

Neutral Citation Number: [2013] EWHC 1591 (Pat)

Case No: HC 12 D03895  
HC 12 B04711

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**  
**PATENTS COURT**

The Rolls Building  
7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Date: 06/06/2013

**Before:**

**MR. JUSTICE BIRSS**

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**Between:**

**VRINGO INFRASTRUCTURE, INC.**  
(a company incorporated under the laws  
of the state of Delaware)

**Claimant**

**- and -**

**(1) ZTE (UK) Limited**  
**(2) ZTE CORPORATION**  
(a company incorporated under the laws  
of the People's Republic of China)

**First Defendant**

**Proposed**

**Second**  
**Defendant**

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**MR. NICHOLAS GREEN QC, MR. THOMAS HINCHLIFFE and MR. TIM POWELL**  
(instructed by **Powell Gilbert LLP**) appeared for the **Claimant**.

**MR. DANIEL ALEXANDER QC and MS. ISABEL JAMAL** (instructed by  
**Olswang LLP**) appeared for the **Defendant**.

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**Approved Judgment**  
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**MR. JUSTICE BIRSS :**

1. This is a case management conference in a patent action. The claimant is represented by Mr. Nicholas Green QC, leading Mr. Thomas Hinchliffe and Mr. Tim Powell, instructed by Powell Gilbert. The defendant is represented by Mr. Daniel Alexander QC, leading Ms. Isabel Jamal, instructed by Olswang.
2. The proceedings consist of two actions brought by the patentee, Vringo, against ZTE (UK) Limited for infringement of six patents. There are three in each action. The patents all relate to mobile phones and related telecommunication systems.
3. These systems are governed by standards. In Europe ETSI is the organisation which promulgates such standards. Vringo says its patents are essential to the relevant ETSI standards and so the patents are sometimes referred to as "SEPs" for Standards Essential Patents. Like many standards setting organisations, ETSI has an IPR policy. This only allows patents to be declared essential to the standard if the patentee is prepared to grant licences under them on FRAND terms. FRAND stands for "fair, reasonable and non-discriminatory".
4. Vringo is prepared to offer a global portfolio licence on the whole of its global SEP portfolio. It has made an offer on that basis. It contends this offer is FRAND and complies with any and all contractual and competition law obligation it might have to offer FRAND licences.
5. Vringo wants the court to decide what it calls the FRAND issues before deciding on the validity and infringement of the patents in suit. ZTE wants the opposite. It wants the court to decide validity and infringement first and then deal with FRAND only if necessary. The parties agree that if all the issues are to be litigated, three trials of some kind will be needed: two patent trials of three patents each and a FRAND trial of some kind at least potentially depending on the outcome of the patent trials.
6. To decide this issue I need to explain the background a little further. Vringo is the owner of a global portfolio of over 500 patents that relate to telecommunications infrastructure, internet search and mobile telecommunication. Although its portfolio consists of some patents that were developed internally, the majority were purchased from Nokia in August 2012. A substantial proportion of the patents and its portfolio are said to be SEPs.
7. At the last count Vringo had some 138 individual granted SEPs in various jurisdictions and a further 248 applications which may mature into granted SEPs. Included within these are the patents in the 31 families Vringo acquired from Nokia which Nokia had declared to ETSI and other standard setting organisations. Along with these declarations, Vringo explains that Nokia gave an undertaking to licence its SEPs on FRAND terms. Vringo, as the successor in title to Nokia, says it will honour that undertaking.
8. ZTE is the UK arm of the ZTE Group. ZTE Group is involved in the manufacture and sale of mobile phones and associated infrastructure primarily in Asia. The parent of the ZTE Group, ZTE Corporation, is not a party to this action and is not alleged to have infringed any of ZTE's patents.

9. Vringo's global offer is addressed to ZTE Corporation. Vringo contends that ZTE Corporation is the natural entity to be the licensee of such a global licence. Vringo argues that ZTE Corp should be made a party to the proceedings in order to be bound by the court's determination which Vringo seeks. So Vringo also seeks to join ZTE Corp into these proceedings.

10. The declarations Vringo is seeking are as follows:

"(1) A declaration that the Confidential Term Sheet enclosed with the letter of 28 March 2013 comprised an offer by the Claimant to licence its Standards Essential Patents to the Defendants on FRAND terms and conditions and that having made a FRAND offer, the Claimant is not obliged to offer to license and the Defendants are not entitled to a licence to any of its Standards Essential Patents on any other terms.

