Neutral Citation Number: [2020] EWHC 2177 (Ch (Pat)

Case No: HP-2019-000014

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

Royal Courts of Justice
The Rolls Building
7 Rolls Buildings
London, EC4A 1NL

Wednesday, 22nd July 2020

Before:

MR. JUSTICE MANN

- -

Between:

(1) MITSUBISHI ELECTRIC CORPORATION
(2) SISVEL INTERNATIONAL SA **Claimants**

- and –

(1) ARCHOS SA
(2) SUN CUPID TECHNOLOGY HK LTD
(3) NUU MOBILE UK LIMITED
(4) ONEPLUS TECHNOLOGY (SHENZHEN) CO, LTD
(5) OPLUS MOBILETECH UK LIMITED
(6) REFLECTION INVESTMENT BV
(7) GUANGDONG OPPO MOBILE TELECOMMUNICATIONS CORP, LTD
(8) OPPO MOBILE UK LTD
(9) XIAOMI COMMUNICATIONS CO LTD
(10) XIAOMI INC
(11) XIAOMI TECHNOLOGY FRANCE SAS
(12)XIAOMI TECHNOLOGY UK LIMITED **Defendants**

- -
- -

APPROVED JUDGMENT

- -
- -

- - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - -

MS. SARAH ABRAM and MR. THOMAS JONES (instructed by Bird & Bird LLP) for the Claimants.

THE 1st DEFENDANT did not appear and was not represented.

MR. JEREMY HEALD (instructed by WP Thompson) for the 2nd and 3rd Defendants.

THE 4th DEFENDANT did not appear and was not represented.

MR. ANDREW LYKIARDOPOULOS QC (instructed by Taylor Wessing LLP) for the 5th, 6th and 8th Defendants.

THE 7th DEFENDANT did not appear and was not represented.

MR. DANIEL ALEXANDER QC and MR. COLIN WEST QC (instructed by Kirkland & Ellis International LLP) for the 9th to 12th Defendants.

- - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - -

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MR. JUSTICE MANN :

Judgment on Long-Stop Date

1. Ms. Abram, let us have the 10th August as the long-stop date. I think the order can provide a proviso with appropriate wording that you will, so far as practicable, provide them if available for disclosure before then.

Judgment on License Disclosure

2. The first point on which I am required formally to pronounce is whether the defendants at this stage should be required to disclose licenses that they have entered into, or in respect of patents which they use or need to use in their phones, other than the licenses which the claimants say they are obliged to take from the claimant.

3. The claimants urge upon me that these are comparables and Ms. Abram pointed to various parts of the defendants' pleadings which indicate that they are likely to be relevant, and that being the case, it would be right that they be disclosed now, and she pointed out that the claimants are themselves disclosing comparable comparables.

4. It seems to me to be virtually inevitable there would have to be an order for disclosure of this material but it is not satisfactory how it has been made to arise. This is effectively an application for disclosure which is not foreshadowed in the evidence, and which I am told without dispute, was raised for the first time when an attempt was made to introduce it into the wording of the draft order which is to be made as a result of this hearing.

5. I think that good order in conducting these cases requires that matters be properly or adequately foreshadowed and I do not think they have been in this particular case. I have the strong impression that the defendants are wriggling a little on this and that the matter is likely to be one only of timing but, nonetheless, generating some order is important, not simply for the sake of generating order but so these hearings can be conducted in an orderly fashion.

6. Mr. Lykiardopoulos explained to me, without evidence (but that is not surprising since he had inadequate warning of the application) that before any of these documents are disclosed notice would have to be given to some if not all counterparties. I accept that from him. That would not itself normally be a bar to my making the disclosure order but it is an additional complication. I can also foresee a further complication, which it is desirable to avoid at this stage, of a debate about how confidential these agreements are, and there is a real possibility that the disclosure will compound a debate which is going to have to happen at some point as to what one does about documents which are disclosed into a lawyer-only environment.

7. That is a point which is going to have to be addressed I do not think it would be useful at this stage to magnify it by adding this category of documents, notwithstanding I can see it is highly likely that they, or a class of them at any rate, will need to be disclosed at some point.

8. For those reasons, and with a degree of reluctance, I refuse this application at this stage. I am reluctant because I think it is only ultimately a matter of timing, and because I think to a certain extent the defendants are playing games in relation to this. I would not normally allow undue formality to stand in the way of something that needs to be done, but on this occasion I have sufficient misgivings about the procedure that has been adopted and the potential difficulties in the future, perhaps with the disclosure regime applicable to them, that I refuse this application.

