's first-round evidence, in particular its expert evidence, and also, in parallel, a licence disclosed quite recently by Ericsson, referred to by the code name Green, which was not disclosed until late January. That stands in a different category to the other amendments for that very reason, because it would have been impossible for Lenovo to deal with it in its expert evidence, or to formulate a pleading amendment earlier.
4. Following service of Lenovo's evidence in January, as I have indicated, Ericsson wrote in correspondence to point out that there were a number of matters, Ericsson said a large number of matters, which were in the evidence but not pleaded. After quite a bit of correspondence, in due course, about a month later, Lenovo provided a draft amended pleading. Ericsson has accepted it can deal with quite a lot of the new pleading at trial, and will deal with at trial, but the four points to which I have referred are objected to; that objection is maintained today; and that is what I have to deal with.
5. The authorities concerning amendment of pleadings in this general sense are well-known, and they categorise amendments into very late amendments, which are amendments which jeopardise the trial date, and late amendments, which are a broader and more variable category. I have found particularly helpful, although it does not present any significantly different overall test, the paragraphs of the judgment of Coulson J (as he then was) in *CIP v Galliford* [2015] EWHC 1345, TCC, at paragraph 19 (case name references omitted):

“19. In summary, therefore, I consider that the right approach to amendments is as follows:

(a) The lateness by which an amendment is produced is a relative concept. An amendment is late if it could have been advanced earlier, or involves the duplication of cost and effort, or if it requires the resisting party to revisit any of the significant steps in the litigation (such as disclosure or the provision of witness statements and expert's reports) which have been completed by the time of the amendment.

(b) An amendment can be regarded as 'very late' if permission to amend threatens the trial date, even if the application is made some months before the trial is due to start. Parties have a legitimate expectation that trial dates will be met and not adjourned without good reason.

(c) The history of the amendment, together with an explanation for its lateness, is a matter for the amending party and is an important factor in the necessary balancing exercise. In essence, there must be a good reason for the delay.

(d) The particularity and/or clarity of the proposed amendment then has to be considered, because different considerations may well apply to amendments which are not tightly-drawn or focused.

(e) The prejudice to the resisting parties if the amendments are allowed will incorporate, at one end of the spectrum, the simple fact of being 'mucked around', to the disruption of and additional pressure on their lawyers in the run-up to trial, and the duplication of cost and effort at the other. If allowing the amendments would necessitate the adjournment of the trial, that may be an overwhelming reason to refuse the amendments.

(f) Prejudice to the amending party if the amendments are not allowed will, obviously, include its inability to advance its amended case, but that is just one factor to be considered. Moreover, if that prejudice has come about by the amending party's own conduct, then it is a much less important element of the balancing exercise."

6. Mr. Hinchliffe KC, who appears for Lenovo today, cited a different authority of Carr J (as she then was) in *Quah Su-Ling v Goldman Sachs* [2015] EWHC 759 (Comm), at 38, but it is not suggested that there is any material difference between these.
7. My task is to decide whether the amendment is very late, in the sense that it threatens the trial date or "merely" late, which has the meaning set out by Coulson J in paragraph 19(a) in *CIP*.
8. Mr. Hinchliffe points out that, strategically speaking, it would not break Ericsson's heart if the trial date was lost, and I imagine that is true, since Ericsson did not want expedition, and has not signed up to the FRAND determination in London, but prefers to litigate elsewhere, in the circumstances described in the judgment of the Court of Appeal. However, I do not accept that that is the right way to look at it. It is quite clear

- and I can get this from the evidence of Mr. Foster of Ericsson's solicitors in support of its position at this hearing but it is apparent anyway - that Ericsson has been working ferociously hard on the preparations for the FRAND trial and, leaving apart the contested amendments, it will be ready to go. The question I have to ask myself is whether if the contested amendments came in, it would still be possible to prepare adequately for the trial. If not, then it is a very late amendment, and Ericsson's desires in relation to the trial are quite separate from that question. It is not asking for an adjournment; it is asking that the amendments be refused because if they are not it cannot get ready for trial. That is the approach that I think is to be applied to deciding whether an amendment is very late. Parties often oppose amendments on the basis that they are very late, even when they very firmly and very critically want to keep the trial date.