(2) In the alternative, a declaration that the Confidential Term Sheet enclosed with the letter of 28 March 2013 complies with the Claimant's obligations to make a licence available to the Defendants to the patents in suit in actions HC 12 DO3895 & HC 12 B04711 on FRAND terms.

(3) In the alternative, the Claimant seeks a declaration as to what would constitute an offer to license to the Defendants its Standards Essential Patents on FRAND terms and conditions.

(4) A declaration that in all the circumstances the Defendants have no entitlement to an individual licence under any of the 6 UK patents in suit in actions HC 12 D03895 & HC 12 B04711 that are found by the Court to be both valid and infringed by the First Defendant".

11. Note that these include at paragraph (3) a declaration as to what would be a FRAND offer. The court is being asked in effect to settle a global portfolio licence.

12. On this application Vringo asks that these matters (1)-(4) be dealt with at the FRAND trial I have referred to.

13. I should also mention that although the declaration refers to the term sheet as being confidential, it is now not confidential.

14. Vringo says that the terms of this global offering are the real dispute between the parties because in the real world this whole (that is to say international) dispute will only end with a global portfolio licence deal between Vringo and ZTE Corp. Vringo says that given the offer, the real dispute is only about money: what is the correct royalty to be paid by ZTE Corp to Vringo for a global licence, which, after all, Vringo is willing to give for its patent portfolio?

15. Vringo says that since this is the real dispute, it will save a lot of time and money if it is sorted out first. For one thing, if the court agrees with Vringo that whatever legal obligations it has to offer a FRAND licence in respect of any given patent, are

satisfied by a single global portfolio licence like this, then just that point of itself will assist the parties in settling the dispute.

16. So Vringo says the court should deal with this first. It will not be a trivial question to try, but it will be less costly and time consuming than patent cases on the merits which will need to be tried instead. Once the FRAND trial is done, the patent trials can be scheduled after that. In any event the FRAND trial is likely to bring the case to an end because the parties are likely to settle afterwards.
17. Vringo also says that it is not trying to prevent consideration of the strength of portfolio being taken into account. In the FRAND trial that Vringo proposes, Vringo contends that the court will be able to take into account evidence about the strength of the patents, their validity and infringement and factors such as the significance of the bit of the standard that they relate to.
18. Vringo refers to a decision of the United States Court in *Microsoft v Motorola* (25<sup>th</sup> April 2013, 10-CV-01823-ORD). Here Judge Robart of the United States District Court for Western District of Washington at Seattle heard a full trial over a number of days and settled RAND terms of a portfolio licence of Motorola's US patents. This included considering the strength of the patents and other economic issues familiar in FRAND or RAND arguments - such as the problem of royalty stacking and something called patent hold up. Vringo submits that this shows that what it asks the court to do can be done. It illustrates, says Vringo, a trend in the courts and in competition authorities globally to seek to resolve the problems caused by large portfolios of SEPs and questions of FRAND licences in this way instead of having costly and expensive patent trials.
19. Vringo also says that in the USA in a dispute between ZTE and InterDigital, ZTE has proposed that the court there should take the same course Vringo is proposing here, i.e. that the US court should determine what the FRAND licence terms should be for the InterDigital patents in issue in that case *before* trying any issue of validity or infringement.
20. Vringo also refers to the judgment of Floyd J in *IPCom v Nokia* [2009] EWHC 1017 (Pat). In that case the judge (as he then was) was asked to schedule a trial of a preliminary issue as to what the FRAND licence terms in relation to IPCom's patents in suit would be. In paragraph 11 the judge described the objective of the preliminary issue as follows:

"The objective of the preliminary issue which is sought is quite plain. What is at stake between parties in portfolio patent litigation of this kind is usually the sum of money which will enable the grant of a worldwide licence under the entire portfolio. The preliminary issue seeks to get to the heart of that question, without the need to try the validity of 15 patents and the infringement of 3 of them, and a variety of ancillary defences."
21. In fact Floyd J refused to order the preliminary issue. It was for two reasons. One of the reasons was because the proceedings had already advanced to address validity and infringement of the patents on the merits and the first patent trial was only six months

away. The implication of this, submits Vringo, is that the court there recognised that the concept was a good idea and that if it had been raised earlier it might well have been worth doing a FRAND trial first.

