



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)**  
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**Defendants**

**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-designation of Dr. Padilla's report)**

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

1. At this CMC there are a number of applications that I need to deal with. The first concerns the Defendants' application for the re-designation of Dr. Padilla's first expert report dated 20 October 2023 and the Annexes thereto from "External Eyes Only" to "Highly Confidential", pursuant to the Confidentiality Order of 19 July 2022.
2. The Claimants do not object to this re-designation, but they point out that they have informed counterparties to the various comparable licences dealt with by Dr Padilla in his report of the proposed re-designation and that two of those counterparties have indicated their objection. One counterparty has said that it does not object and one has not provided any response.
3. The two counterparties that have registered an objection have done so, as I have seen today, in the briefest of terms, providing no real reasons as to why they consider that the report should continue to be designated as for "External Eyes Only".
4. I accept the submission from Mr. West KC, on behalf of the Defendants, that this plainly indicates a low level of concern on their part. The fact that other counterparties have not objected to the proposed re-designation only serves to support the fact that it cannot sensibly be regarded as being of serious concern. Mr. West correctly points out that it is incumbent upon the counterparties to justify what is a rare and stringent form of order in relation to confidentiality and their responses have simply not provided any such justification. They have not felt it necessary to explain their objections in a letter to the court and nor have they attended the hearing today to make any representations to the court, notwithstanding that they have been notified of this hearing by the Claimants' solicitors.
5. In all the circumstances, I can attach very little weight to their objections and, in the absence of any dissent from the Claimants, I will make the order that is sought by the Defendants.
6. In conjunction with that order, I will also make the additional order that is sought by the Defendants to admit Mr. Xiao (in place of Mr Huang) to the Defendants' HCONF club. The application for this substitution to take place was also notified to the counterparties to the licences referred to in Dr Padilla's report and again they objected only in the same vague terms used to object to the re-designation. They raised no additional concerns around Mr Xiao's inclusion. Once again, therefore they showed a very low level of concern.
7. One further issue arises however. The Claimants have expressed concern at the potential for Mr. Xiao to change his role. As things stand, the Claimants have been assured by the Defendants that Mr Xiao's role does not create any difficulties for his admission to the HCONF club owing to the fact that it is litigation based; he is managing these proceedings, together with Mr Peng, on behalf of the Defendants. However, the Claimants are understandably concerned that if his role were to change (for example if he were to become involved in the negotiation of licences), that would affect their willingness to consent to his inclusion in the HCONF club and accordingly they would want to know about it. The Claimants have therefore invited the court to order that, if and in so far as Mr. Xiao is to be included in that club, as requested, the Defendants should be obliged to inform the Claimants of any role change.

8. Mr. West opposes this suggestion on the basis that it is not necessary, that by the time of the trial in February there will be no further evidence likely to go into the confidentiality ring, with the possible exception of documents relating to the Samsung 2014 licence, and that any question surrounding Mr Xiao's role can be dealt with at the proper time when, and if, any further material is re-designated.
9. Doing the best I can on the submissions of the parties, and bearing in mind that this issue also engages concerns expressed by two of the counterparties in relation to confidentiality, I consider that it would be preferable, as Mr. Saunders KC, on behalf of the Claimants, suggests, if the Defendants were to update the Claimants in the event that Mr. Xiao's role changes in the future and they should do so within seven days of any such role change. On that basis I will permit his admission to the Defendants' HCONF club.

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