9. That is the structural split in the analysis I have to conduct. I also bear in mind what goes into the mix if I reach the conclusion that these are "merely" late amendments. As Coulson J pointed out, the history of the amendment, and an explanation for why it is made late, is a matter for the amending party and an important factor in the balancing exercise, is that there has to be a good reason for the delay. Furthermore, as he went on to point out later on, in subparagraph (f), when it comes to considering prejudice, "... if that prejudice has come about by the amending party's own conduct, then it is a much less important element of the balancing exercise." Although he did not express it in that way, no doubt because of the context of the situation he was considering in that case, it must follow, logically, I think, that if the amending party omits to explain its conduct, then the court will be ready to infer, although it will not necessarily do so, that the fault is on the part of the amending party and downgrade the significance of any prejudice alleged.
10. The present case is unusual in relation to the history of the amendment and the explanation for lateness, in that it is only a very slight exaggeration to say there was no explanation at all offered by Lenovo. I say that it is only a slight exaggeration because there is a passing reference in the evidence of Ms. Dagg of Lenovo's solicitors to one of the points, which is called the observable characteristics point (I need not go into what that is at this stage) having come into consideration with the relevant expert quite late. However, apart from that, there is no explanation at all, and it is a tricky question, I think, what approach I should take in that situation. Ms. Abram KC, who appears for Ericsson, does not contend that the absence of an explanation is in itself necessarily fatal. I think it is a possible reading of Coulson J's judgment that it could be, but again what he said there in subparagraph (c) is no doubt context-dependent. Anyway, it is not Ms. Abram's contention that I should observe the lack of an explanation and move on simply to reject the amendments for that reason alone. So that is not what I am going to do.
11. However, the situation remains a tricky one, because in the absence of an explanation, what should I assume has happened? There are a variety of possibilities, some of which might be relatively benign, had they been explained, and others which might be much worse. It could be that although the party seeking to amend has not presented an explanation the true explanation is simply that the point only occurred at the eleventh hour and there is no more to it than that. A much more malign explanation would be that the party seeking to amend thought of the point, realised it was not pleaded, and plugged on in the expectation of getting a tactical advantage by putting the pleading in only after the service of evidence.

12. I do not see any reason to err in favour of the party, in this case Lenovo, which has failed to give an explanation, but it could be an unfair and, on the facts, not justifiable, approach to assume the worst. I think it is inherently unlikely that Lenovo and its advisers spotted that the point was not pleaded and deliberately moved forwards from there to get a tactical advantage. Mr. Hinchliffe says that that allegation should have been put if it was to be made. I do not agree that that is a realistic way to look at it, because Ericsson just was not in a position to allege any particular thing, not knowing, because there was no explanation, why the points only emerged in the evidence of Lenovo. Nonetheless, something quite so regrettable is not positively alleged, and I have to do the best I can be with a complete lack of explanation. What I do have is some visibility of the attitude that Lenovo took after Ericsson taxed it with the point that these matters were not pleaded. Lenovo declined initially to remedy matters by proposing a draft amended pleading and at one point offered the explanation that in the Patents Court it is quite common for the evidence to be put in, mismatching to the pleadings, and for the pleadings only then to be fixed. That is factually incorrect. That is not how the Patents Court proceeds. The Patents Court is no different from any other branch of the High Court in this respect. The pleadings are there to avoid surprise and to manage the proceedings efficiently in a cards-on-the-table way, and it is completely unacceptable to put in evidence which is unsupported by the pleading without any reason or any explanation.
13. That correspondence is the best I have to get some idea of what has happened here. My conclusion is that, apart from the minor point on observable characteristics, Lenovo was acting, at least tacitly, on the fundamentally and inexcusably mistaken premise that it could put what it wanted into its expert evidence and then let the pleadings catch up later. I would characterise that as being a reckless disregard of the impact that that conduct, out of keeping with the ordinary rules, would have on the opposing party and the court. I emphasise that I do not know that this is what happened, but I think it is the most benign explanation reasonably available and the most consistent explanation with what I can see has happened. It is imperfect, but that is the best I can do.
14. In any event, against that background, I turn to consider the four contested amendments. I do so against the background of Ericsson already having agreed to all of the other amendments necessary in the light of Lenovo's evidence, and I do so against an assessment that this is an extremely extensive and complicated trial that is coming up, where, even on the pleaded issues, I have no doubt that on both sides it is all hands to the pump for every member of the team from now, every day, until trial.
15. The four points I will refer to as “grant-back/scaling”, “HEVC”, “observable characteristics” and, separately, the Green licence, which is a further licence that I have referred to already, and where there is not an issue of lateness.
16. In his submissions, Mr. Hinchliffe raised the question of what should happen if I was only prepared to let some of the amendments in and he ordered, from most preferred to least preferred, the points as follows: HEVC first, grant-back/scaling second, and roughly equal in third and fourth place the Green licence and observable characteristics.
17. In principle, I think it is entirely right that a party with a clutch of amendments ought to be able to argue to preserve or get in those which cause the least disruption and to accept the court's ruling that other ones are more problematic. Mr. Hinchliffe was helpfully direct in saying that the order of preference is based on those which give, or

