



Neutral Citation Number: [2019] EWHC 1982 (Pat)

Case No: HP-2017-000048

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

Royal Courts of Justice
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 22/07/2019

Before:

HIS HONOUR JUDGE HACON

Between:

CONVERSANT WIRELESS LICENSING S.à.r.l.
(a company incorporated under the laws of Luxembourg) **Claimant**
- and -
(1) HUAWEI TECHNOLOGIES CO., Ltd.
(a company incorporated under the laws of the People's
Republic of China)
(2) HUAWEI TECHNOLOGIES (UK) CO., LIMITED
(3) ZTE CORPORATION
(a company incorporated under the laws of the People's
Republic of China)
(4) ZTE (UK) Limited **Defendants**

MS. SARAH FORD QC (instructed by EIP) appeared for the Claimant.

MR. MICHAEL TAPPIN QC (instructed by Allen & Overy LLP) appeared for the HUAWEI Defendants.

MR. DANIEL PICCININ (instructed by Bristows LLP) appeared for the ZTE Defendants.

Approved Judgment

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,
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HIS HONOUR JUDGE HACON :

JUDGMENT ON CLAIMANTS' APPLICATION FOR DISCLOSURE

1. There is an application for disclosure. The claimant seeks disclosure by the defendants of licence and assignment agreements to which 3G and/or 4G patents comprise a significant element of the licensed rights entered into on or after 1st January 2011.
2. In relation to the Huawei defendants, the point made by the claimant is that Huawei have relied on a licence granted by Nokia in December 2017 as being a comparable licence relevant to the FRAND trial. The claimant's point is that there is no way of telling whether the licence is truly comparable to the licence to be settled at the trial or whether it is a complete outlier and thus of no comparative use. The claimant argues that the only way of resolving this is to look at other licences, that is to say licences granted to Huawei by other licensors.
3. There must be a realistic degree of proportionality when it comes to orders for disclosure like this one.
4. I was shown sections of the judgment of Birss J in *Unwired Planet* [2017] EWHC 2988 (Pat). It seems that the judge's experience in that litigation was that licences granted by third parties were of no help to him in resolving the issues he had to decide. There also seems to be a virtual certainty that an order for disclosure of licences and assignments as sought by the claimant would give rise to a significant increase in costs. It would likely involve, among other things, applications by the third parties who are party to the relevant agreements, making submissions about how the disclosure of confidential agreements should be handled.
5. With regard to the ZTE defendants, the point was taken that ZTE has raised an argument that bundling licences granted under SEPs with licences granted under non-SEP patents is contrary to EU competition law. I am not persuaded that looking at other ZTE licences will help the trial judge resolve the issue as pleaded.
6. It of course will remain open to the claimant at trial to make all the arguments it wishes about whether the licence relied on by Huawei is truly comparable given its content and for ZTE to argue about the lawfulness of bundling licences.
7. For those reasons, I will not order the disclosure sought.

JUDGMENT ON DEFENDANTS' APPLICATION FOR DISCLOSURE

8. The disclosure sought by the defendants consists of documents evidencing the transaction by which Conversant purchased patents in its portfolio from Nokia and/or 2011 Intellectual Property Trust, including in particular the valuation of those assets or the royalties or revenues anticipated to be generated.
9. The question is whether it would be relevant to the court at trial to know the value placed by Nokia and Conversant on a portfolio of patents of which the patents in issue at trial are a subset.

10. The value put on a patent portfolio must be directly tied to the royalties which the relevant parties believe can be generated by that portfolio. Of course, the subjective view of Nokia and Conversant in 2011 will not be a decisive guide to what the judge has to decide at trial. Nonetheless, it seems to me that it may provide some assistance to know the view taken in the market in 2011.
11. For that reason it seems to me disclosure of the relevant documents should be ordered.