Judgment on Disclosure of Assignments of Patents

9. The next question which I am called on to decide is whether or not the claimants should be required to disclose assignments of patents where assignees are members of the pool and the patents are pool documents.

10. The defendants seek disclosure, even at this initial disclosure stage, on the footing that these documents are relevant or potentially relevant. Mr. Lykiardopoulos has pointed out correctly that their relevance is not, at the end of the day, disputed by the claimant. It is no doubt felt that the valuation given to these patents is capable of contributing to an assessment as to the value to be attributed for FRAND purposes.

11. Mr. Lykiardopoulos, whose submissions are adopted by the other defendants, submits that it is appropriate to give disclosure of these relevant documents at this stage because they will be useful, if not necessary, for the purposes of the defendants fulfilling the obligation, which the claimants say they are under, and which they accept, to give further details of their FRAND case.

12. Ms. Abram, for the claimants, does not in the end dispute relevance, but she says these documents are, as she put it, in the outer ring of relevance. Of much more relevance are the comparables, which are going to be produced by the claimants in the form of licence agreements of various sorts, and the defendants will receive over 100 of those. She says it is better to form a view as to the real significance of this sort of evidence at a future disclosure exercise, which is already provided for by the parties agreed order.

13. At that later stage, it can be seen whether disclosure of these documents will add anything to the debate, which is to take place in the future, and whether or not it is necessary to add them to what Ms. Abram will say is the considerable body of evidence that they will by then have had.

14. I bear in mind that the disclosure which is being sought is part of initial disclosure. I would not normally order this sort of disclosure at this stage as part of an initial disclosure exercise, because *prima facie* it seems to be unnecessary and excessive to do so. There is much to be said for Ms. Abram's submission that it is better to form a view as to the necessity to disclose these documents at the next disclosure stage, particularly when one has the benefit of the defendants' more positive and one hopes more illuminating pleading as to what their FRAND case is.

15. However, it is the case that the defendants are to provide better particulars of their FRAND case and purpose of disclosure at this stage is to enable them to do so. In that context, it becomes appropriate for the defendants to have disclosure of these documents. I base my decision primarily on the fact that they say they will need it in

order to be able to do the exercise, which is required of them, of pleading their FRAND case properly.

16. In reaching my conclusion I do not, with all due respect to Mr. Birss J, rely particularly heavy on his decision in *TQ Delta v ZyXel* [2018] EWHC 2577 patents, to which I was taken by Mr. Lykiardopoulos. Mr. Lykiardopoulos relied in particular on the remarks about disclosure in paragraph 29. Time has not permitted a detailed study of the facts of that case. However, the fact that Birss J in that case thought a that assignment-type documents were relevant to his FRAND enquiry does not necessarily mean they are relevant to the present enquiry and certainly does not mean they are necessarily relevant for the purposes of disclosure at this stage.

17. However, bearing in mind the purposes of the initial disclosure and bearing in mind the defendants say they require them for pleading, I shall order this disclosure.

18. However, it come at a price for the defendants. I shall order it on the footing that to their obligations to provide disclosure of their FRAND case, there is added a particular obligation to indicate with clarity and with full particulars all the reliance that they place on any of the documents that are to be disclosed to them under this head. If it turns out that little or no reliance is placed on them, then these documents can be parked for the rest of the proceedings. I am taking the defendants at their word for these purposes that these are documents which are going to be very useful. I do not think that Mr. Lykiardopoulos put it as high as essential for the purpose of their exercise. That being the basis on which I order disclosure, they must indicate quite clearly in their exercise what reliance they place upon them. By "quite clearly" I do not mean some sort of passing reference. I mean that they must set out appropriately any analysis and rationale, which is based on these documents, so it becomes quite plain whether these documents are to have relevance or not. If it turns out that they do not and that Ms. Abram is right that they are in the outer and not in a particularly helpful ring of disclosure in this case, then it is hoped that they and their consequences can be parked thereafter. That seems to me to be an appropriate way of dealing with all questions of proportionality and timing and taking into account what the defendants say about the current need, and I stress the words "current need", for disclosure of these documents.

Judgment on Pool Royalties disclosure

19. Next on the agenda is an application by the defendants for disclosure by the claimants of the manner in which the royalties in respect of the pool are divided up between them. Mr. Lykiardopoulos, who effectively led on the application, sought to demonstrate relevance by reference to the fact that he has pleaded a reference at two points I think to this matter. That does not make the matter relevant for the purposes of disclosure. Mr. Lykiardopoulos has attempted to explain to me what the real significance of this is for the purpose of the exercise, and whether the fault be mine or not, I have completely failed to understand how at this stage it is really going to advance his case to know how the royalties are divided up within the royalty pool.

