



Case No: HP-2021-000047

**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, 22<sup>nd</sup> November 2023

**Before:**

**MRS. JUSTICE JOANNA SMITH DBE**  
**Hybrid via Microsoft Teams**

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**Between:**

**INTERDIGITAL TECHNOLOGY  
CORPORATION  
(and others)**

**Claimants**

**- and -**

**ONEPLUS TECHNOLOGY (SHENZHEN) CO.,  
LTD.  
(and others)**

**Defendants**

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**MR. NICHOLAS SAUNDERS KC, MR. CHRIS HALL and MR. EDMUND EUSTACE**  
(instructed by **Bird & Bird LLP**) for the **Claimants**  
**MR. COLIN WEST KC and MR. RAVI MEHTA** (instructed by **Taylor Wessing LLP**) for  
the **Defendants**

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**APPROVED JUDGMENT**  
**(re: provision of disclosure and inspection of documents)**

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,  
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**MRS. JUSTICE JOANNA SMITH DBE:**

1. The next application that I need to deal with at this case management conference is an application by the Defendants for the provision of disclosure and inspection of documents evidencing the Claimants' internal reasoning for entering comparable licence agreements at the rates agreed, for example, internal deal memoranda, board minutes and board papers, or other documents submitted to key internal decision makers.
2. This application is opposed by the Claimants. However things have moved on since the service this morning of the third witness statement of Ms. Stephens (on behalf of the Claimants) who indicates that information in the form of Deal Approval Documents could (if the court were to make an order for disclosure) be provided on 27th November 2023. Mr. West has informed the court that, for present purposes, the Defendants would be prepared to limit their application for disclosure to cover the Deal Approval Documents identified by Ms. Stephens, subject to the caveat that they may wish to renew their application once they have had an opportunity to review those documents.
3. Notwithstanding the apparent narrowing of the issues precipitated by Ms. Stephens' statement, the Claimants continue to oppose the application. Neither party addressed me in any detail on the principles to which I should have regard in relation to a disclosure application of this sort, but, in general terms, I must have regard to the overriding objective and, in particular, in this context, to issues of proportionality.
4. Both parties accept that documents of this nature are of peripheral relevance at best in the context of the trial and, for that reason, disclosure applications for similar types of document have been rejected in other FRAND cases.
5. However, in this particular case, Mr. West has shown me the evidence served by the Claimants for trial in three witness statements, each of which addresses the question of the subjective internal decision-making and internal views and assumptions of the Claimants at the time of entering into the comparable licences.
6. In circumstances where the Claimants have seen fit to lead evidence of this type in their witness statements for trial (and will therefore presumably be inviting the court to place weight on such evidence at trial), it seems to me that it would only be fair and just and in accordance with the overriding objective for the Defendants to have access to the Deal Approval Documents identified by Ms. Stephens. Such documents may well, as Mr. West submits, cast light on the accuracy of the evidence in those witness statements.
7. Of course, as I have said, there will often be a proportionality issue with this type of application because the documents are accepted as not being of central importance. However, proportionality must be considered on two distinct bases; first the practicality of disclosure of the documents (i.e. the cost and complexity of producing the material) and second their likely significance at trial. In this case, the first limb (the practicality of disclosure of the documents) creates no real difficulties where the Claimants have already indicated that they can provide the Deal Approval Documents by 27th November. I am accordingly only left with the question of proportionality for the purposes of the trial in circumstances where it is common ground that the documents are of peripheral relevance.

8. On balance, it seems to me that, given the content of the Claimants' witness statements, these are documents that the Defendants should be entitled to see. The category of documents sought is limited to documents relating to approval of any deal in its final form by the relevant individuals. The Claimants have themselves put the matter of their internal decision making in issue in their evidence and the documents identified by Ms. Stephens have already been located and can be easily provided.
9. In the circumstances I am going to make an order for disclosure at this stage only of the Deal Approval Documents with liberty to apply.

*(For continuation of proceedings: please see separate transcript)*