



Neutral Citation Number: [2019] EWHC 927 (Pat)

Case No: HP-2018-000025

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: Monday 1st April 2019

Before:

HIS HONOUR JUDGE HACON
(Sitting as a Judge of the High Court)

Between:

(1) ABLYNX N.V.
(2) VRIJE UNIVERSITEIT BRUSSEL

Claimants

- and -

(1) VHSQUARED LIMITED
(2) UNILEVER NEDERLAND B.V
(3) UNILEVER NEDERLAND HOLDINGS B.V.
(4) UNILEVER RESEARCH AND
DEVELOPMENT
VLAARDINGEN B.V.
(5) UNILEVER VENTURES HOLDINGS B.V.
(6) UNILEVER N.V.

Defendants

MS. LINDSAY LANE QC (instructed by Linklaters LLP) appeared on behalf of the
Claimants

DR. JUSTIN TURNER QC (instructed by Bird & Bird LLP) appeared on behalf of the
Defendants

Approved Judgment

Transcript of the Stenograph Notes by Marten Walsh Cherer Limited,
1st Floor Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. Fax No: 020 7831 6864 DX 410 LDE

Email: info@martenwalshcherer.com

Web: www.martenwalshcherer.com

HIS HONOUR JUDGE HACON:

1. Following my judgment dated 29th March 2019, it is accepted by the parties that the time for service of the second acknowledgment of service by the defendants be extended until their appeal has been finally determined. I have given the defendants permission to appeal the substantive part of the order made following that judgment and they have undertaken to apply to expedite that appeal.
2. The claimants apply for an order that the defendants should serve their Defence within the next few weeks and that a trial date be fixed. Mr. Turner, who (as before) appeared for the claimants, submitted that this can be done without affecting the defendant's challenge to the jurisdiction of this court. I was referred to the judgment of Blair J in *Deutsche Bank AG London Branch v. Petromena ASA* [2015] EWCA Civ 226; [2015] 1 WLR 4225 and the judgment of Henry Carr J in *Conversant Wireless Licensing SARL v Huawei Technologies Company Limited* [2018] EWHC 2016 (Ch).
3. Following those authorities, it seems clearly possible for me to make an order that the Defence be served without affecting the claimants' challenge to this court's jurisdiction. On the other hand, I do not take from those two cases the proposition that such an order should be automatic. On the facts of both there would have been a considerable prejudice to the claimant if no order for service of the Defence had been made.
4. The main question I must decide is whether the claimants in this case would suffer sufficiently significant prejudice if I were not to make the order requested. Mr. Turner said that the application for a stay made by the defendants had always been tactical and although it had failed, not having to serve a Defence soon would still give rise to delay. That may be true, but if the defendants had been entitled to stay these proceedings pursuant to the Brussels I Regulation recast then these proceedings would have been stayed. Seeking a stay was a point which that the defendants were always entitled to take.
5. Mr. Turner also pointed out that the defendants may succeed in the Court of Appeal in overturning my order refusing a stay. That would lead to the dispute being decided in Brussels. In Brussels, he said, several outcomes were possible which would lead to considerable delay.
6. If all this happens there will certainly be delay in resolving the dispute, but an order today requiring that the Defence be served within a few weeks is not going to make any difference.
7. The real potential prejudice to the claimants is that if the appeal from my order today is not successful, the trial may happen a little later if the Defence has not been served by the time of the appeal.
8. The prejudice to the defendants if I order them to serve a Defence is said to be twofold: first, they will incur costs in drafting the Defence; secondly, they say that if they succeed on appeal and the dispute is heard in Brussels, the court in Brussels might be persuaded that because a Defence has been served in this jurisdiction and a trial date fixed, the defendants have submitted to this jurisdiction. As to the second, that should not happen. On the other hand, it is possible that money will be wasted on such an argument in Brussels and costs and delay thereby incurred.

9. It seems to me that the real factor which will determine whether these proceedings move forward speedily or less so, is whether the Court of Appeal takes the view that the appeal from my order merits expedition. If the Court of Appeal decides that expedition is merited, there will be an early appeal and thereafter the Court of Appeal can either give appropriate directions for the pleadings or can remit that matter to this court to be decided in fairly short order.

10. It seems to me that the balance of prejudice favours no order now requiring the defendants to serve a Defence, with the costs that would involve. The speed at which these proceedings move forward should be left to be decided by the Court of Appeal.