20. For her part Ms. Abram, for the claimants, does not accept that there is a relevance and she relies on paragraphs 31 and 32 of the third witness statement of Jane Mutimear, which explains that the division of the pool revenue is not by some mechanical basis such as the number of patents or contributions and so on, it is a

matter of individual negotiation between the pool administrator, Sisvel, and each individual member. There is not much more particularisation of how it is actually done. As Mr. Lykiardopoulos pointed out, what is said in paragraph 31 is what is not the case and we do not know what is the case. Be that as it may, I am not at all satisfied of the relevance of this matter at all, and certainly not for present purposes. On that basis, I am completely unconvinced that it will help at the moment.

21. It may be at a later stage, when the there has been some initial disclosure and a further pleading by the defendants, that it can be made apparent what the relevance is, preferably by way of a worked example. At the moment, I am not satisfied that this matter is sufficiently relevant certainly for initial disclosure. I therefore refuse this application by the defendants.

Judgment on FRAND Terms

22. Next is the question of whether the claimants should be required to state whether they have any basis for contending that the terms alleged by the claimants to be FRAND on any basis other than already set out in paragraphs 5-7 of the claimants' FRAND statement of case.

23. Mr. Alexander makes his application on the basis that there has been a suggestion in correspondence that the claimants may seek to rely on other reasons for saying that the terms which they say are FRAND are indeed FRAND. He says the seeds are sown for a degree of uncertainty. His submission is that if the claimants have any other reasons at present for saying that the terms they rely on are FRAND then they should put them forward now so that the defendants can meet them in the next round of pleading and going forwards. He is at pains to point out that he is not seeking to shut out any further grounds being advanced in the future, necessarily, and he is not seeking to shut out the prospect of any amendment of the claimants' case.

24. Ms. Abram, for the claimant, says that it is inappropriate to make such an order. It is either, she says, a rather silly dispute about pleadings and a storm in a teacup, or it is actually an attempt to try to shut out the claimants, or at least make life much more difficult for them in the future, if they have further and better thoughts which is entirely foreseeable in litigation of this sort.

25. I tend to regard this dispute as being at the "silly dispute on pleadings" end of the spectrum. At one stage I thought the matter boiled down to a request for further and better particulars of a particular allegation in paragraph 7 of the claimants' statement of case which said this:

> "The claimants will say that the comparable licenses demonstrate that the MCP Pool licence available and offered to the defendants is FRAND because, among other reasons and without limitation: …"

There are then five lettered paragraphs. I thought that the problem could easily be solved by requiring the claimants to give further and better particulars of the "other reasons" relied on under that paragraph. I can now see, with the assistance of Ms. Abram's analysis of the pleading, that that does not quite meet the point because the other reasons are for saying that the comparable licenses demonstrate FRAND;

they are not other reasons why FRAND is said to be what the claimants say it is. The difference is subtle but it is there and it is material.

26. Having heard the arguments on the point, I have determined that this is an order that I will not make. I do not consider that the sort of posturing on the part of the defendants which is involved in seeking this order is appropriate at this stage.

27. The parties seem to anticipate there will be shifts and changes in litigation such as this. It is indeed the case that the defendants have not yet put forward a positive case on what is FRAND in this case. There will inevitably be some shifts and changes. It is appropriate that any shifts and changes are dealt with by applications to amend, where appropriate, which can be agreed or resisted, where appropriate.

28. It would be inappropriate for the claimants to introduce a brand new case in reply and they seem to accept that. So it may be that if they have further and better thoughts as a result of the defence documents they may have to amend the particulars of claim. I would be surprised if there were not some other amendments in the particulars going forward in any event.

29. The attempt of the defendants in this particular way to pin down the claimants seems to me to be inappropriate. It can be assumed, or should be assumed, that the case which the claimants wish to advance at this stage is that set out in their pleading. If they wish to set out a different case in the future they will not be allowed to do so without an amendment which is either agreed by the parties or allowed by the court. That should be good enough.

30. There is in my view no real material for supposing that the claimants are holding something back for some nefarious or indeed any other reason. In my view the order in this respect which the defendants seek is inappropriate. I shall not make the order propounded in the defendants' proposal for paragraph 8 of the order.

