

DANIEL PICCININ KC and FEMI ADEKOYA (instructed by **Taylor Wessing LLP**) for **Warner Bros**

NICHOLAS SAUNDERS KC and EDWARD CRONAN (instructed by **Bird & Bird LLP**) for **Nokia**

ANTON DUDNIKOV KC and KYRA NEZAMI (instructed by **Kirkland & Ellis International LLP**) for **Paramount**

**Approved Judgment
(On Application)**

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

1. This is a hearing at which Warner Bros seeks the continuation of the anti-anti-suit relief it obtained from Mellor J ([2025] EWHC 2888 (Pat)). Warner Bros is represented by Mr. Piccinin, King's Counsel; Nokia by Mr. Saunders, King's Counsel; and Mr. Dudnikov, King's Counsel appears for Paramount, who are not actively seeking the continuation of any injunctive relief, but who say that they ought to have the same protection that Warner Bros obtain, if any.
2. After helpful discussion, some draft undertakings by Nokia have been prepared which require only a small number of tweaks so as to set out their scope, but the fundamental question remains between Warner Bros and Nokia of whether those undertakings should be contractual, as Nokia contends, or undertakings to the Court, as Warner Bros contends.
3. I have been taken to the correspondence and the evidence and a number of the authorities, including my own decision in *Philips v. Oppo* [2022] EWHC 1703 (Pat). I think the position in principle is this: there is a significant difference between an undertaking in contract and an undertaking to the Court because the latter has the equivalent compulsive power as an injunction, whereas the former is only remedied by a contract claim.
4. Nokia objects to giving undertakings to the Court because it says that it ought not to be subject to an injunction, so it ought not to be subject to equivalent relief, and it has given the Court no reason to suppose that it would break a contractual promise. Warner Bros, on the other hand, says that there is a risk with a contractual promise from Nokia because if Nokia were to break it and apply for anti-suit relief in the courts of, in particular, Germany or the UPC, and were to get that relief, which on the current state of events has to be at least significantly likely, then there would be no way back and these proceedings would be effectively over.
5. In my view, Nokia does not stand in the same position as Oppo in the previous case before me or, indeed, in an identical position to any other litigant. Its position has to be assessed on its own merit and on the facts. Nokia has created no reason to suppose that it would break a contractual promise if it was clear. I think Nokia is right that it ought not to be put in the position of being perceived as a party that requires the coercive sanction of contempt to keep its promises. It has not, in this litigation, so far as I can see, or previously, done anything to lead me to conclude that it might break a contractual promise.
6. It has sought various forms of anti-suit relief in the past, in particular anti-anti-suit relief to protect its own ability to bring patent infringement proceedings but, as Mr. Saunders points out, that is a quite different matter and is regarded as much more conventional and protective than the sort of anti-suit relief now the subject of a debate between this Court and the courts of Germany and the UPC. Mr. Saunders has been very clear that Nokia, as it were (and these are not his words) stakes its reputation on being seen to honour a contractual promise that it gives to Warner Bros in the sight of the Court at this hearing and I accept that.

7. It is fair to say that Nokia has not been entirely clear about exactly what contractual promises or other promises, indeed, that it would give, and there has been a good deal of correspondence about that, including a certain amount of shadow-boxing on both sides. But the question of whether the contractual promises in their scope were clear from the very outset is totally different to my mind from the question of whether Nokia will honour its promises once they are given and I think that I can have a very high degree of confidence that they will.
8. Mr. Piccinin says that protection, backed by the force of contempt, is necessary and that there is nothing going the other way. But I disagree: it is an important point of perception for a company such as Nokia whether it is compulsorily made subject to an order the equivalent of an injunction or not. That goes the other way to a significant extent.
9. There are one or two additional safeguards that have been thrashed out in the course of argument before me. In particular, it is agreed that Nokia's contractual undertakings can be enforced in these proceedings without the necessity for fresh proceedings for breach of contract. There is a provision for service and Nokia agrees and indeed proposes, which I consider sensible, that the contractual undertakings should be expressly said to be subject to English law and the jurisdiction of this Court. I also think it is appropriate, and Nokia accepts this, that the same regime should be put into place between Nokia and Paramount.
10. So, for those reasons, I am willing to accept Nokia's contractual undertakings and the corresponding undertakings from Warner Bros or Paramount, as the case may be and, on that basis, subject to deciding with counsel for how long they should last and in what event they can be discharged, that is what I will do.

(For continuation of proceedings: please see separate transcript)

11. Nokia express, through Mr. Saunders, a concern about the way in which service was accomplished in the orders made by Mellor J for service out. That is the Order of 3rd November entitled "Service Out Order" and the Interim AASI Order, also of 3rd November, which is the one that is just headed "Order", with "Penal Notice". Mr. Saunders explains that it is a matter of concern to Nokia and I think, also, to Bird & Bird, that service of the Claim Form, the Particulars of Claim and other related documents was to be permitted by (i) e-mail to Mr. Waxler, a Senior Director at Nokia, and two partners at Bird & Bird and (ii) by post or courier to three addresses in the jurisdiction which, as is explained in the written evidence, are not the addresses of the Nokia entities who are the defendants in these proceedings. I make it clear that is the assertion made in evidence and I have not tested that.
12. That is how service out of the proceedings was to take place and service of the injunction was governed by paragraph 16 of the AASI Order and was by similar means. Nokia expresses a concern about service to law firms not yet on the record, by e-mail, primarily, but I think also to the addresses of entities who are not parties, and says that it does not want this to become the default option.
13. It is not my function today to review, in the nature of an appeal or otherwise, the decision of Mellor J. He was dealing with a situation where there was an

application for an urgent *ex parte* injunction and for service out of the proceedings as a whole. But I record simply that his judgment did not say that this sort of service of proceedings as a whole was to be routine and no decision has been made that it is. In every case, it will have to be decided on its facts and I do not think Mellor J was doing anything differently from that. I record also that I make no criticism at all of the way in which Warner Bros and its advisers proceeded in this way, but I do confirm that this sort of service out of substantive proceedings is not the default and was not said to be such by Mellor J.

14. The only practical consequence is that, from here on out within these proceedings, Bird & Bird is on the record and service can be made to it in the normal way and that, therefore, paragraph 3 of the Service Out Order can be discharged, not because it was wrong and not in the spirit of criticism, but simply because it has now become unnecessary.

(For continuation of proceedings: please see separate transcript)

15. I have declined to make an order to mediate, However, I will direct the parties to exchange mediation proposals by 12th December. Before 12th December, the parties' solicitor representatives are going to have a without prejudice call to discuss what is going to go into those proposals. I will also direct there to be a hearing of up to an hour this term before me to discuss mediation further.
16. I will direct there to be a hearing with a time of estimate of one day to take place in the week commencing 15th December (if practicable) to consider any application for an expedited RAND trial made by Paramount by 3rd December. Warner Bros have not as yet made an expedition application, and these directions will have to be reviewed (not necessarily requiring a hearing) if Warner Bros make such an application (and/or if Paramount do not make an application by 3rd December).
17. I am going to make the jurisdiction hearing not before 2nd February 2026 and adjust the dates to give the little bit of extra breathing room that has been requested before that. Warner Bros have had a tremendous amount on their plate, that is obvious, but I do encourage them and indeed Paramount to give thought to how they can progress the proceedings, and their position, even without early disclosure, because other litigants have managed to. I am not criticising, but other litigants have managed to do useful work in the period pending early disclosure.
18. But in any event I will not let the extra couple of days that Mr. Saunders has asked for prevent an expedited trial if I am otherwise persuaded to do one.
