

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) INTERDIGITAL PATENT HOLDINGS, INC.
(2) INTERDIGITAL HOLDINGS, INC.
(3) AVANCI, LLC

Respondents/Defendants

CCIA:
THIRD PARTY SUBMISSIONS IN SUPPORT
OF PERMISSION TO INTERVENE
PURSUANT TO SUPREME COURT RULE 24

1. The Computer & Communications Industry Association (“**CCIA**”) provides these submissions in accordance with Rule 24 of the Supreme Court Rules 2024, in support of its application for permission to intervene in the appeal with case reference UKSC/2025/0058 (the “**Appeal**”), concerning appellants Tesla, Inc. and Tesla Motors Limited (together, “**Tesla**”) and respondents InterDigital Patent Holdings, Inc. and InterDigital Holdings, Inc (together “**InterDigital**”) and Avanci LLC (“**Avanci**”). CCIA has had regard to paragraphs 4.45 to 4.57 of Practice Direction 4 in preparing these submissions.
2. Ahead of preparing these submissions, CCIA had the benefit of reading the following documents: (i) Tesla’s application for permission to appeal, (ii) InterDigital’s Notice of Objections, (iii) Avanci’s Notice of Objections, and (iv) Tesla’s Written Case for their appeal.

3. Definitions used in Tesla's Written Case are adopted in the submissions below, unless otherwise specified.
4. CCIA previously made third-party submissions in support of Tesla's application for permission to appeal, which were filed with the Supreme Court on 10 June 2025. CCIA now seeks permission to intervene in the Appeal by way of written submissions only. The majority of the permission to appeal submissions have been repeated below in support of CCIA's application to intervene. The submissions which CCIA would wish to make by way of intervention have been set out in full in from 17 below.

CCIA

5. CCIA is an international, not-for-profit trade association, which represents a broad cross-section of telecommunications, digital services, and technology firms. CCIA has more than 20 members of all sizes, including device manufacturers and providers of technologies that support the digital economy.
6. 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, the Appeal raises issues which are highly relevant to the business of CCIA members.

CCIA's basis for this application to intervene

7. Patent pools are highly relevant to the businesses of CCIA members and companies involved in providing technology products and services more generally. As Tesla's Grounds of Appeal noted at [32.5], 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.

8. 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 licences¹.
9. While the Appeal is focused on the Challenged Patents owned by InterDigital, the Avanci 5G Pool Licence, and the ETSI IPR Policy, the Supreme Court’s judgment may have (or may be interpreted as having) wider applicability – for example, to other licensors, pools and/or IPR policies. Avanci and InterDigital suggest in their respective Notices of Objection² that the Court of Appeal’s reasoning is only 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 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:
 - i. Vehicles (with separate pools for 4G, 5G and aftermarket products);
 - ii. IoT (with separate pools for Smart Meters and electric vehicle chargers);
 - iii. Broadcast technologies (ATSC 3.0 standard enabling 4K/UHD broadcast); and
 - iv. Video streaming (compression technologies such as AV1, H.265, H.266, MPEG-DASH and VP9).

¹ See e.g., *InterDigital v Lenovo* [2024] EWCA Civ 743 at [204], *Panasonic v Xiaomi* [2024] EWCA Civ 1143 at [79], and *Alcatel v Amazon* [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].

10. 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.
11. 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. If that finding stands and SEP holders continue to rely on collective offers as discharging their FRAND obligations in jurisdictions other than the UK, 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 Court³ (even those, like InterDigital, who previously chose it as a forum for rate-setting), so CCIA believes that this risk is far from theoretical.
12. 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 Platform⁴. 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 may be evidence of the implementer’s unwillingness if they insist

³ See, in particular (i) Nokia, who brought proceedings seeking a FRAND declaration in the *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 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)).

⁴ See CA Judgment, at [233] and [251].

on bilateral licensing. A list of such cases has been provided in the **Annex** to this submission.