22. Vringo also refer to the judgment of Kitchin J (as he then was) in *Philips v Alba*. That was on 24th October 2008 and it is available as a transcript of the proceedings rather than an approved judgment. The case was about the patents in the MPEG patent pool. There were three issues. The judge ordered the issues to be tried in the following order: (i) did the defendants have a licence; (ii) the FRAND question; and (iii) the merits of the patents in terms of their validity and infringement. So it is said by Vringo here is another example of a court scheduling a FRAND hearing before hearing the patent issues on their merits.
23. ZTE does not agree with Vringo's submission. It says that Vringo's portfolio of patents in this case, all six of them, are all invalid and/or not infringed. It points out that so far as it is aware, no company has taken a licence under this portfolio and suggests that that is an indication that the portfolio is a weak one. ZTE's case is that if a patent is found valid and infringed by the court, then ZTE is willing to accept a FRAND licence in respect of that patent.
24. ZTE submits that the FRAND trial proposed by Vringo will be a massive undertaking. The portfolio has hundreds of patents in it. There will be masses of evidence about the strength of the portfolio, potentially a full scale fight about validity and infringement inside the FRAND trial. There will be very likely to be references to the Court of Justice on major competition issues which the case will involve.
25. As with any patent portfolio in this field, there are potentially very large sums at stake given the global nature of the licence offered by Vringo. The term sheet put forward by Vringo in correspondence has financial terms. As I say, although they were confidential at one stage in these proceedings, they are now not. The terms include a royalty of \$2.50 for the smartphones, \$1.50 for the other handsets and 1.5% of the revenue on any infrastructure.
26. On the other hand, ZTE says that Vringo's patents are extremely weak and worth very little. So the parties are far apart. The basis of this difference, in my judgment, is a fundamental disagreement about validity and the relevance of these patents.
27. ZTE submits that the court should allow ZTE to test the validity (and infringement) of the patents first. That, it says, is the real issue between the parties. Once that is determined, it will go a very long way to helping the parties to settle their differences.
28. So ZTE submits I should refuse Vringo's applications and schedule the patent cases before any FRAND trial.

#### Discussion

29. Although a lot of words have been written and spoken about this issue on this application, I think it is relatively simple to determine. The key, in my judgment, is that there is a fundamental dispute between the parties as to whether this portfolio has any value at all.

30. I think Vringo's argument confuses two distinct situations which, although they may look similar, are fundamentally different.
31. First, when a patentee asserts its patents against a defendant, a defendant may say they are invalid and not infringed but the defendant may also say, "Even if your patents are as good as you say, all they are worth is a modest sum X".
32. In that case it is possible for the court to resolve how much X is before deciding if the patents are truly valid and infringed. It is likely to assist settlement. Floyd J referred to this in *Nokia v ICom* judgment I have already mentioned at paragraph 17. I have done the same thing in the Patents County Court - schedule the determination of quantum in a copyright case before deciding on liability and doing it on the assumption that the claimant has the rights claimed and the defendant has infringed.
33. There is no reason why this approach cannot be extended to a portfolio of patents. The defendant can say the fair rate, if the patents are what the patentee says they are, is something the court can resolve.
34. In cases like this the preliminary issue being decided is on a tangible basis. If the claimant wins, the damages or royalty will be X. It is clear what conditions are required to be satisfied for the determination of the preliminary issue to apply. Once the preliminary issue has been decided and the rate has been found to be X, the parties are not compelled to stop fighting about the merits of the patent. A settlement may ensue but, if it does not and at the later trial the patent is invalid, nothing will be due at all. The preliminary issue is binding but it is not a finding that the defendant must pay the sum found. On the other hand, if the patent is held valid and infringed, then of course the finding on the preliminary issue will take effect.
35. Similar kinds of analysis are done in the United Kingdom Copyright Tribunal setting an appropriate royalty rate in a licensing scheme. The parties there are not challenging the underlying rights. The only issue is the tariff terms. There is nothing intrinsically unjusticiable about the issue to be resolved.
36. But there is a second kind of case. The court could determine the rate (and terms) which would be arrived at as the outcome of a notional negotiation between a willing licensor and a licensee willing to negotiate without fighting a trial on the merits about the underlying rights.
37. In this second case, the hypothetical negotiation is with a licensee willing to agree on a licence before determining the trials on validity and infringement. In this sort of assessment the court can consider the strength on the basis proposed by Vringo in this case, just as real negotiators would. The determination is a decision by the court of what the outcome of a real negotiation would be.
38. But this exercise produces a different result from the first exercise. Self-evidently the royalty rate arrived at will be different from that arrived at in the first exercise. No doubt a healthy discount on the royalty rate will be arrived at compared to the case in which all the patents are found valid and infringed. It is this latter exercise which Vringo proposes here.

