UKSC/2025/0058

IN THE SUPREME COURT OF THE UNITED KINGDOM

ON APPEAL FROM
COURT OF APPEAL CIVIL DIVISION
Neutral citation: [2025] EWCA Civ 193

B E T W E E N:

(1) TESLA, INC.
(2) TESLA MOTORS LIMITED

Appellants/Claimants

AND

~~(1) IDAC HOLDINGS, INC.~~
(2) INTERDIGITAL PATENT HOLDINGS, INC.
(3) INTERDIGITAL HOLDINGS, INC.
(4) AVANCI, LLC

Respondents/Defendants

CCIA:
THIRD PARTY SUBMISSIONS IN SUPPORT OF PERMISSION TO APPEAL PURSUANT TO SUPREME COURT RULE 16

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1. The Computer & Communications Industry Association ("**CCIA**") provides these submissions in accordance with Rule 16 of the Supreme Court Rules 2024, in support of the application for permission to appeal made by Tesla, Inc. and Tesla Motors Limited (together, "**Tesla**") with case reference UKSC/2025/0058. Ahead of preparing these submissions, CCIA had the benefit of reading Tesla's Précis of Factual Background and Grounds of Appeal and the Notices of Objection made by: (i) InterDigital Patent Holdings, Inc. and InterDigital Holdings, Inc. (together, "**InterDigital**") and (ii) Avanci, LLC ("**Avanci**").

CCIA

2. CCIA is an international, not-for-profit trade association, which represents a broad cross section of communications and technology firms. CCIA has more than 20 members of all sizes, which provide high technology products and services, including manufacturing products such as computers and streaming devices.

3. Devices produced by CCIA members may be licensed to relevant intellectual property rights through patent pools, or platforms, which allow licensees to gain access to a large number of patents relevant to particular technologies in a single licence. As such,

Tesla's appeal raises issues which are highly relevant to the businesses of CCIA members.

Patent pools and the need for scrutiny

4. Patent pools are highly relevant to the businesses of CCIA members and companies involved in technology products and services more generally. As Tesla's Grounds of Appeal notes at [32], there is an increasing "*prevalence of standardised technologies in the era of the "internet of things*"", or "*IoT*". Connected devices need to communicate with each other by using standardised communications technologies such as cellular and Wi-Fi. Whilst it was once the case that cellular technologies were only relevant to companies directly involved in the provision of telecommunications products and services, cellular standards are now being implemented in all sorts of products, from consumer devices like white goods to medical devices to cars.

5. For companies from industry sectors that are unfamiliar with the standardisation process and have no previous involvement in the licensing of standards essential patents ("SEPs"), patent pools can provide an effective means of gaining access to licensing for a significant proportion of SEPs that are relevant to the technology standard. Given that infringement of a single SEP can be all that is needed to remove a company's products from the market in a key jurisdiction, access to efficient licensing of SEPs on fair, reasonable and non-discriminatory ("**FRAND**") terms is necessary to encourage widespread adoption of standards and to ensure business continuity. This is particularly relevant in situations where the English court has said the implementer should be proactive in seeking licences[1].

Tesla's appeal raises issues of public importance

6. Tesla's appeal raises important issues of cellular SEP licensing, namely whether the FRAND obligation, the contractual commitment by which each contributor to the cellular standards has agreed that it will license its SEPs on FRAND terms, equally applies to licences offered/granted by Avanci, or whether it can be disregarded – or potentially avoided or frustrated by SEP holders licensing as part of a collective. Avanci and InterDigital suggest in their respective Notices of Objection[2] that the Court of Appeal's reasoning is <u>only</u> strictly applicable in the cellular context in respect of the Avanci 5G vehicle pool. However, it is clear that the Court of Appeal's decision could lead to situations where Avanci, or other pool operators or licensing collectives seek to apply the reasoning to other industry contexts to shield other pool (or collective) licences from

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1 See e.g., *<u>InterDigital v Lenovo</u>* [2024] EWCA Civ 743, at [204], *<u>Panasonic v Xiaomi</u>* [2024] EWCA Civ 1143 at [79], *<u>Alcatel v Amazon</u>* [2025] EWCA Civ 43 at [52].