Judgment on Statements of Case

31. Mr. Alexander seeks a direction that before the trial each side should put in what he originally described as a statement of case, setting out their final position in relation to FRAND, the calculation of FRAND and all relevant terms. That is proposed on the basis that these cases develop as they go through and parties' positions inevitably change as things happen, and it would be useful to have a crystallising document from each side. He proposes that such a document be prepared by each party eight weeks before the trial.

32. In debate with me he accepted that it did not necessarily have to be a statement of case in the technical sense, but could be a position statement or a document similarly described. It seems to me there is much merit in making such an order.

33. Ms. Abram said an order should not be made now, and that it would be more useful to deal with it perhaps at one of the future disclosure CMCs. I disagree. An order that I make can, if appropriate, be varied, but it would be useful for the parties to have a target and know that eight weeks before the trial the position on what each party says is FRAND will be crystallised in a position statement, which should not be a long elaborate document.

34. That will have a number of clear advantages. First, it will enable each party to understand clearly and finally what the other side is saying and might help to penetrate the inevitable fog from expert reports and the like. It will enable the parties to distil their positions as a result of expert reports and the meetings of experts, and it will provide a useful tool for the court in seeing in one place for each party clearly what they say the position is.

35. It could also conceivably be a useful tool to have before and for the purposes of the PTR, first so that the judge conducting the PTR can, if he or she thinks fit, review what those terms are, although I do not suppose they will be gone into in any great detail.

36. Second, should the preparation of such a document by any party lead another party to take a pleading point on it, that can be dealt with one way or another at the PTR.

37. For those reasons I consider there is much merit in this proposal. I think there is merit in setting it out now. I see no benefit in waiting until a further disclosure CMC and I can consider that waiting for the PTR, which was Ms. Abram's initial proposal, would be to leave it too late.

38. In the circumstances I shall make this order, but it should describe the document as a position statement. Calling it a statement of case brings with it the baggage which attends a statement of case, such as for example a statement of truth, which does not seem to me to be necessary, and it leaves open the question of an entitlement of a party to propose a statement of case if it is inconsistent with a previous pleading. It is much better to make it a position statement because that is what it is.

39. If it is a position statement technically it may be easier for a party to resile from it at trial. But a position statement of this nature and for these purposes should be treated as a document from which it would be pretty difficult to resile at a trial without good reason.

Judgment on "For Lawyers' Eyes Only" Mechanism

40. The next question I have to decide is the mechanism under which disputes about whether documents are fit for lawyers' eyes only should be resolved. The basic point in issue is this. Who should take the initiative in having the point decided by the court if it is necessary to do have that?

41. It is accepted in this case that a number of documents will be likely to be at least in the first instance appropriately disclosed as for lawyers' eyes only. It is I think accepted that there is a possibility that there are some documents which will remain in that category throughout. In any event, the parties having agreed a mechanism in which documents will receive an AEO designation (attorneys' eyes only designation), in order to protect the document from being further disseminated without any disputes about that being resolved. I think I can predict that there will probably be an over-enthusiastic application of that designation, but the parties have for the time being agreed that that designation may be applied to documents.

42. The dispute is about what happens about disputes. Putting the matter shortly, the claimants' case is that if a document is to be moved out of the category of AEO

document,s and it is not agreed what should happen, then the parties seeking to remove the documents from that category will have to make an application to the court to have the point decided.

43. The defendants' position, run principally by the Xiaomi defendants who argue this particular point through Mr. West QC, is that the burden should be the other way around. It anticipates a mechanism in which a receiving party will give some form of notice that it wishes to remove the document from the AEO category and the providing party will then have a period of time, initially put at 7 days but Mr. West seems to be prepared to go out to a longer period than that, say 14 days, in order to make an application to maintain status of the document. If the providing party does not make the application in time, the AEO protection automatically lapses.

44. Thus the dispute is: Who should have the burden of applying? In support of the proposition that the providing party should have the burden of making the application Mr. West QC urges upon me the decision of Roth J in *Infederation Ltd v Google LLC & Ors* [2020] EWHC 657 (Ch). In that case Roth J engaged in an extensive analysis of authorities dealing with the appropriateness of confining documents to lawyers and keeping documents from clients.

45. It would be impossible to do justice to his analysis in a couple of sentences. Suffice it to say that one of the things that one takes very firmly from that analysis is that keeping documents confined to lawyers only and not allowing clients to see them is a wholly exceptional course.

46. Mr. West says that the fact that it is a wholly exceptional course means really the burden should be on the person justifying its retention, both to establish the retention and take steps to retain it.

