



Neutral Citation Number: [2025] EWHC 1689 (Pat)

HP-2024-000028

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

4 July 2025

Before:

MR JUSTICE LEECH

B E T W E E N:

(1) MEDIATEK, INC
(a company incorporated under the laws of Taiwan)
(2) HFI INNOVATION, INC
(a company incorporated under the laws of Taiwan)
(3) MTK WIRELESS LIMITED

Claimants

- and -

(1) HUAWEI TECHNOLOGIES CO, LTD
(a company incorporated under the laws of
the People's Republic of China)
(2) HUAWEI TECHNOLOGIES (UK) CO LTD

Defendants

MR THOMAS RAPHAEL KC, MR HENRY FORBES SMITH KC and MS JENNIFER DIXON (instructed by **Allen Overy Shearman Sterling LLP** and **Bird & Bird LLP**) on behalf of the Defendants.

MR ANDREW LYKIARDOPOULOS KC and MR THOMAS JONES (instructed by **Kirkland & Ellis International LLP**) appeared on behalf of the Claimants

Hearing date: 16 June 2025

APPROVED JUDGMENT

Mr Justice Leech:

I. Introduction

1. On 18 March 2025 I handed down judgment in relation to three applications made by Huawei and one application made by MediaTek: see [2025] EWHC 649 (Pat) (the “**Judgment**”). In this second judgment, I adopt the defined terms and abbreviations which I used in the Judgment and where I refer to paragraph numbers I intend to refer to paragraph numbers in the Judgment unless I state otherwise. I listed a one day hearing to deal with consequential matters on 16 June 2025.
2. On 10 April 2025 Huawei issued a further Application Notice seeking a second case management stay (the “**Second Stay Application**”). Meade J did not have time to hear it at the hearing for expedition on 15 April 2025 and I agreed that it should be relisted before me. Huawei relied on four new witness statements and served a substantial Skeleton Argument in support of the Second Stay Application.
3. The parties were able to agree the issues relating to costs. However, Huawei opposed MediaTek’s application for permission to amend the Particulars of Claim on the basis that Claim (6) against the Second Defendant should be struck out. Huawei also relied on draft Grounds of Appeal (the “**Grounds of Appeal**”) against my original judgment. The Second Stay Application occupied most of the Court time on 16 June 2025. Nevertheless, I heard brief submissions in relation to Huawei’s application for permission to appeal. I also heard MediaTek’s application for permission to amend the Particulars of Claim.

II. The Second Stay Application

4. I refused a case management stay after hearing argument at the hearing in December 2024: see the Judgment, [214] to [220]. In their Skeleton Argument dated 12 June 2025 Mr Thomas Raphael KC, Mr Henry Forbes Smith KC and Ms Jennifer Dixon, who appeared on behalf of Huawei, argued that there had been a material change of circumstances. They also submitted that I should recall the entire Judgment under the *Re Barrell* jurisdiction, and that I should reconsider the question of *forum non conveniens* and now refuse jurisdiction.

(1) Change of Circumstances

5. It was common ground that in order to persuade the Court to consider afresh whether to exercise its decision to grant a stay on case management grounds, it was necessary for Huawei to show that there had been a material change of circumstances since the first hearing. I also have at the forefront of my mind the passage which I quoted from the judgment of Males LJ in *Athena*: see [144]. It is the function of the Court to hear and decide cases and I would require a powerful reason to stay the English Claim now having decided once to accept jurisdiction and refuse a stay. The Defendants advanced three reasons why I should do so.

(i) Change in the law

6. The Defendants submitted that there had been a change in the law because in *Optis v Apple* [2025] EWCA Civ 552 Arnold LJ had accepted that the decision of the Court in the US state of Delaware could be supplemented in England: see [257]. I reject that submission. In deciding whether to grant a stay originally I took into account the possibility that the English Court would give effect to the findings of the Chinese Court on Chinese rate-setting: see [83], [84] and [215]. Furthermore, Arnold LJ was not laying down any general principle which involved a fundamental change in the law. He was deciding what the “least-worst option” was in that case.