39. I recognise that such a determination may lead to settlement. In the end after the matter has concluded the parties might say that they will accept that finding.
40. However, I need to consider what will be the effect of a decision of the kind urged by Vringo. Although in this case Vringo has said it is prepared to be bound by the court's decision on this putative FRAND trial, ZTE is not prepared to be bound. So the FRAND trial does not in fact bring the proceedings to an end.
41. Say the court decides that the terms of such a licence involve a global royalty payment, in all countries, to the patentee. It is quite possibly the kind of thing a real negotiation might produce. Then the action continues and the patents are all found invalid. It cannot be that the rate arrived at is binding on the defendant. The defendant will have established that it has no obligation to pay the patentee in this jurisdiction whatsoever.
42. That is the heart of the defendant's contingent position. In this case ZTE is not willing to be a licensee of invalid and/or not infringed patents. So ZTE is not prepared to be bound by the outcome of the determination that Vringo proposes. This raises the question of what is a willing licensee. The suggestion from Vringo was that this stance showed that ZTE was not really a willing licensee at all.
43. The concept of a willing licensee arises in this context as follows. There is what I will call a general idea (without expressing a view on whether it is right or wrong) that when a patent is an SEP, if a defendant is a willing licensee, then it may be that the patentee is not entitled to obtain an injunction against the defendant, whereas if the defendant was not a willing licensee, then the defendant may be subject to the risk of an injunction. This issue has developed in Germany and questions have been referred to the Court of Justice dealing with these issues. It arises in Germany at least in part as a result of the bifurcated procedure where a defendant in an infringement court can find itself in a position in which the patent is found to be infringed -- that is to say it covers the standard -- and is therefore facing an injunction a long time before validity has been determined by the Federal Patent Court. Any problem of this kind caused by bifurcation is not an issue here.
44. This case is a long way from having to consider whether to grant injunctive relief; after all, according to ZTE, the patents are all invalid and/or not infringed. However, in any case I reject the idea that the stance being taken by ZTE in this jurisdiction can fairly be said to mean that ZTE is not a willing licensee. ZTE has said it is willing to take a FRAND licence on any patent found valid and infringed. In my judgment, a defendant accused of patent infringement by a patentee who claims to have a standards essential patent is and must be entitled to say, "I wish to know if this patent is valid or infringed or not before I take a licence". Such a stance cannot fairly be described as unwillingness.
45. So here the defendant is entitled, in my judgment, to adopt a contingent position. In a contingent case like this, there is no basis on which the court could compel the defendants to accept a licence arrived at by approaching the matter as if the licensee was willing to take a licence without having a judicial determination of validity and/or infringement.

46. Looking at it the other way, if, once the patent trials are heard, for example, say Vringo's alleged SEPs were found invalid, it would be absurd for Vringo to say it still wanted to have a trial to determine a FRAND royalty rate applicable in the United Kingdom. The rate would be zero. Equally, say Vringo won all the patent trials hands down and then conducted a FRAND trial, it would equally be absurd for ZTE at that trial to say, "Oh but these are weak patents likely to be invalid or not infringed and the royalty should correspondingly be less".
47. Looking at the cases referred to by Vringo, my assessment of them is as follows:
48. *Microsoft v Motorola*, as I understand it, is a case in which the alleged infringer and putative licensee was demanding the licence be settled on basis (2) above. The court could settle appropriate terms and did so safe in the knowledge that that determination resolved the dispute. It illustrates that such a determination can be done but it does not give a reason to schedule it in this case.
49. *InterDigital v ZTE*. In that case ZTE is not adopting a contingent position. ZTE is saying that it will be bound by a licence settled by the court regardless of validity and infringement later.
50. In *IPCom*, Floyd J was concerned about the role that validity and infringement would play in the preliminary issue, the issue he was considering, which he did not order. In paragraphs 27 and 28 of his judgment, he said this:
- "27. Despite the point being well made by Mr. Nicholson that Nokia's position is somewhat inconsistent, the court as the end of the day will have to determine whether validity, infringement and essentiality of the patents is a factor which should be taken into consideration in arriving at the licence fee which it is being asked to determine. If the court comes to the conclusion that it cannot answer the question without making a determination, at least on some basis of the essentiality, validity and infringement issues, then it will not be able to answer the question.
28. Mr. Nicholson's response is to say, 'Even that will be useful because then the court will know, and the parties will know, what further technical matters need to be investigated and those issues can be tried accordingly".
51. In the *MPEG* case, the defendants were prepared to conduct a FRAND trial on the basis that all the patents were valid and infringed. That is just a conventional example of the first type of case I identified earlier.