13. 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.
14. Unfortunately SEP holders often demand royalties that significantly exceed the FRAND rate for their portfolio. This has been the conclusion in every case before the English Court which has determined FRAND terms – please see:
 - i. *Unwired Planet v Huawei* ([2017] EWHC 711 (Pat)),
 - ii. *InterDigital v Lenovo* ([2023] EWHC 1583 (Pat) and [2024] EWCA Civ 743), and
 - iii. *Optis v Apple* ([2023] EWHC 1095 (Ch) and [2025] EWCA Civ 552).
15. 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.
16. If CCIA is not permitted to intervene in the Appeal, it is concerned that the Supreme Court will decide issues that could have broad repercussions for other

areas of licensing by reference to the particular context of this case (i.e., the Avanci 5G Vehicle Pool). As explained in CCIA's submissions below, the question of what constitutes "industry practice" is essential to determining whether a particular licensing practice, licensing scope, or set of terms, is or is not FRAND. This may vary from industry to industry. Even if Tesla is ultimately wrong on its primary case that the Avanci licence is the appropriate set of FRAND terms for the Challenged Patents, CCIA believes that making this determination at the jurisdiction stage is premature. This could set a precedent that might prevent other parties from bringing claims in circumstances where a pool licence is the only real FRAND option. CCIA's submissions below develop this point further from its industry standpoint.

CCIA's Submissions on the Appeal

Ground 1: *Whether pool licences are arguably required to be FRAND: The majority was wrong to hold that Tesla had no real prospect of establishing at trial that a SEP owner's obligation under the FRAND Commitment to offer a licence on FRAND terms applies to licences under that SEP offered via pools or platforms.*

17. The key question for the Supreme Court is whether Tesla's Particulars of Claim (PoC) raise a serious issue to be tried that involves InterDigital and Avanci. CCIA respectfully submits that this is so, for the reasons set out below.
18. By Prayer (10) PoC, Tesla seeks from the Patents Court a determination of the terms for a FRAND licence covering the Avanci 5G Vehicle Platform (which includes the Challenged Patents owned by InterDigital). Prayers (5) and (9) PoC seek declarations that terms offered by Avanci are not FRAND, and Prayer (6) PoC seeks a declaration that a FRAND licence covering, *inter alia*, the Challenged Patents, would be a licence between Tesla and Avanci that is worldwide in scope and which covers the entirety of the Avanci 5G Pool.⁵

⁵ Arnold LJ correctly described this part of Tesla's claim as "seeking ... declarations essentially as to FRAND terms for a licence of the UK SEPs in the Avanci 5G Platform, alternatively the Challenged Patents" (CA Judgment, [3]) and then later in his judgment he stated "I would characterise Tesla's Licensing Claims against Avanci as a dispute about what terms for a licence of the UK SEPs in the Avanci 5G Platform are FRAND" (CA Judgment, [116]).

19. The case Tesla advances, to be proven at trial, is that the FRAND licence to the Challenged Patents is the licence from Avanci to the 5G Vehicle Platform, as noted by Lord Justice Arnold at [95] of the CA Judgment:

“95. ... Tesla allege that, as a matter of commercial reality, the only licence of UK SEPs covered by the Avanci 5G Platform which can be FRAND is a global platform licence of the kind offered by Avanci as agent for the SEP owners.”

20. However, as recorded by Arnold LJ, Tesla has undertaken to take a licence on whatever terms are ultimately declared by the English courts to be FRAND (CA Judgment, at [2]).

Importance of Commercial Practice in Determining FRAND Licence Terms

21. The Supreme Court has confirmed that it is “*highly relevant*” to consider commercial practice when assessing what licence terms are FRAND – at [62] of *UPSC* the Supreme Court stated (**emphasis added**):

*“62. The IPR Policy is intended to have international effect, as its context makes clear. This is underlined by the fact that the undertaking required of the owner of an alleged SEP extends not only to the family of patents (subject only to reservations entered pursuant to clause 6.2 of the IPR Policy) but also to associated undertakings, as stated in the declaration forms in the IPR Policy. In imposing those requirements and more generally in its requirement that the SEP owner makes an irrevocable undertaking to license its technology, **ETSI appears to be attempting to mirror commercial practice in the telecommunications industry ... [i]t is to be expected that commercial practice in the relevant market is likely to be highly relevant to an assessment of what terms are fair and reasonable for these purposes ... [i]n our view the courts below were correct to infer that in framing its IPR Policy ETSI intended that parties and courts should look to and draw on commercial practice in the real world”.***