(ii) The Shenzhen Claim

7. The Defendants also submitted that there had been a material change of position in the Shenzhen Claim and that the Shenzhen Court would now calculate and set out a global rate in fixing a rate for both parties’ Chinese patents. There was a dispute of fact about this on which the parties’ English and Chinese witnesses filed further evidence. Mr Lykiardopoulos accepted that there may be inputs into the Shenzhen Court’s decision which are global but that does not convert the Shenzhen Claim into a global rate-setting action.
8. I accept that the Shenzhen Court may receive evidence from the parties of global rates. I cannot be satisfied, however, on the basis of the evidence before me that the Shenzhen Court will decide what a global rate will be for all of the parties’ worldwide patents. Moreover, I cannot decide whether that will give rise to an issue estoppel in the present proceedings. Mr Raphael did not go so far as to suggest that the Shenzhen Court was bound to accept global rates as reliable comparables for fixing a Chinese rate and the

Shenzhen Court may reject those rates and determine the Chinese rates exclusively by reference to comparables of Chinese rates.

9. But even assuming in the Defendants' favour that the Shenzhen Court will decide what global rates are in fixing Chinese rates, I accept Mr Lykiardopoulos's submission that this does not convert a Chinese rate-setting action into a global action and it would require MediaTek's consent before it would apply worldwide. Mr Justice Meade put this point directly to the Defendants' counsel at the CMC on 15 April 2025 and he accepted this without qualification: see page 71, lines 13 to 16.
10. In my judgment, therefore, there has been no material change of circumstances. There have obviously been developments in the Shenzhen Claim since I heard the Applications in December 2024. But that does not mean that the Defendants are entitled to a stay of proceedings. If it did, the Defendants would be back before this Court every time a hearing took place in China trying to re-argue the question whether it was appropriate to grant a stay.

(iii) The Offers

11. Before the CMC on 15 April 2025 at which Meade J ordered an expedited trial, Huawei made two alternative offers to MediaTek. They were set out in the first witness statement of Ms Jane Mutimear dated 10 April 2025 ("**Mutimear 1**"). Ms Mutimear is a partner in Bird & Bird LLP who also act for the Defendants in this litigation and the offers which she put forward are as follows:

"a. For the reasons explained in paragraphs 10-12 of Xu Jing 5, the Shenzhen judgment, which is awaited, will set out what the global rates would be for both parties' one-way licences before going on to determine the rates which will apply for China. Huawei therefore undertakes to enter into a global cross-licence on the terms determined by the Shenzhen court (i.e., on the rates determined by the Shenzhen court for each party's respective global 4G/5G portfolios). The licence terms determined by the Shenzhen court would apply to past sales, and for sales going forward to end of 2030, unless a different forward-looking term is set by the Shenzhen court in its judgment.

b. Alternatively, as explained in paragraphs 11-12 of Xu Jing 5, if the parties file a joint petition to the Shenzhen court, the Shenzhen court will almost certainly re-open the proceedings in order to formally determine the terms of a global cross-licence. As explained in paragraphs 11-12 of Xu Jing 5, this process is unlikely to cause much (if any) delay to the

Shenzhen court's determination, given that both parties have advanced valuation cases which calculate global rates and then derive China rates from those global rates. If MediaTek consents, Huawei would agree to: (i) the Shenzhen court formally determining the terms of a global cross-licence; and (ii) undertake to enter into a cross-licence with MediaTek on the global terms determined by the Shenzhen court."

12. In her second witness statement dated 5 June 2025 ("**Mutimear 2**") Ms Mutimear recorded that Huawei had made two further offers to MediaTek. She made it clear that the two original offers stood but that the third and fourth offers were intended to complement them:

"Huawei undertakes to enter into a global cross-licence on the terms determined by the Shenzhen Court for China (i.e., the China rates determined by the Shenzhen court for each party's respective 4G/5G portfolios in China would apply globally). The licence terms (including China rates) determined by the Shenzhen court would apply to past global sales, and for global sales going forward to end of 2030, unless a different forward-looking term is set by the Shenzhen court in its judgment."

"On the condition that: (i) these proceedings are stayed pending the judgment by the Shenzhen court; (ii) MediaTek agrees to a stay or dismissal (without prejudice) of all non-rate setting actions brought by both parties globally, including but not limited to infringement and antitrust actions; and (iii) MediaTek undertakes to enter into a licence for products sold or manufactured in China on the terms determined by the Shenzhen court, Huawei would undertake to offer a licence for the rest of the world on terms determined by the English Court in these proceedings."