would give, if successful, to Lenovo the greatest financial benefit. However, they were not ordered necessarily in terms of complexity or burden of dealing with them. In any event, I have actively borne in mind the possibility of letting in some and not others, and it is certainly right, from what I have seen, that some bring with them more complexity than others.

18. I also think it is important to identify to what extent these points would be important to Lenovo's case. When a party is seeking to amend, there may be a number of reasons for it to do so. It may have found an outstandingly good, new point which gives it a wholly new and strong route to victory. It may have found a point which is critical to its case, because it repairs a fatal hole that has been identified. It may be a point which simply bolsters its existing case, or it may even be a point that is not actively in play, but which it apprehends it might want for defensive reasons.
19. I think it is clear, and anyway I intend to proceed on the basis, that the grant-back/scaling point is an alternative way of justifying Lenovo's position, and not its primary case. The HEVC point, in one scenario, could improve Lenovo's financial outcome considerably, but it is not a fundamental improvement to its case. It rather improves the best possible result from one facet of the case. The observable characteristics point is a potential defensive point against a criticism that might be made of Lenovo's patent counting expert, Dr. Baron. The Green licence, which at the risk of repeating myself is not said to be a late amendment, is a point which, on one view of Ericsson's case, if accepted, would mathematically, potentially, depending on unpacking, improve Lenovo's position. So I must consider the amendments individually, but, overall, none of them is said to be a critical element of Lenovo's case. In general, they are either defensive or secondary, and only the HEVC point is said positively to significantly improve Lenovo's position, and that in the event of certain other matters falling in its favour.
20. The further evidence that would be necessary on these points it is proposed by Lenovo would be put in around about 24th March, which is about 10 days from now. I think that each of these points, with the possible exception of Green, which I am going to treat differently, is of very significant complexity. Although I am not able to be clear about it, I think it is likely that grant-back/scaling was a significant part of the preparation of Lenovo's evidence, and has taken some time to put together. I cannot be certain of that quantitatively. It would involve really significant work to deal with. There are certainly elements that could be plugged in, which are similar to matters that have already been considered in the evidence. For example, the grant-back value, if I can put it that way, is accepted to have been done. However, translating that to a percentage for 5G appears not to have been.
21. Since it appears that this took Lenovo quite some time to put together, and given my assessment of its complexity, I think it is not realistic that Ericsson could meaningfully and adequately respond in the time that remains, which puts this in the very late category, and I would reject it for that reason alone. However, even if it was merely late, the absence of an explanation counts heavily against Lenovo. The fact that it is a supporting point, but not actively relied on by either side, leads me to conclude that the prejudice in refusing it is modest. I also bear in mind what Coulson J said in *CIP*, that there is a real sense of Ericsson being mucked around here. Even if it was possible, contrary to my main conclusion, to deal with this point in time for trial, Ericsson would have to, no doubt, divert other resources from its legal team, or find them somewhere

else, with lawyers who, heaven forbid, had no familiarity with the case, and put them on this point. That kind of distraction at this critically busy time would be, in my assessment, grossly unfair on Ericsson.