22. The Supreme Court also noted at [84] of *UPSC* that the US and German courts take a similar approach in drawing upon commercial practice when considering what terms are FRAND.⁶
23. Importantly, at the jurisdiction stage, the scope and terms of the FRAND licence that will be determined at trial are not known and should not be pre-judged. These are trial issues, to be resolved once evidence has been heard regarding industry practice in this area. This position is consistent with the reasoning of the High Court in *Conversant* [2018] R.P.C. 16, [2018] EWHC 808 (Pat) (ultimately upheld in *UPSC*) that the question of whether or not a licence would be global in that case was a matter for evidence at trial, not an issue to be definitively determined at the jurisdiction stage - see [69]:

“69. In Unwired Planet, Birss J held that a global licence was FRAND, on the basis of evidence as to industry practice, and comparables agreed between willing licensors and willing licensees of SEP portfolios. Whether such relief should be granted in the present case will be a matter for the FRAND trial, if liability is established. If these claims were stayed on the basis of forum non conveniens, then the consequence would be that the English court could not decide upon infringement of UK patents, and could not decide what relief it would be appropriate to grant where such patents are infringed. That, in my judgment, would not be in the interests of all the parties and the ends of justice.”

24. Crucially, industry practice may vary in different cases. In light of the increased relevance of pools explained above, there may be one industry context where a pool licence is the FRAND licence and one industry context where a pool licence is simply one of a number of different FRAND alternatives. However, the consequence of applying an overly-stringent standard at this stage of the jurisdiction analysis is that both such cases would be rejected notwithstanding the fact that, in the first situation, had the trial taken place it would have been shown that the pool licence could be the only genuine FRAND option.

⁶ *UPSC*, [84]: “In summary, the US case law shows ... (iv) a practice of looking to examples of real life commercial negotiation of licences by parties engaged in the relevant industry when fixing the FRAND terms of a licence Similarly, in Germany the developing case law shows ... (ii) a practice of having regard to the usual practices of parties in the relevant industry when the court determines the FRAND terms of a licence”.

25. At the jurisdiction stage, the parties should not conduct a mini-trial (*Lungowe v Vedanta Resources Plc* [2020] AC 1045 at [9]-[16]; *Okpabi v Royal Dutch Shell Plc* [2021] 1 WLR 1294 at [20]-[23] as cited at 15.1 of Tesla's Written Case). To the extent that there are differences between the parties about the facts in issue, the Court should be mindful that "*Save in cases where allegations of fact are demonstrably untrue or unsupportable, it is generally not appropriate for a defendant to dispute the facts alleged through evidence of its own. Doing so may well just show that there is a triable issue*" (*Okpabi* at [22]).
26. In the present case, it is not known, for example, whether a bilateral licence from InterDigital and/or a pool licence from Avanci is FRAND – Tesla's case is that its claim embraces these possibilities until the scope and terms of the FRAND licence are ultimately determined by the English courts. Based on the information available to-date, CCIA believes that, when viewed through the lens of the appropriate standard (i.e., that of a serious issue to be tried at the jurisdiction stage), it cannot be said that Tesla's claim to a pool licence as the FRAND licence falls short of this threshold – i.e., Tesla's claim cannot be said to be "*fanciful*", "*bound to fail*" or "*hopeless*".⁷
27. As Mr Justice Fancourt found at [13] of the HC Judgment, InterDigital does not have a vehicle licensing programme. InterDigital's stated position is that it "*discharges its ETSI undertaking by being prepared to grant bilateral licences on FRAND terms*" (InterDigital's Notice of Objection, [10]). Based on the documents referred to in [2] above, it does not appear that InterDigital has made an offer to Tesla of a 5G bilateral licence covering the Challenged Patents – it seems that the Challenged Patents have only ever been licensed to the automotive industry through the Avanci pool. According to Avanci's website,⁸ so far, at the time of preparing these submissions, there appears to be approximately 39 licensees that have taken a pool licence to InterDigital's Challenged Patents. It is unknown if any licensees in the automotive industry have ever taken a bilateral licence to the Challenged Patents directly from InterDigital.

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AK Investment CJSC v Kyrgyz Mobil Tel [2011] UKPC 7, [71], [82] and [103].

⁸

<https://www.avanci.com/vehicle/5gvehicle/>

28. InterDigital is not alone in adopting this stance. Mr Justice Fancourt found at [13] of the HC Judgment that there were other members of the Avanci pool who did not have vehicle licensing programs:

“13. Some of the Patentees, including InterDigital, have no programme for granting bilateral licences for vehicle licensing, but others have.”