13. In my judgment, the four offers which Huawei have made do not amount to a material change of circumstances. There is no reason why Huawei could not have made these offers before the hearing in December 2024. Furthermore, it should not be open to a party to reopen an earlier decision by bargaining with the Court. Finally, as the Defendants had to accept, Huawei required MediaTek's consent to convert the Shenzhen proceedings into a global rate-setting action and if MediaTek is unwilling to do so, the Court cannot compel this outcome.
14. For reasons which still remain somewhat opaque to me, Huawei chose to initiate rate-setting proceedings in the Shenzhen Court limited to Chinese patents. It no doubt considered that there was an advantage to do so. But having chosen to do so, it is not entitled to insist before this Court that MediaTek agree to convert it into a global rate-setting action. Furthermore, Huawei is not entitled to insist that this Court should put

pressure on MediaTek to accept its offer under threat of a stay.

(iv) The Undertakings

15. Finally, the Defendants submitted that there had been a material change of circumstances because it had offered two further undertakings. Those undertakings were set out in Mutimear 2 and were as follows:

“Undertaking A

The Defendants and each of them hereby undertake to the Court that they will not seek to rely in these proceedings (HP-2024-000028) on MediaTek's ETSI FRAND obligations as a defence to a claim for infringement brought by the Claimants or either of them in these proceedings (HP-2024-000028) in respect of any UK designated cellular 4G/5G essential patents within MediaTek's portfolio and, if any such patents are found to be valid and to have been infringed by the Defendants or either of them in these proceedings, will submit to an injunction and damages as determined by the Court after any appeals.

Undertaking B

The Defendants and each of them hereby undertake to the Court that they will not seek to enforce any UK designated 4G/5G essential patents within the Huawei portfolio (“Huawei UK Patents”) against the Claimants for any infringement of the Huawei UK Patents until 31 December 2030, and the First Defendant will procure the same in respect of affiliates in the Huawei group. Further, until 31 December 2030, the First Defendant will notify the existence of this undertaking to any assignee or exclusive licensee of any Huawei UK Patents 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 the Claimants 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 Huawei UK Patents carried out through acts by third parties.”

16. Ms Mutimear made it clear in Mutimear 2 that these undertakings were offered on the conditional basis that the Court granted a stay of the proceedings. Ms Mutimear also made it clear that these undertakings had the following limitations:

“For the avoidance of doubt, this undertaking is not, and is not intended to be a: (i) licence to the Claimants in respect of any Huawei UK Patents; or (ii) waiver of any claims which Huawei may have against the Claimants in respect of any upstream acts carried out by the Claimants outside the UK based on non-UK designated patents (including, but without limitation, the supply of chipsets to any OEM customers); nor as a grant of any licence or covenant not to sue any third party. The Defendants reserve the right to

take action against any third party in respect of their acts in the UK or elsewhere.

21. I should point out that the reference to “assignee or exclusive licensee” in the undertaking above obviously only relates to future assignees or exclusive licensees.”

17. The Defendants relied on the decisions of Arnold J (as he then was) in *Actavis Group PTC EHf v Pharmacia LLC* [2014] EWHC 2265 (Pat) (“*Actavis 1*”) and [2014] EWHC 2611 (Pat) (“*Actavis 2*”). In *Actavis 1* Arnold J refused a stay of proceedings because certain undertakings offered by Pharmacia went a considerable way to reducing the commercial uncertainty for Actavis in the UK but not quite far enough: see [30]. However, Pharmacia offered two additional undertakings after the *Actavis 1* judgment had been circulated in draft and Arnold J indicated in the version which he handed down that he would hear further argument on their proposal. In *Actavis 2* he held that the overall balance came down in favour of a stay: see [5].
18. Arnold J did not consider whether he had jurisdiction to grant a stay after handing down judgment and, if so, whether there had been a material change of circumstances because he had not delivered judgment when Pharmacia offered its two further undertakings and he had already directed that there should be further argument on that issue. In the present case, I circulated the judgment in draft to the parties on 11 March 2025 and handed it down on 18 March 2025. Huawei could have made the offer of Undertakings A and B to the Court within that week and then invited me to hear further argument before I handed down judgment. But it chose not to do so. The two *Actavis* decisions provide only limited assistance, therefore, in deciding whether to grant a stay now.
19. I am prepared to assume in Huawei’s favour the offer of new undertakings can, in principle, amount to a change of circumstances. But I am not satisfied that the offer of Undertakings A and B which Huawei has made in the present case amounts to a material change of circumstances and, even if that offer does amount to a material change of circumstances, I refuse a stay of proceedings for the following reasons:
 - (1) Huawei could and should have offered Undertakings A and B in good time before the hearing in December 2024 to enable both MediaTek and the Court to explore their consequences. However, it did not do so and offered a range of undertakings which changed during the course of the hearing. I described those undertakings as

a “moving target”: see [220](2). In my judgment, it is far too late to try again.