22. So I would decline that one, both on the basis that it is very late and that, even in it was just late, there are overwhelming factors against allowing it in.
23. On HEVC, I must be careful not to lump this in in just the same way, because of two things. First of all, it is not just a second pillar for the same case. It could, at least theoretically, improve Lenovo's position. Secondly, because the licences on which it is based have been considered, including specifically by Mr. Mills (Ericsson's expert) in the parallel ITC proceedings. I also have to be a little bit granular about this one because there are two licences at issue. One is a pool licence and one is a bilateral licence. The grounds of opposition to the amendment are not the same. The licence that conceivably would improve Lenovo's position very substantially is the pool licence. What Ericsson say is that they would want to challenge whether the pool licence is FRAND at all, with the obvious consequences for its use in the FRAND valuation if it is not. Ericsson, in my view, gains some useful support for the fact that that sort of contention is at least a sensible one from the evidence of another of Lenovo's witness, Mr. Djavaheerian, who points out these difficulties with pool licences.
24. There is no need for me to conclude whether Ericsson would be right or wrong at this stage; all I need to do is to say that I think that is a reasonable contention that Ericsson would justifiably want to put in play if this amendment came in, and which was not done in the ITC. Although the evidence, I think, is very limited or sketchy but it is credible, I am told that there was not time for that in the ITC. However, in any event, it is not in dispute that it was not done there, and that Ericsson says that they would want to run it here.
25. That, on its own, is a task that is clearly impossible to do in time for the trial, and so I conclude that that is also a very late amendment. Again, even if it was merely late, I would not have permitted it because of the lack of an explanation and because of the knock-on effect on other preparations for trial.
26. I have said already that the bilateral HEVC licence is in a different category, but none the less, I think appreciable work would be needed to fit it in before the trial that is upcoming before me. However, as I understand it, that licence was in play in the ITC but not unpacked. It is harder to conclude that this, on its own, would jeopardise the trial date in the sense of not being possible to do before the trial. On balance, I think it is very late, but, again, I would assess that I would not let it in even if it was merely late. The distinguishing characteristic here being that it is not the licence that is said to give Lenovo the financial advantage. It is rather more much of a muchness with other licences that are already in, so the prejudice to Lenovo in refusing it is much less, if any.
27. Observable characteristics: there is some evidence that this one came in because it was identified only very late in the preparation of Dr. Baron's report. Thin though that evidence is, and late though it comes, I would be inclined to accept that explanation. Looking at Dr. Baron's report, the point has only a small amount of text devoted to it, and comes at the end, and smacks of being something of an afterthought, and I say that with no disrespect.

28. As I said in the course of argument, this does happen sometimes, that an expert thinks of a defensive point or a point based on their own experience, it comes up right at the end of the preparation of their report, and it is not a serious criticism if the party putting forward that expert report simply includes the point under pressure of time and then tidies up the pleadings in a timely fashion. Although in the overall context of this situation, that is not remotely a fair characterisation of what has happened, because there are so many other much bigger unpleaded points that were not flagged, and where I have no reason to think that they only came up at the last minute.
29. However, in any event I am prepared to accept that the explanation is that this came up very late, and that is the reason why it was put forward only in the evidence and not in the pleading.
30. The point is one, however, I conclude, of extremely high complexity. There is an unedifying dispute about whether certain materials were handed over, but what this point goes to, ultimately, is the question of how to explain certain patent families, where it is said no patent has yet granted, because, it is said, of the timing, and that is a point that is sought to be made good by comparing what are called observable characteristics of the patents, which are things like the close correspondence of the claims to the standard, or extensive forward citation of the patent.
31. All of this is very complex, leaving aside entirely for the moment whether the right materials have yet been handed over, and the significance of the point to Lenovo's case is extremely minor. It is a defence to a point that Dr. Baron thinks might be made, and no more than that. The complexity is such that I do not think it can be dealt with in time for trial, so it falls into the very late category. Had I had to balance matters more finely on the basis that this was merely a late amendment, then, again, the knock-on effect to Ericsson's other preparations, balanced against the very minor part this point has to play, would still have led me to reject it.
32. Finally, I come to the Green licence. This is not late, for reasons I have touched on two or three times already. Although the position is not entirely clear, I conclude that it has some prospect of materially changing the numbers on Ericsson's position on what I will call the simple average approach. The way that it would plug into the simple average, I think, is relatively straightforward, and the extra work that this would involve is unpacking the Green licence, where there is room for dispute, but the methodology is not said to be different from the methods applied to unpacking licences already in the case. That means that there is one more unpacking to do and argue over.
33. I do not trivialise this, but I think I need to come to consider this proposed amendment putting to one side the very considerable criticisms that I have of Lenovo's conduct on the amendments that I have refused. I think I have to put that to one side and simply approach the Green licence on its own terms. It is a non-late amendment, which could make some difference, and which I think will require an amount of work which I assess to be non-trivial, but very tractable, so there is no question of this causing an adjournment, and I think, in fairness, I ought to allow that one in.
34. So I am refusing all of them except for the Green licence.

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