29. Further, Mr Justice Fancourt found that, as a practical matter, “*many*” members of the Avanci pool rely on the pool offer as discharging their obligation to offer a licence of their SEPs to automotive makers on FRAND terms:

“13. ... In practice, many of the Patentees will rely on an Avanci offer to discharge their obligation to offer a licence of their SEPs to automotive makers on FRAND terms.”

30. Some Avanci pool members have relied on an Avanci pool offer (rather than any offer of their own) as discharging their obligations under Article 6.1 of the ETSI IPR Policy, in particular, when commencing patent infringement proceedings, and seeking injunctive relief, against implementers in the automotive industry – we include a non-exhaustive list of examples (not involving Tesla) in the **Annex**.
31. From the perspective of implementers, there are clear efficiencies (both in terms of costs and time) for approaching a pool for a licence rather than each of the 75+ licensors⁹ that are members of the Avanci 5G Vehicle Platform – as Mr Justice Fancourt acknowledged at [13] of the HC Judgment. However, the Supreme Court should be cognisant of taking this conclusion too far – while the efficiency of the pool arrangement is evident, an issue which cannot conclusively be resolved at this stage is whether the pool is more than a mere convenience, and in fact is one of (or the) FRAND licence that Tesla would be entitled to (for example, on the basis that other industry participants all enjoyed the benefits of a “one stop shop” that should also be available to Tesla). Moreover, the fact that many of the Avanci pool members do not have a bilateral licensing program for vehicles does not change the fact that manufacturers will

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Ibid.

continue to accrue royalties on their sales and that a pool license may be the only viable means to meet those obligations. Again, these are matters which can only be determined at trial, but which CCIA believes is clearly arguable in light of the above.

32. Lord Justice Arnold (a judge with considerable experience of SEP litigation at first instance and on appeal) considered that Tesla had a real prospect of establishing its claim, when comparing the widespread adoption of the Avanci 4G & 5G Vehicle Platforms by implementers in the automotive sector with the bilateral licensing and litigation (“*the licensing debacle*”) that was prevalent in the mobile phone sector (CA Judgment, at [95]):

“95. ... Tesla also allege that, in reality even if not formally, most members of the Avanci 5G Platform rely upon the availability of a licence under that platform as fulfilling their FRAND obligations. Although these allegations are disputed by Avanci (and InterDigital), I consider that Tesla have a real prospect of establishing them. Indeed, the former allegation receives some support from a striking submission made by counsel for Avanci himself, who has considerable experience in this field, that there was a stark difference between what Avanci had achieved with its Platforms in the automotive sector and what he termed “the licensing debacle” in the mobile phone sector. “Debate” is, in my view, something of an overstatement; but nevertheless it is an inescapable fact that, in the absence of any pool or platform licence in that sector, there has been, and continues to be, worldwide litigation between multiple players.”

33. In the same way that the courts in *Unwired Planet v Huawei* recognized the efficiencies of global licensing (as compared to country-by-country licensing) (UPHC at [544], approved by the Supreme Court in UPSC at [15]), it is at least conceivable that the courts could come to a similar conclusion in the present case – namely, that there is a commercial practice in the automotive industry to conclude pool rather than bilateral licences, since no rational business would negotiate with each licensor individually, unless it could not be avoided. Courts have previously encouraged implementers to seek pool licences rather than

bilateral licences. In particular, courts both in Germany and UK have thought that insisting on a bilateral licence, over a pool licence, could be evidence of an implementer's unwillingness to enter into a licence on FRAND terms (**emphasis added**):

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

*[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."*

*[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.**"*

LD Munich, UPC, decision of 18 December 2024, docket no. UPC_CFI_9/2023—Huawei/Netgear

*[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 fulfil 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.”