- (2) At the hearing in December 2024 Huawei was finally prepared to offer an unconditional undertaking. Both Undertaking A and Undertaking B (above) are now offered on conditional terms. In my judgment, there is nothing in principle wrong with a party offering a conditional undertaking. Indeed, as Mr Raphael pointed out to me, I accepted a conditional undertaking in *Awendale Resources Inc v Pyxis Capital Management Ltd* [2020] EWHC 1286 (Ch). However, the conditional nature of the undertakings only serves to emphasise the fact that Huawei has been trying to negotiate with the Court to buy off the FRAND Claims. In my judgment, the offer of Undertakings A and B is no more than a renewed attempt to continue the same exercise.
- (3) Moreover, Mr Raphael used the four new offers and Undertakings A and B as an attempt to re-open my decision and to re-argue the Applications. He sought to argue that I should now decline jurisdiction or find that the Shenzhen Court was the most appropriate forum. But I have already decided all of these issues and Huawei cannot have another bite at the cherry simply by changing the terms of the undertakings which it is prepared to offer.
- (4) But even if I am wrong and the offer of new undertakings involves a material change of circumstances, it is not in the interests of justice to grant a case management stay and I decline to do so. In *Actavis I* Arnold J cited the decision of the Court of Appeal in *IPCom GmbH & Co KG v HTC Europe Co Ltd* [2013] EWCA Civ 1496, [2013] RPC 12 where Floyd LJ had set out 13 principles for dealing with applications to stay English proceedings whilst parallel proceedings were taking place in the EPC: see [68]. His thirteenth and final principle was as follows:

“The hearing of an application for a stay is not to become a mini-trial of the various factors affecting its grant or refusal. The parties' assertions need to be examined critically, but at a relatively high level of generality.”
- (5) In my judgment, it will require a mini-trial to decide whether Undertakings A and B substantially different from the undertakings offered in December 2024 and whether they give the kind of protection to MediaTek which Huawei asserted for

them. Mr Lykiardopoulos raised a number of concerns about their scope which are not easy to evaluate without yet a further hearing. Undertaking A only requires Huawei to submit to an injunction and damages after the Asserted Patents have been found to have been valid and infringed and after any appeal. It, therefore, leaves open the possibility that Huawei would elect to enter into a licence or cross-licence on the terms found by the Court (if it considered that they were favourable). Mr Lykiardopoulos described this as "wriggle room". Undertaking B is limited in time to 31 December 2030 and only to Huawei's assignees and exclusive licensees. It is very difficult for the Court to decide at a high level of generality whether these undertakings give MediaTek sufficient protection to justify a case management stay.

- (6) But even if it were possible for me to decide whether Undertakings A and B give MediaTek adequate protection without a mini-trial, it is clear that they will not give MediaTek the same protection as a licence on FRAND terms. Huawei has now commenced 23 sets of proceedings against MediaTek around the world and the need for a FRAND licence is pressing. Meade J accepted that the purpose of those proceedings is coercive and contrary to Huawei's FRAND obligations: see [2025] EWHC 1016 (Pat). He stated this at [13]:

"In line with the recent Court of Appeal decisions in *Panasonic v Xiaomi* and in *Nokia v Amazon*, the conclusion that I think is the proper one to reach, and which I would reach anyway, is that the purpose of Huawei in bringing these various proceedings, but most especially the proceedings in Brazil, is to try to coerce MediaTek by threat of injunctions coming up very soon into paying supra-FRAND rates, or, alternatively, given the procedural context which I have just explained, to give up on these UK proceedings and to agree, contrary to its preference, to a global rate determination in China."

