Neutral Citation Number: [2022] EWHC 1745 (Pat)

Case No: HP-2021-000023

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

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

Date: Wednesday, 6th July 2022

Before:

MR. JUSTICE MEADE
Remotely via Microsoft Teams

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Between:

NOKIA TECHNOLOGIES OY **(a company incorporated under the laws of Finland)**	**Claimant**
- and -	
(1) ONEPLUS LIMITED TECHNOLOGY (SHENZHEN) CO., LTD **(a company incorporated under the laws of the People's Republic of China)** **(2) UNUMPLUS LIMITED (t/a OnePlus)** **(3) GUANGDONG OPPO MOBILE TELECOMMUNICATIONS CORP, LTD** **(a company incorporated under the laws of the People's Republic of China)** **(4) OPPO MOBILE UK LTD**	**Defendants**

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MR. MICHAEL TAPPIN QC (instructed by **Bird & Bird**) for the **Claimant**

MR. GUY BURKILL QC and **MR. DANIEL SELMI** (instructed by **Hogan Lovells International LLP**) for the **Defendants**

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Approved Judgment

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd
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MR. JUSTICE MEADE:

1. I am asked to rule on whether the defendants should be allowed to put in a Civil Evidence Act Notice introducing a statement by a gentleman called Mr. Mirea, from Qualcomm, who are the chip designers. I am going to keep my reasons skeletal out of an abundance of caution, since this relates to information said by Qualcomm to be highly confidential. But I think I can give adequate reasons for my conclusions on this essentially procedural issue without getting into the technology. In outline Mr. Mirea's evidence speaks to a change to the software in the relevant chips and the reason for doing it, and he speaks to a particular version of the software. His statement that is sought to be introduced is extremely high-level, and other than reference to some very brief comments in the code itself, there are no supporting documents to verify the intention for the change.

2. The change, as related by Mr. Mirea, has been mentioned in the expert evidence of the defendants' expert, Dr. Crols. The CEA Notice was served late but Nokia, very sensibly, are not taking technical procedural points about whether the statement should come in or not. Nokia's resistance is that it is irrelevant for Mr. Mirea to give evidence about the subjective intention when the fundamental question for me at trial will be how the device actually works.

3. I very largely, I have to say, accept Nokia's submission and it may, therefore seem ironic or inconsistent for me to be allowing the statement in, but I think the statement is also of some potential relevance if there were to be some question about which code version is the right version or when changes were made (although it is to be hoped that that will not be a necessary debate at trial) and it gives some sense of overall consistency to the defendants' case, having regard to the experiments that are in the case and other aspects of Dr. Crols's evidence. I think it cannot absolutely be excluded that the statement will turn out to have some marginal relevance.

4. With considerable reservations, I will let the statement in now, but my mind remains open to coming down more firmly on this matter and deciding that the statement is, in fact, irrelevant, either at the PTR (which I will be hearing) or at the trial, which again I will be hearing, when matters have clarified further. But I think the safe course at the moment is to let it in.

5. I will also give Nokia permission to call Mr. Mirea for cross-examination, which I have to say I do not have a great deal of confidence in happening, but I will give them permission to seek to bring that about.

6. I will also say that there are quite clearly severe questions over any weight which might ultimately be given to the statement, either because it is impossible to cross-examine to it or because such cross-examination as takes place happens against a background where Nokia have no documentary material to scrutinise or to use to challenge it, through Qualcomm's choice. In the course of argument, I have indicated that I am not entirely comfortable about the way material being brought into the case is being controlled by Qualcomm. In saying this, I cast no aspersion on that company's propriety; they have their own interests to protect, but I am not finding it helpful.

7. This means, I am afraid, some procedural burden on Nokia, but I think, really for the same reason given by Mr. Tappin as to relevance, that this will turn out to be a very

small corner of the case, with only a modest degree of frictional procedural overhead. I will be paying close attention to that and to the costs implications of letting this statement in, in due course.

8. I do urge the defendants, in particular, to keep the position constantly under review, because such benefit as there is of this statement is modest and perhaps, on reflection at some point, the defendants will consider that they do not need it after all.

9. I just make two other observations about procedural context. Matters are moving quickly. The defendants have provided more detail of that which they want a declaration of non-infringement about, and that forms something of the backdrop to this hearing. When the dust settles over that, it may be that that facilitates a decision by the defendants over Mr Mirea's statement.

10. Secondly, I have said already that Dr. Crols has referred to the Mirea statement and I think it would be an undesirable burden on him to have to change his report to take that out or for him to have to reflect on how much difference it makes if he cannot rely on it. Again, this may turn out to be a very minor part of the picture, but I think that is one task that could probably be done without at the moment.

11. That is my ruling. I admit the statement, subject to the procedural steps and the reservations that I have indicated during these reasons.

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