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Standard Essential Patents – UK moves closer to FRAND rate setting for patent pools

The landmark 2020 decision of the UK Supreme Court in *Unwired Planet v Huawei* [2020] UKSC 37 determined that the English Court has the power to set global FRAND rates.

In a further development, on 27 July 2026, the UK Supreme Court issued its decision in *Tesla v InterDigital & Avanci* [2026] UKSC 27, giving a strong indication that the English Court may also have the power to set global FRAND rates for pools of standard essential patents.

This note summarises the context of the *Tesla* decision and the key findings of the UK Supreme Court. The potential implications for patent owners and implementers are also discussed. References in this note are to paragraphs of the judgment.

I. Context

The context is that Tesla, the implementer, intends to launch 5G-enabled vehicles in the UK (its fourth largest market) and requires access to 5G technology protected by UK standard essential patents ("**SEPs**"). Avanci operates a platform through which 89 SEP owners (including InterDigital) collectively license approximately 170,000 5G SEPs to vehicle manufacturers for a single fee ([35], [73], [163]). Notably, Avanci itself owns no SEPs, has given no fair, reasonable and non-discriminatory ("**FRAND**") undertaking to the relevant standards-setting organisation (ETSI) and can only license the whole platform collectively – not any subset.

Ahead of launch, Tesla commenced proceedings in England against InterDigital and Avanci seeking declarations that (i) it was contractually entitled to a FRAND licence to the 2G-5G SEPs of all licensors on the Avanci 5G platform (including InterDigital's UK SEPs); (ii) the FRAND licence extended to the entirety of the Avanci 5G platform; and (iii) the current Avanci rate was not FRAND, together with a determination of the correct rate (the "**Licensing Claims**") ([42]).

At first instance, the High Court struck out the Licensing Claims, holding there was no serious issue to be tried. A majority of the Court of Appeal dismissed Tesla's appeal, holding that the FRAND obligation had no application to collective platform licensing and that the declarations sought would not be useful or legitimate. Arnold LJ gave a dissenting judgment and would have allowed the appeal.

II. Judgment

The UK Supreme Court unanimously allowed Tesla's appeal and dismissed InterDigital's cross-appeal (Lord Kitchin and Lord Hamblen giving a judgment with which Lord Sales, Lord Briggs and Lord Burrows agreed), ruling that:

- **There is a serious issue to be tried:** (1) Licensing via a platform does not release SEP owners from their FRAND obligations ([83]–[92]); (2) Tesla has a real prospect of establishing at trial that the only FRAND licence of InterDigital's UK SEPs is a global licence to the entire Avanci 5G platform, given the evidence that many licensors rely on the platform licence to satisfy their FRAND obligation and the commercial impracticability of negotiating thousands of bilateral licences ([96]–[103]); and (3) Tesla has a real prospect of obtaining the declarations sought against both InterDigital and Avanci as its agent (even though Avanci is not itself subject to the FRAND obligation) ([126]–[145]).

- **The English Court has jurisdiction:** (1) Properly characterised, the Licensing Claims relate principally to InterDigital's UK SEPs on the platform, notwithstanding that only a global licence would be FRAND or that UK SEPs form a small proportion (7%) of the whole portfolio ([154]–[177]); (2) the Licensing Claims were properly served as claims "relating to" UK registered patents ([178]–[203]); and (3) the Delaware Court of Chancery would not determine a FRAND rate for non-US patents and so was not an available forum ([204]–[216]).

III. Comment

This is an important decision which potentially widens the scope of FRAND litigation in the United Kingdom with implications for SEP owners, implementers and patent platform/pool operators across the telecommunications, automotive, IoT and audiovisual sectors.

It was established prior to the *Tesla* decision that both SEP owners and implementers can seek FRAND declarations in England. But, for SEP owners, it can now no longer be assumed that licensing via a pool or platform will insulate those licensing rates from scrutiny. For implementers, the *Tesla* decision signals that a potentially powerful and cost effective tool may be available: a single UK claim, brought proactively and without waiting to be sued, that could be used to test the FRAND-compliance of an entire global platform rate.

The decision reaffirms the English Court as the preeminent forum for resolving global FRAND disputes and reinforces the value and leverage which can be obtained from a UK FRAND determination. That leverage is worth reiterating. An implementer that declines to enter into a court-determined FRAND licence may face exclusion by injunction from the UK market ([22], [126]). Similarly, SEP owners that decline to offer a licence on court-determined FRAND terms cannot exclude the implementer from the UK market by injunction ([126]). Such an SEP owner may also be judged by the English Court to be an 'unwilling licensor', with potentially wide implications for its own patent licensing programme.

This final appeal conclusively decides that Tesla's claim passes the threshold "serious issue to be tried" test such that the English Court has jurisdiction to try the case. The case now returns to the

High Court where it will progress toward substantive determination.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to reach out to:

David Lancaster
Partner and Head of Intellectual Property Litigation in London Office
London
davidlancaster@quinnemanuel.com, Tel: +44 20 7653 2080

Samuel Mitchell
Senior Associate
London
samuelmitchell@quinnemanuel.com, Tel: +44 20 7653 2009

Byron G. Turner
Associate
London
byronturner@quinnemanuel.com, Tel: +44 20 7653 2122

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