- (7) Furthermore, Meade J considered the importance of a FRAND licence to be sufficiently important to expedite the trial. In my judgment, this is a powerful reason to refuse a case management stay and to allow the proceedings to take their course. Although Huawei will not be required to make an *Optis v Apple* election until the Court has determined what terms are FRAND, there is no reason why it would not elect to enter into a cross-licence on the FRAND terms determined by the Court (if those terms are favourable). Undertakings A and B were offered on a conditional basis but also because Mr Raphael submitted that I should make that

assumption in his Skeleton Argument for the Applications.

- (8) Finally, I have held that the First Defendant was validly served with the FRAND Claims under CPR Part 63.14: see [160] to [167]. Moreover, in *Tesla Inc v InterDigital Patent Holdings Inc* [2025] EWCA Civ 193 Arnold LJ took a very similar approach: see [208] to [212] (below). This is not just a case in which a claimant has been granted permission to serve out. MediaTek was (and is) entitled to pursue those claims now that the Court has dismissed Huawei's application to stay them on *forum non conveniens* grounds. As Mr Lykiardopoulos pointed out, MediaTek now has the benefit of a judgment on jurisdiction and it should be entitled to pursue the FRAND Claims to trial.

(2) *The Judgment*

20. In *AIC Ltd v Federal Airports Authority of Nigeria* [2022] UKSC 16, [2022] 4 All ER 777, Lord Briggs and Lord Sales discussed the approach which the Court should adopt to an application to reconsider a judgment. They stated this at [32]:

“This means that, on receipt of an application by a party to reconsider a final judgment and/or order before the order has been sealed, a judge should not start from anything like neutrality or evenly-balanced scales. It will often be a useful mental discipline, reflective of the strength of the finality principle, for the judge to ask herself whether the application should even be entertained at all before troubling the other party with it or giving directions for a hearing. It may be a perfectly appropriate judicial response just to refuse the application *in limine* after it has been received and read, if there is no real prospect that the application could succeed. Judges should not re-open proceedings just to allow debate on the point if it is already clear that the judgment or order should not be re-opened. That would defeat the Overriding Objective in the CPR that cases be decided "justly" and "at proportionate cost".

21. Given the decision which I have made on the Second Stay Application, I dismiss Huawei's application to reopen the Judgment. As I have stated, Mr Raphael was inviting the Court not only to grant a case management stay because there had been a change of circumstances but also to revisit the principal issues. For the reasons which I have given I refuse to do so. But in my judgment, the importance of the finality principle means that I should not entertain such an application.

III. Amendment

22. MediaTek applies for permission to amend in the form of the revised draft Confidential Amended Particulars of Claim and I grant permission. The issue between the parties was whether I had intended to strike out Claim (6) against the Second Defendant in the Judgment, [244] to [246]. I make it clear that I did not intend to do so and, having heard argument, I am satisfied that MediaTek has a real prospect of success in obtaining the relevant declaration against the Second Defendant and I grant permission to amend in the form of the draft before the Court.

IV. Permission to Appeal

23. Practice Direction PD 52C, paragraph 5 is headed “Grounds of Appeal” and it provides as follows:

“(1) The grounds of appeal must identify as concisely as possible the respects in which the judgment of the court below is— (a) wrong; or (b) unjust because of a serious procedural or other irregularity, as required by rule 52.21(3). (2) The reasons why the decision under appeal is wrong or unjust must not be included in the grounds of appeal and must be confined to the skeleton argument.”

24. Huawei filed Grounds of Appeal which consisted of 36 separate Grounds. By my calculation I decided twelve issues in the Judgment at [158] to [249] (including the one which I decided in Huawei’s favour). Excluding connecting or explanatory paragraphs in the Grounds of Appeal, the Defendants contend that the Judgment was either wrong or unjust for a serious procedural or other irregularity in thirty separate respects. Huawei’s position, therefore, is that I managed to get wrong each point I had to decide twice or even three times over. If this was the case, one might have expected Mr Raphael to be able to point to a number of glaring errors or a total failure to engage with the issues or evidence in his brief oral submissions. He did not persuade me that I had done so.

(1) CPR Part 63.14(2)

25. It was common ground that the First Defendant had been validly served with the Challenged Patents Claims. The first issue which I had to decide was whether the FRAND Claims were related to those claims and fell within CPR Part 63.14(2). I held that they were: see [160] to [167]. In doing so, I followed the decision of Fancourt J in *Tesla* at first instance: see [111] to [113]. Arnold LJ has now adopted the same approach in the Court of Appeal (above). Although he dissented on the “pool” licence issue, he

was the only member of the Court to deal with CPR Part 63.14. He did so at [208] to [212]:

“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 IDPH 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 as 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."