Mitsubishi and Sisvel v OnePlus and others [2021] EWHC 1541 (Pat)

[32(ii)]: “**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.**”

34. It would be unjust if the conclusion in these decisions, that the pool licence is or may be the relevant set of FRAND terms, was reached on the basis that the argument was raised by the SEP holder rather than the implementer seeking a licence. Given that, as noted above, the Courts have encouraged implementers to proactively seek FRAND licences, CCIA respectfully submits that such a conclusion cannot be right in law.
35. Tesla's claim that the only licence to the Challenged Patents which can be FRAND is a pool licence clearly raises a serious issue to be tried and it cannot be disposed of at the jurisdiction stage by assuming, as the majority of the Court of Appeal did, that InterDigital can necessarily discharge the FRAND Commitment it has given in respect of the Challenged Patents by offering a bilateral licence to Tesla.

DECLARATORY RELIEF

36. CCIA supports Tesla's case that there would be a useful purpose in the declaratory relief sought. As a general matter of principle, there is always utility in clarifying the nature of a party's rights and obligations pursuant to the FRAND commitment.

(a) InterDigital's obligations

37. InterDigital has made a FRAND commitment in respect of the Challenged Patents, by which it has made an irrevocable commitment under French law that it is “*prepared to grant irrevocable licences*” to those Challenged Patents on FRAND terms. InterDigital can choose to discharge that obligation by licensing

the Challenged Patents bilaterally, and/or through an intermediary such as Avanci, on FRAND terms.¹⁰

38. CCIA agrees with Tesla that, where InterDigital makes licences to its Challenged Patents available via an intermediary such as Avanci, those licence terms offered by Avanci must be on FRAND terms. For the reasons explained by Tesla in [29]-[36] and [39]-[40] of its Written Case,¹¹ there is nothing in the language, context or policy of the FRAND Commitment to suggest that the FRAND Commitment ceases to apply when a SEP owner chooses to make licences to their SEPs available through an intermediary.
39. Indeed, such a conclusion would be surprising in the FRAND context, where the FRAND commitment affects what parties agree in commercial negotiations and real-world markets. If a SEP holder was permitted to offer unFRAND alternatives through pool arrangements because they were also willing to licence bilaterally on FRAND terms, this could risk distorting market practice and undermining the purpose of the FRAND commitment. The conclusion of the majority in the Court of Appeal that “[i]t was to avoid the complexity of multiple bilateral negotiations that Avanci devised the “one-stop” 5G Platform licence. Avanci’s product is not an implementation or variation of the ETSI arrangements to which the SEP owners are party. It is a completely different commercial offering by way of alternative” (CA Judgment, [251]) is, respectfully, one which CCIA submits cannot be determined without detailed evidence about the nature of licensing in this industry (which is not available to, and should not be ruled on by, the Court at the jurisdiction stage).
40. InterDigital states in its Notice of Objection, at [10], that “IDG does not rely on the Avanci licence as discharging its FRAND obligations ... InterDigital

¹⁰ See Paragraph 33 of these submissions above and, in particular, the extracts from the two German cases cited there: *Higher Regional Court Düsseldorf, decision of 12 May 2022, docket no. I-2 U 13/21, GRUR 2022, 1136–Signalsynthese II*, and *LD Munich, UPC, decision of 18 December 2024, docket no. UPC_CFI_9/2023–Huawei/Netgear*. See also InterDigital’s Notice of Objection which addresses this point 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.

¹¹ CCIA has not seen the master agreements between Avanci and the 5G Platform Members and so is not in a position to comment upon them or upon any FRAND obligation owed by Avanci.

discharges its ETSI undertaking by being prepared to grant bilateral licences on FRAND terms". Mr Justice Fancourt noted that "*InterDigital is ambivalent (perhaps deliberately so) about whether the terms of the Avanci Licence are FRAND*" (HC Judgment, at [12]).

41. However, if InterDigital has not made a bilateral offer to Tesla, the only licence to the Challenged Patents that has been made available is the Avanci 5G Licence. If a declaration were to be granted confirming that the Avanci 5G Licence is FRAND, then InterDigital could make a decision as to whether to rely on that licence to discharge its obligations to ETSI. If the declaration confirmed that the Avanci 5G Licence is not FRAND, then InterDigital could make a decision as to whether to offer Tesla a bilateral licence. There is obviously considerable benefit to licensors and their intermediaries generally in having the licensor's obligations under the FRAND commitment clarified.