2 See the Avanci Notice of Objection at, e.g., [2], [4]-[6] and [19] and the InterDigital Notice of Objection at, e.g., [15] and [17].

examination under FRAND principles. Avanci is only one of a number of patent pool administrators, and offers a number of patent pools (or platforms) concerning different technologies and focusing on distinct products or services, such as:

(a) Vehicles (with separate pools for 4G, 5G and aftermarket products);

(b) IoT (with separate pools for Smart Meters and electric vehicle chargers);

(c) Broadcast technologies (ATSC 3.0 standard enabling 4K/ UHD broadcast); and

(d) Video streaming (compression technologies such as AV1, H.265, H.266, MPEG-DASH and VP9).

7. The potential shielding of pool licences from scrutiny is a particular concern in respect of pools that Avanci itself operates. However, in the event that the Court of Appeal decision stands, any other pool operator or collective seeking to avoid scrutiny of the rates and terms offered would be likely to adopt the same methodology/strategy as has been adopted by Avanci in the formation of its 5G vehicle pool.

8. CCIA believes that licensors and patent pools would be incentivised to do this because the implication of the Court of Appeal decision, in the context of the Avanci 5G vehicle pool, is that the obligations of the SEP holders under the FRAND commitment cease to apply in situations where SEP holders license their FRAND-encumbered patents on a collective basis, i.e., with any other party.[3] If that finding stands and SEP holders continue to rely on collective offers as discharging their FRAND obligations in jurisdictions other than the UK (for which, see [9] below), the implications for many technology companies could be profound. In recent years, many SEP holders have been reluctant to submit their patents to the scrutiny of the English Court[4] (even those, like InterDigital, who previously chose it as a forum for rate-setting), so CCIA believes that this risk is far from theoretical.

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3 InterDigital's Notice of Objection addresses this at [14] and says that "*where there is a range of options that can be FRAND, the declarant can choose how to discharge its obligations within that range: see Unwired Planet v Huawei [2018] EWCA Civ 2344, [121]. So the declarant can choose to discharge its ETSI undertaking by offering bilaterals and does not need to discharge its ETSI undertaking by a platform offer*". However, this merely highlights the issue that arises in circumstances where pool or collective offers discharge the FRAND obligation of the SEP holder – so they are the only terms available to the implementer, but, following the Court of Appeal decision, those terms will not be scrutinised by the English Court.

4 See, in particular (i) Nokia, who brought proceedings seeking a FRAND determination in *Nokia v OPPO* (HP-2021-000022), but unsuccessfully challenged jurisdiction when a claim for determination of the terms of a FRAND licence was brought by Amazon in *Alcatel v Amazon* (HP-2023-000038, see [2024] EWHC 1921(Pat)) and (ii) InterDigital who brought FRAND determination proceedings against Lenovo in 2019 (HP-2019-000032), but unsuccessfully challenged jurisdiction when Lenovo later brought proceedings for a FRAND determination of the follow-on licence (HP-2023-000031, see [2024] EWHC 1036 (Pat)). Both Nokia and InterDigital are members of the Avanci 5G vehicle pool. Other members have also unsuccessfully challenged the jurisdiction of the English Courts to set rates in response to requests from implementers in respect of cellular licensing, see *Lenovo v Ericsson* ([2024] EWHC 846 (Ch)) and *MediaTek v Huawei* ([2025] EWHC 649 (Pat)).

9. The majority in the Court of Appeal stated that there was no suggestion of SEP holders declining to engage in bilateral negotiations for a FRAND licence in reliance on their SEPs being available through the Avanci 5G Platform[5]. However, in other jurisdictions it is commonplace for a SEP holder to rely on a pool licence offer as discharging the FRAND obligation in obtaining injunctive relief – and it will typically be evidence of the implementer's unwillingness if they insist on bilateral licensing. See for example the following cases (in machine translation):

9.1 *Higher Regional Court Düsseldorf, decision of 12 May 2022, docket no. I-2 U 13/21, GRUR 2022, 1136 – Signalsynthese II*:

(a) At [159]: "*In principle, the patent holder is not obliged to offer the licence seeker a bilateral licence in addition to a pool license. It is regularly in the well-understood interest of potential licence seekers that they are offered a licence for the entire standard or significant parts thereof from a single source under uniform conditions, as this relieves them of the need to seek a licence from each individual patent holder for their intellectual property rights. If a licence seeker uses not only the intellectual property rights of the plaintiff but also the patents of the other pool members, there is no objection to [a requirement to obtain a license] for the entire pool*."