26. Mr Raphael was forced to argue that Arnold LJ was wrong in his Skeleton Argument. This is not an encouraging start to an application for permission to appeal and, in my judgment, Huawei has no real prospect of success on this issue. Mr Raphael was not able to point to any authority in his favour and it is a fairly simple point. Once one characterises the claims in the correct way, it is obvious that the FRAND Claims related to the Challenged Patent Claims. In my judgment, Grounds of Appeal ¶2 to ¶4 have no real prospect of success.

(2) *Gateways*

27. It was also common ground that the Asserted Patent Claims passed through at least one Gateway in PD6B. The question whether the FRAND Claims passed through any of the Gateways only arises, therefore, if I am wrong about CPR Part 63.14. Mr Raphael and his team had two hurdles to overcome and even if they overcome the first, I am not satisfied that they have any real prospect of success in overcoming the second. They have to persuade the Court of Appeal that Zacaroli J (as he then was) was wrong in *Alcatel* (at first instance) and that the Court was wrong in *Vestel* and, in my judgment, I was either bound to follow them or cannot be criticised for doing so. I, therefore, refuse permission on Grounds 5 to 10.

(3) *Characterisation*

28. I characterised the Challenged Patent Claims as about a UK patent and the Challenged Patent and FRAND Claims together as a composite claim to enforce Huawei's ETSI declarations if the Challenged Patents are found to be valid and essential: see [198]. I held that Huawei had put forward no basis for distinguishing *Conversant CA* and *Nokia CA*. Huawei has to persuade the Appeal Court that I should not have followed those decisions and that there were real grounds for distinguishing them and characterising the FRAND Claims as "global licensing claims". In my judgment, Huawei has no real prospect of doing so and I found none of the arguments which they advanced in their

lengthy Skeleton Argument convincing. In my judgment, I was right to dismiss those arguments for reasons which Arnold LJ considered “should be familiar to students of the English courts' jurisprudence in this field”. He stated this in *Tesla* at [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.”

29. I, therefore, dismiss Grounds 14 to 22. Mr Raphael advanced four further Grounds in relation to the question whether China was the appropriate forum. However, he had to accept that this issue only arises if the FRAND Claims are properly characterised as a global licensing dispute and that my characterisation of them was wrong. In my judgment, Huawei has no real prospect of disturbing that finding and, therefore, no real prospect on Grounds 24 to 28.

(4) *Case Management Stay*

30. In my judgment, Huawei has no real prospect of success on any of the Grounds which it advanced for overturning my decision to refuse a case management stay. Mr Raphael did

not submit that I got the test wrong or that Huawei had put forward a powerful reason to depart from the normal course: see [144]. In substance, he tried to reargue the case in his Skeleton Argument. This was ultimately a matter of discretion for the Court and having dismissed the jurisdiction challenge, Mr Raphael did not provide me with a powerful reason to grant a stay on case management grounds. In my judgment, Grounds 32 to 34 have no real prospect of success.

(5) *Other Grounds*

31. I dismiss Ground 35 for the reasons which I gave at [237]. If Huawei fails on all of its other Grounds, then I would not grant permission to appeal on this Ground only. I also dismiss Ground 36 which, as Huawei accepted in its Skeleton Argument, will only arise if MediaTek serves a Respondent's Notice.

V. Paragraph 107

32. Shortly before the hearing I received a personal letter from Mr Raphael arguing that I had been unfair to him and his team in [107]. He suggested that this paragraph carried the implication that he and the counsel team had deliberately obscured Huawei's position to the Court. He explained in very great detail why I should not have reached that conclusion. I replied immediately accepting his explanation and that neither he nor anyone else on his team intended to mislead or confuse the Court. I am happy to record that in this judgment.
33. However, what I also said in my letter to Mr Raphael was that I considered that what should have been a relatively simple jurisdiction challenge had been over-complicated and it is important that I should also record this qualification. Mr Raphael and his team argued every point tenaciously and with great erudition. But I wish to express the same concerns which Fraser J (as he then was) and Lord Hamblen JSC expressed in *Opkabi*: see [118]. In my judgment, the critical issue was how to characterise these claims and on that issue there was clear authority from which most of the other legal conclusions followed.