47. I do not see that Roth J's case really terms the question that I have to determine. What I have to determine is a question of practicalities. The consideration of whether a document should retain its AEO designation will be conducted in accordance with the principles extracted by Roth J in his case, whoever it is makes the application. To my eyes the question is one of practicalities and common sense. One could make a case for either mechanism and indeed Mr. West and Ms. Abram between them have sought to do so.

48. In my view, the position is that once a document has the designation, the convenient and most practical course will be for the person seeking to remove it to apply for its release. That is the best way of making sure that the release is properly reasoned and the extent of the release is properly described. Any party seeking a release from the AEO designation will need to indicate clearly who it is will see the document and make a case for that person seeing it in terms of litigation need, and make a case for that person seeing it in terms of reliability. I think that the resolution of that dispute is best served if there is an incentive on that person to set out the case at the earliest possible opportunity and not to have it come in in some form of evidence in answer to an original application to maintain the document.

49. I therefore consider that the claimants' mechanism is to be preferred, that is to say, the burden is on a person seeking to procure the release of the AEO designation to make the application. There will be, of course, an expectation of some preceding

correspondence and it is to be hoped that there will not be a whole series of ad-hoc applications as the case goes through. I have contemplated during the debate before me whether there is some mechanism or restraint that I can put in place at this stage to make sure that does not happen. A situation cannot be allowed in which a whole series of relatively short but significant disputes are sought to be got before the court in order to obtain the release of documents. At the moment I cannot determine in my own mind what that mechanism should be. However, the parties should be under no illusions that if this system presents the court with the prospect of a whole series of successive applications in relation to particular documents, rather than there being gathered under one application, then the court will devise some sort of restraint mechanism. I regret at the moment I am not able to devise one for myself, but it is likely to happen if the regime which is in place amounts to effectively abusing the court's goodwill in providing time. The dangers of that of course exist whichever side it is has the burden of making applications. So, I do not I think can reduce the potential burden on the court by making one side or the other be the applicant. The parties should take heed of my concerns about that.

Judgment on Foreign Lawyers and AEO Documents

50. Next I have to decide whether documents which go to attorneys' eyes only or lawyers' eyes only, which is a category of documents which is going to be significant in this case, should be allowed to be shown to foreign lawyers and not just English lawyers; or putting it another way, whether the only lawyers who can see it are English qualified lawyers or members of their staff, basically.

51. Mr. West, for Xiaomi defendants, seeks to have foreign lawyers brought into the category those whose eyes are permitted to see the very sensitive documents, on the footing that this sort of litigation is now very much internationalised and there may be foreign lawyers who will need to see the documents for the bona fide purposes of the English proceedings.

52. Ms. Abram, for the claimant, resists that. She points to the high degree of confidentiality of the documents and points to the fact that the confidentiality is not necessarily just that of her clients but also potentially that of third parties. She says there is no need for the expansion.

53. Mr. West, for his part, says there is a possible need for the expansion and that if necessary and appropriate any foreign lawyers who receive documents would be required to sign a confidentiality undertaking which makes them subject to the jurisdiction of the English courts, and which amounts as well to an undertaking to the English court. In that way, he seeks to bolster such constraints as independently exist on a foreign lawyer by foreign regulatory requirements.

54. It seems to me that we must be talking about a category of highly sensitive documents in this case. It is envisaged that a number of documents, perhaps a large number of documents, will start life with the AEO designation, although some of them may need to be moved from that and one can anticipate that they will be. It is unusual, if not exceptional, for documents first to go to lawyers and highly exceptional for documents to go to trial only having been seen by lawyers.

55. It seems to me that the parties are anticipating a particularly sensitive class of documents, which means that in the first instance the access to those documents should be restricted. It seems to me that access by foreign lawyers should come under the regime which has already has been put in place for extending access to documents beyond the attorneys' eyes. In other words, they should be treated as non-attorneys for these purposes. If it really does become necessary for foreign lawyers to see AEO documents then an appropriate application can be made and appropriate applications launched on the basis of need.

56. At the moment, bearing in mind the implicit high degree of confidentiality of these documents, I do not think it is desirable to grant a blanket permission to allow the documents to be shown to foreign lawyers, in whatever jurisdiction, and whatever regulatory regime may be thought to be operating in those jurisdictions. There are some jurisdictions in which it might be thought the regulatory regime is likely to be more rigid and protective than in others, but nobody has sought to dissect regulatory regimes in that manner. I however have the possibility in mind.