(b) Tesla's Rights

42. By virtue of Tesla giving an undertaking to take a licence to the Challenged Patents on whatever terms are ultimately declared by the English courts to be FRAND, Tesla is a third-party beneficiary to InterDigital's FRAND Commitment to ETSI (CA Judgment, [2] and [163]). As such, Tesla has a right under French law to be offered a licence on FRAND terms to the Challenged Patents and is entitled to seek a declaration from the Patents Court in respect of those terms (CA Judgment, [163]). If a declaration were to be granted stating the FRAND terms for a licence of the Challenged Patents was a FRAND licence to the Avanci pool, then Tesla would have certainty in respect of a licence in the FRAND range which it would be entitled to be offered. As noted above, it is at least arguable that Tesla should be offered a licence to the Challenged Patents on terms that are consistent with FRAND terms offered to, and entered into by, other industry participants. Further, and as above, it is evidently beneficial to licensees to have clarification of their rights under the FRAND commitment.

(c) Declarations Serve Useful Purpose

43. Therefore, if the Patents Court were to grant Tesla a declaration in respect of the terms for a FRAND licence to Challenged Patents, CCIA believes that this declaration would serve, at least, the following useful purposes: (i) clarify how

InterDigital can discharge its FRAND Commitment in respect of the Challenged Patents, (ii) clarify the scope of Tesla's rights to a FRAND licence in respect of the Challenged Patents, and (iii) assist the parties in narrowing their negotiating positions so that the parties may be able to conclude a licence agreement without the need for further litigation.

Ground 5 – Appropriate forum for Licensing Claims: Fancourt J was wrong to express the view (obiter) that there was any objection on forum non conveniens grounds to the Licensing Claims proceeding in England.

44. CCIA has had the benefit of reading Tesla's Written Case on Ground 5 and broadly agrees with Tesla's analysis, as set out in paragraphs [95]-[117] of its Written Case. It therefore only wishes to make two points on jurisdiction.
45. First, an important point of principle for the Supreme Court to be aware of is the potential inconsistency that could be created in cases where the claim to a FRAND licence is brought by an implementer rather than the patent holder. Authority from the Court of Appeal indicates that an implementer cannot successfully argue that the English Court should not have jurisdiction to determine the terms of a FRAND licence in a case brought by a SEP holder because such claims are characterised as claims relating to UK patents – see *Nokia v OPPO*, [2023] F.S.R. 11 at [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.”

46. However, the effect of both the lower courts' decisions in respect of this Appeal indicates that where such a claim to a licence is brought by an implementer, the court can take a very different position on characterisation of the claim, notwithstanding that the implementer's claim also raises issues about UK patents by way of, e.g. declarations of non-infringement. CCIA submits that both

types of cases have essentially the same claim – to a declaration of the FRAND terms under which specified UK patents should be licensed. It would be unfair and unjust for a different and more stringent jurisdiction standard to be applied solely depending on which party brings the claim.

47. Second, Tesla notes at [111] of its Written Case that the burden of proof on appropriate forum differs depending on whether a case is a “service out” or a “service in” case. CCIA agrees with this analysis but wishes to draw the Supreme Court’s attention to the High Court decision of *Amazon v InterDigital* [2025] EWHC 3334 (Pat). The judge explains at [45] that:

“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.”

This was agreed by the InterDigital parties in that case, as was recorded in [40] of the judgment.

48. CCIA submits that this is the correct summation of the law. This is important because, at [107] of Tesla’s Written Case it states that *“No similar undertaking is offered by any of the Respondents in this case.”* This means that, even if InterDigital and Avanci were to consent now to rate setting in Delaware, this would not affect the outcome. This is because at the time of the application for service out, such consent had not been given, and so the forum was unavailable.

HOGAN LOVELLS INTERNATIONAL LLP

10 February 2026

Annex

Avanci's 4G / 5G Vehicle Pool

SOL IP, LLC v Ford Motor Company (United States District Court for the Eastern District of Texas Marshall Division) (Case 2:22-cv-00097)

11. Sol IP, through its agent Avanci, has offered to license the patents-in-suit to Ford on FRAND terms and conditions as part of the joint license offered by the 2G/3G/4G connected vehicles licensing program administered by the Avanci essential patent licensing platform, which includes almost 50 licensors.