#### Decision on the major part of this application

52. The FRAND trial proposed by Vringo would be a major exercise. In my judgment, it is much heavier than Vringo suggests. Although the comparison is not exact, I note that the *Nokia v IPCom* FRAND trial, which was to deal with one patent, was estimated for a comparable length as the trial Mr. Green proposes here. However, the



FRAND trial in this case would be about a portfolio of hundreds of patents. To make the order sought would commit the parties to very substantial costs and time.

53. Vringo is not suggesting that the court should decide the FRAND royalty on the basis that all the patents are all valid and all infringed. In other words, this is not a case of the first type. That could be done in theory but it is not what Vringo are asking for. And since ZTE says the patents are invalid, I can see there would be little point in that exercise.
54. I sympathise with Vringo to this extent. If both sides were willing one way, probably the cheapest and most cost effective way, of resolving the *whole* global case overall, would be if a single court were to do what was done in *Microsoft v Motorola*. In my judgment, if both sides were willing to be bound by the outcome, there is no reason why the English court could not do it. Nothing in the determination makes it intrinsically impossible for the court to resolve. It would be costly but that is a different matter; it would be less than the three trials proposed by the defendant, and less than the aggregate of that plus all the various parallel cases going on elsewhere. I gather there are cases on this portfolio between Vringo and ZTE in at least France, Germany and possibly Australia. If the defendant was prepared to accept such a determination as binding, then it would at a stroke resolve the case in a time and cost efficient manner because then there would be no patent trials at all.
55. But, as I have said already, the court cannot and should not seek to compel or coerce a defendant into that position. The defendant in this case is entitled to challenge validity and infringement of the patents in suit.
56. In some ways I believe the position adopted by Vringo in this dispute confuses the true nature of its legal rights. Its rights are and are nothing more than patent rights. Although it is a truism that disputes of this kind often end up with a global licence, one needs to be careful turning that truism into something like a right to compel a defendant to enter into such a licence. The truism does not alter the character of Vringo's underlying rights.
57. Since the defendant wishes to challenge validity, then the issues proposed by Vringo are a major distraction and are potentially misleading. They have the capacity to create the idea that the defendant owes a sum determined as if it was willing to negotiate without determining validity or infringement.
58. In my judgment, the issue before me is not simply a matter of case management and consideration of the court's resources. In this case, I think it would be wrong to schedule a trial of the various declarations sought by Vringo before the trial of the patents in this case, and I will not do so.
59. Another important element, a case management element, which applies and is a reason why I should not schedule a major FRAND trial in advance of the patent merits is the following. I am not convinced that the patent trials on these patents will necessarily be as costly and as awful a prospect as Vringo's submission implies. When a putative licensor of patents has a portfolio of this kind, very often part of the value in the context of a negotiated settlement is the number of patents; but necessarily, for a given royalty rate, as the number of patents goes up, the value of an individual patent goes down. In cases of this kind, with a substantial portfolio of patents, it is

obvious that any royalty rate which would be commercially realistic in the telecoms field will mean that the value of an individual patent is of the same very rough order of magnitude as the value of cases proceeding in the Patents County Court. That is obviously a generalisation from cases in general but, as it happens, in this case one can be even clearer. Taking a royalty of \$2.50 per handset and six patents in the United Kingdom produces a royalty of something like just over 40 cents per handset; I will call it 30p. The damages cap in the Patents County Court, not the value cap, is £0.5 million. The number of handsets for 30p to aggregate to £0.5 million is 1.6 million, a substantial number in a country of 60 million people. I do not know how many Standard Essential Patents Vringo claims to have in the United Kingdom. I understand it is more than six, but it is choosing this six to sue on.