57. In the circumstances therefore I shall not allow these documents to go beyond English lawyers' eyes or the category of lawyers in the claimants' draft without invoking the exemption-obtaining mechanism which has already been put in place.

Judgment on Timetabling

58. I now have to deal with certain timetabling issues in relation to events for the rest of this year. The central issue was presented to me as turning on a CMC, which the parties have agreed should take place for two days, being rather generous with the court's time, in November. Ms. Abram made submissions as to how things should be geared around that.

59. I prefer to approach this whole question of the sequencing of the next stages in a logical fashion, which gives an appropriate amount of time to each step in the sequence, but keeps this matter on the rails so that it can be got ready for a trial in October 2021. I am invited to bear in mind difficulties that might arise if a CMC takes place in December, at the same time as technical trial 1 is going to take place, because part of the teams of at least one if not two of the sets of parties will be involved in both. I propose to pay less attention than I otherwise would to that factor. The parties have proposed a regime in which they are concurrently running both a FRAND trial and technical trial which might in theory render the FRAND trial irrelevant. If that means they have to split their teams, or a team has to split itself between two activities, that is a consequence of the way in which they have chosen to run matters.

60. I have heard significant debate on the timing for the next steps. First of all there is the timing for the defendants' next step, which is their restatement, as they would say or first statement as the claimants would say, of their position on FRAND. Mr. Lykiardopoulos, Mr. Alexander and Mr. Heald all seek 30th October. Ms. Abram suggests that the end of September is appropriate because they then have the summer to do it.

61. I am satisfied by reason of Mr. Lykiardopoulos' submissions that the burden on them of dealing with the disclosure, which they are getting precisely so they can plead

properly (as the claimants would say) is such that the end of September would not be appropriate, bearing in mind the difficulties of getting work done in August, even though if one is pressing on to trial it might be said that those difficulties ought to be overcome. I consider that the end of September, bearing in mind the impact of the vacation, and surprisingly nobody mentioned Covid, but the possible impact of that, is such that the end of September is a little over ambitious for, or over-onerous on, the defendants, who I accept have a lot of work to do. However I do not think that they should have as long as the end of October to do it. I consider that they should have their new pleading ready to go by Friday 16th October.

62. I do not accept Ms. Abram's submissions that the defendants are seeking time for something which they should have done before. Even if the defendants had pleaded more fully before now they would still be re-pleading on the basis of disclosure that they have not had that hitherto. I consider the 16th October gives an adequate period of time to enable the defendants to take their next step.

63. The next step after that is the claimants' reply. I think that Ms. Abram's first bid was 6-8 weeks for their reply. I bear in mind that what they are doing is a reply. They will not be doing all the work that the defendants are doing on the disclosure they are being given, and that their reply ought to be responsive. I do not think, in the interests of pursuing the case and getting matters done in an orderly fashion, they should have as long as the 6-8 weeks that she specifies. I think the reply should come in at a time which presents some prospect of dealing with disclosure issues arising out of the reply at the CMC, which I propose to order be heard in the last complete week of term, which is week beginning 14th December, subject to the clerk of the lists being satisfied that it is practicable.

64. That is an important matter and the order should express the date for the CMC in terms of "if practical" because I may be told that that is not a practicable week to hold a CMC. In order to give some prospect of being able to deal with post reply issues of disclosure at that CMC and not merely post defence issues of disclosure, I propose to order that the claimants' reply shall be provided by Wednesday 18th November. That leaves five and a half weeks for the reply, which as far as I can tell at the moment is a legitimate period of time in respect of which to have that work done.

65. If that conflicts with trial preparation then somebody must fix that problem. There is inevitably going to have to be some concurrent activity, whichever version of the timetable one adopts. That enables a view to be taken as to whether or not useful post reply disclosure can be dealt with at the CMC in the date that I have provided.

66. I propose to order that the CMC be listed for 1-2 days, but that will be qualified by practicability. If the parties are told they can only have one day by the clerk of the list then that is how long it will take. That timetable should satisfy the needs of each of the parties. If there is any slippage they can agree between them, but the object of the exercise is to make sure as much is done as possible before the CMC. If the court is to make a judge available for the CMC, on what would be an expedited basis if a two day hearing is requested, the parties should be expected to work hard in order to be able to achieve that. Those will be the dates for the next phase of the operation.

67. I do not think the stringency applies to the next level down. I will not confine that to UK lawyers. I will allow foreign lawyers, but they will have to give the undertaking.

-- -- -- -- -- -- -- -- -- --