(Paragraph 11, Complaint for Patent Infringement, emphasis added)

L2 Mobile Technologies LLC v Ford Motor Company (United States District Court for the District of Delaware) (Case 1:21-cv-01409)

17. L2MT is a member of the Avanci LLC patent pool. On information and belief, Avanci LLC made Ford a FRAND offer to patents that are essential to the 3G wireless communications standard. On information and belief, Ford declined to take a license to the Avanci LLC patent pool.

(Paragraph 17, Complaint for Patent Infringement, emphasis added)

Acer, Inc. v Volkswagen, AG and Volkswagen Group of America, Inc. (United States District Court for the Eastern District of Virginia) (Case 1:21-cv-01390)

3. Plaintiff [Acer, Inc.], through their licensing agent Avanci, LLC, has offered a license to the Patents in Suit on FRAND terms, and are prepared to grant a license agreement to Defendants' infringing products on terms and conditions that are fair, reasonable, and non-discriminatory ("FRAND").

(Paragraph 3, Complaint for Patent Infringement, emphasis added)

Acer, Inc. v Paccar, Inc. (United States District Court for the Eastern District of Texas Marshall Division) (Case 2:25-cv-00740-JRG)

3. Plaintiff, through its licensing agent Avanci, LLC, has offered a license to the Patents in Suit on FRAND terms, and is prepared to grant a license to Defendant's infringing products on terms and

conditions that are fair, reasonable, and non-discriminatory (“FRAND”).

*(Paragraph 3, Complaint for Patent Infringement, **emphasis added**)*

Avanci’s Video Pool

Velos Media, LLC v ByteDance Ltd (United States District Court for the Western District of Texas Austin Division) (Case 1:25-cv-00967)

*149. Further, TikTok has engaged in discussions with **Avanci Video, which acted on Velos’ behalf.***

*150. On information and belief, **TikTok received an offer to take a license** that would cover the Velos’ [sic] video coding patents, including the Asserted Patents, **on RAND terms and conditions.***

*(Paragraphs 149 & 150, Complaint for Patent Infringement, **emphasis added**)*

MPEG-LA Pool

Fraunhofer-Gesellschaft v ZTE, Regional Court (Landgericht) of Düsseldorf, decision of 9 November 2018, docket number 4a O 15/17¹²

*III. (2) (d) **By sending the standard [MPEG-LA] license agreement to the parent company in February 2012, a FRAND-compliant offer attributable to the plaintiff was submitted, which both meets the (rather) “formal” requirements establish by the ECJ and proves to be fair, reasonable and non-discriminatory in terms of content.***

(aa) MPEG-LA’s offer in the form of the standard license agreement sent at the end of September 2011 meets the (rather) “formal” requirements that the ECJ places on patent holder’s offers.

... Also, the fact that the standard license agreement provides for a pool licence does not preclude the FRAND compliance of that offer.

Tagivan v Huawei, Regional Court (Landgericht) of Düsseldorf, decision of 9 November 2018, docket number 4a O 17/17¹³

¹²

https://www.katheraugenstein.com/app/uploads/2018-11-09-4a-O-15_17-EN-pdf.pdf (English translation)

¹³

https://www.katheraugenstein.com/app/uploads/2018-11-09-4a-O-17_17-EN-pdf.pdf (English translation)

By sending the [MPEG-LA] standard license agreement to the parent company in February 2012, a FRAND-compliant offer attributable to the plaintiff was submitted, which both meets the (more) “formal” requirements established by the ECJ and proves to be fair, reasonable, and non-discriminatory in terms of content.

Via Licensing Alliance’s AAC Pool

Philips v TCT - Higher Regional Court Düsseldorf, decision of 12 May 2022, docket no. I-2 U 13/21, GRUR 2022, 1136–Signalsynthese II¹⁴

After the action was filed, the parent company [TCT] contacted the Plaintiff [Philips] in a letter dated 25 March 2020 and stated that T. was willing to take a license from the Plaintiff on FRAND terms. ... the parent company again requested the submission of a bilateral offer....the Plaintiff stated that it saw no reason to submit a bilateral offer to T. ... In a letter dated 5 October 2020, the Plaintiff stated that it considered the possibility of taking up a pool license to be a sufficient offer within the meaning of the FRAND conditions.

¹⁴

https://www.katheraugenstein.com/app/uploads/2022-12-01-OLG-Duesseldorf-decision-dated-12.05.2022-2-U-13_21-Signalsynthese-II_EN-1.pdf (English translation)