60. These numbers simply illustrate that, on a rough and ready basis, the figures are comparable to the sorts of value of cases routinely now heard in Patents County Court. I am not suggesting that these patents should be transferred to the Patents County Court, but it is an indication that it may be sensible to adopt some of the elements of active case management in the Patents County Court system, in order to ensure that a proportionate approach to these patents is taken. That is another reason why a large FRAND trial would not be sensible before these patent trials.

#### Vringo's alternative submission

61. In the course of argument, in part no doubt as a result of comments from the bench, Mr. Green, for Vringo, proposed a fall back. He submitted that the court should resolve what is a clear dispute on the pleadings between the parties, without getting into setting the royalty rate on what might turn out to be a wrong basis. The point is that Vringo says it has made a FRAND offer, complied with competition law and any other obligations, by offering a global licence on the whole portfolio of SEPs. Part of ZTE's case is that it is entitled to say, on a per patent basis, "Your patents are invalid, but if a given patent turns out to be valid and infringed, then we are willing to take a FRAND licence on that patent."
62. There is a dispute of principle wrapped up in this. Vringo says that the court could resolve the question of principle by resolving something like the following question: is a patentee, especially when it has a global portfolio of patents and the licensee is a subsidiary of a global group, entitled under competition law to refuse to accept per patent licences and to offer a global deal only?
63. Vringo says this is the real issue between the parties. Vringo says ZTE is not entitled to do what it is doing. Vringo says this question is a point which can be decided quite simply. It is a matter of law or principle. The court can assume that Vringo is in a dominant position for competition law purposes and it will only require a few days of court time. Although it will not decide the whole dispute, it is very likely to facilitate settlement. If Vringo wins, it will bring ZTE Corp to the negotiating table. If ZTE wins, Vringo will know its stance does not work. Vringo will need to rethink.
64. Vringo also relies on the position of ZTE Corp in this litigation. The action is between Vringo and ZTE (UK), but Vringo says ZTE Corp is a sensible counterparty for the global portfolio licence. The licence would be for the benefit of ZTE (UK), and Vringo says that in the real world this dispute will be settled eventually by the parties, Vringo and ZTE Corp, entering into some kind of global settlement.

65. Vringo says that in correspondence, Powell Gilbert, acting for ZTE Corporation in this context, explained that ZTE Corporation is willing to enter into a global deal of some kind; the only issue was about the terms. In paragraph 12 of his statement, Mr. Burdon says:

"ZTE (UK)'s position on the CMC is that the two cases should continue to proceed in the usual way of patent infringement proceedings as they have done to date. The issues on remedies will only arise if any of the patents are held to be valid and infringed. For the reasons I will explain, I consider that the court's judgment on the validity and infringement of the two sets of three patents in these proceedings will assist Vringo and ZTE Corp separately to negotiate a worldwide licence. I also consider it is an efficient and effective way to proceed. Further, Vringo's position regarding ZTE (UK)'s lack of entitlement to damages in lieu of an injunction raises possible competition law issues which might need to be referred to the CJEU."

66. Pulling all this together, I agree with Vringo that one aspect of the dispute between the parties does indeed relate to an argument about a global portfolio licence as opposed to a per patent licence. However, in my judgment, that dispute is not amenable to being resolved in the manner proposed by Vringo, because it is impossible to say in the abstract that a global offer is or is not anti-competitive. Whether it is or is not depends on all the terms. In other words, in fact this point could only be considered in the context of the whole licence proposal, which takes one back to Vringo's main application, which I have rejected.

67. In my judgment, it would not help to approach the case in this way.

68. I remain of the view that the best way to facilitate resolution of this dispute is for validity and infringement of the patents to be determined. That is the real issue between the parties.

69. It remains to be decided what to do:

- i) First, I am not prepared to schedule the FRAND case in the manner proposed by Vringo.
- ii) Second, the patent trials should come first.
- iii) Third, I do not accept that ZTE Corporation are an appropriate party at this stage in these proceedings. In my judgment, the issue which would make them an appropriate party is not ripe to be decided. I will therefore refuse the application to amend because the amendments seek to make ZTE Corp a party.
- iv) Fourth, I will schedule any remedies or FRAND issues to await the outcome of at least the first patent case in these proceedings. Once I have given this judgment, I will give directions to deal with the patent cases.

70. For those reasons, I will refuse the claimant's application.