(b) At [183]: "*A lack of general willingness to license can also be inferred if the infringer—as in the present case—categorically insists that it does not intend to agree to a specific, obviously reasonable licensing model (e.g., a pool license) and instead adamantly demands a bilateral individual licence, even though it cannot provide any justifiable reasons for doing so*."

9.2 *LD Munich, UPC, decision of 18 December 2024, docket no. UPC_CFI_9/2023 – Huawei/Netgear*:

(a) At [134]: "*[…] This is because, for antitrust reasons, the patent holder is only required to show the patent user a licensing route that meets the FRAND requirements. The patent holder can fulfill its antitrust obligations in particular by offering a pool licence. Insofar as it can be assumed that this complies with the FRAND requirements, it is irrelevant in the context of the FRAND objection to an infringement action seeking injunctive relief, recall, and destruction how a bilateral licence offer made in parallel is to be assessed under antitrust law*."

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5 See the Court of Appeal judgment, at [233] and [251]

(b) At [143]: "*[…] The defendants also failed to argue that and why they would be discriminated against by the pool licence fee already paid by other pool licensees. They also failed to argue that and why the plaintiff should be obliged under antitrust law to make them a bilateral offer on FRAND terms in addition to the pool licence offer. Consequently, it can also be assumed, due to a lack of information, that the offer to obtain a pool licence for the patent in suit via the SISVEL pool satisfies the requirements of antitrust law*."

9.3 The case involving Ford, referred to at [23] of Tesla's Grounds of Appeal.

10. The cases referred to in [9] above are also consistent with the reasoning of Mr Justice Mellor in *Mitsubishi and Sisvel v Oneplus and others* [2021] EWHC 1541 (Pat), where the judge said at [32(ii)] that "*for an implementer to refuse a pool licence but to insist only on a bilateral licence would require justification in a case where the pool comprised patents claimed to be essential to a particular standard which had been implemented by the products in question*".

11. In circumstances where the English Court has placed the onus on the implementer of the standard to seek a licence, including by asking the English Court to set FRAND terms, it is necessary for there to be scrutiny of the terms of licences offered by pools generally. The English Court's declaration of FRAND terms serves a vital purpose in the sense of guiding the patent pool operators, even if the declaration does not formally require them to offer those terms. Given that other jurisdictions (with the exception of China) have declined to set FRAND terms for SEP licences absent consent of the parties, it is necessary that a Court with the power to grant declaratory relief exercises that discretion to ensure that SEP owners are not permitted to rely on pool offers to obtain injunctions in any jurisdiction if the FRAND nature of the pool licence is shielded from scrutiny. Such injunctions will lead to supra-FRAND licensing, increased costs for producers of products that implement standards, and thereby increased costs for consumers, or reduced adoption of standards.

12. Unfortunately SEP holders often misjudge the value of their patents when attempting to make "FRAND" offers – invariably, the offers made are too high. This has been the conclusion in every case before the English Court which has determined FRAND terms, see *Unwired Planet* [2017] EWHC 711 (Pat) at [522], *Lenovo v InterDigital* [2023] EWHC 1583 (Pat) at [897]-[928] and *Optis v Apple* [2023] EWHC 1095 (Ch) at [354] and [473]. As observed by Mr Justice Meade in *Nokia v OPPO* [2023] EWHC 1912 (Pat) at [260], "*[b]ecause it is almost impossible to hit the nail on the head, it is usually found that the offer was not FRAND, but the court is able to say what would be FRAND*."

This issue demonstrates that the risk of supra-FRAND licensing without recourse to the Court's ability to review the rates sought is real, and not merely speculative.

13. As such, Tesla's appeal does raise issues of general public importance and permission to appeal should be granted.

Hogan Lovells International LLP

10 June 2025