Neutral Citation [2021] EWHC 46 (Pat)

Claim No: HP-2019-000036

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (Pat)
PATENTS COURT

Royal Courts of Justice
Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 14 January 2021

Before:

THE HONOURABLE MR JUSTICE MARCUS SMITH

BETWEEN:

(1) TOP OPTIMIZED TECHNOLOGIES SL
(a company incorporated under the laws of Spain)
(2) TOT POWER CONTROL SL
(a company incorporated under the laws of Spain)

Claimants/Respondents

- and -

(1) VODAFONE GROUP SERVICES LIMITED
(2) VODAFONE GROUP PLC
(3) VODAFONE LIMITED

Defendants/Applicants

- -

- -

Mr Thomas Raphael, QC and **Mr Jaani Riordan** (instructed by **Hogan Lovells International LLP**) for the Applicants

Mr Michael Bloch, QC, **Mr Richard Davis** and **Mr Edward Cronan** (instructed by **Mishcon de Reya**) for the Respondents

Hearing dates: 17 and 19 November 2020

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Approved Judgment

I direct that no official note or transcription shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Mr Justice Marcus Smith:

A. INTRODUCTION

1. This is the application of Vodafone Group Services Limited, Vodafone Group plc and Vodafone Limited to stay, either on jurisdictional grounds, or for case management reasons, proceedings commenced by Top Optimized Technologies SL and TOT Power Control SL under claim number HP-2019-000036.

2. Vodafone Group Services Limited, Vodafone Group plc and Vodafone Limited are all part of the Vodafone group of companies and – unless it is necessary to differentiate between different companies – I shall refer to them collectively as **Vodafone**.[1] Similarly, I shall refer to Top Optimized Technologies SL and TOT Power Control SL as **TOT**, unless it is necessary to draw any more specific distinction. I shall refer to the proceedings brought by TOT against Vodafone as the **Second UK Proceedings**. As will become clear in the course of this Judgment, there are (including the Second UK Proceedings) three sets of proceedings that are relevant to Vodafone's present application. The other two proceedings are:

   (1) What I shall term the **Madrid Proceedings**, being proceedings commenced by TOT against Vodafone and Huawei Technologies Co (**Huawei**) in the Commercial Court in Madrid. These proceedings were commenced on 29 July 2016. Prior to the trial of the Madrid Proceedings, Vodafone successfully mounted a jurisdictional challenge to various claims TOT made against it. The basis for that challenge was that some of TOT's claims against Vodafone were the subject of exclusive jurisdiction clauses in favour of the courts of England and Wales. To the extent that the claims were the subject of exclusive jurisdiction clauses, the contention succeeded, and the Spanish courts declined jurisdiction. However, TOT's claims against Huawei continued, as did some claims against Vodafone for patent infringement.

   (2) What I shall term the **First UK Proceedings**, being proceedings commenced by Vodafone against TOT under claim number HC-2017-000399. By the First UK Proceedings, Vodafone sought declarations that:

      (a) Various claims (similar to those brought by TOT against Vodafone in the Madrid Proceedings) were time-barred. To be clear, Vodafone was seeking declarations that claims similar to those being advanced in Spain in the Madrid Proceedings would, if advanced in England and Wales, be subject to a limitation defence.

      (b) The Madrid Proceedings were brought in breach of various exclusive jurisdiction clauses in agreements between Vodafone and TOT.

   TOT has filed a Defence and Counterclaim in the First UK Proceedings. The First UK Proceedings are presently stayed, by order of Mr Justice Arnold dated 19 April

[1] A list of the terms and abbreviations used in this Judgment, setting out where those terms and abbreviations are first used, is at Annex 1 to this Judgment. Annex 1 does not include the terms defined in paragraph 10 below.

2018. Any party to these proceedings may apply to lift the stay,[2] and I understand that TOT has done so. (Nothing, I should say, turns on this.)

3. By its application dated 5 March 2020, Vodafone sought "[a]n order under CPR Part 11 that the Court does not have/shall not exercise its jurisdiction, and that the proceedings shall be stayed; alternatively, a case management stay, on the terms of the draft order attached". The reason for the application is stated as being:

"Because, for the reasons explained more fully in the attached witness statement of Dominic Nelson Hoar, these proceedings are related to proceedings already pending before the Courts of Spain (the "Madrid Proceedings") for the purpose of Article 30 of Regulation (EU) No 1215/2012 and/or it is appropriate to grant a stay."

4. It is clear – reading the application notice as a whole – that Vodafone is not (and never has been) mounting a full-fledged argument that this court has no jurisdiction to hear the Second UK Proceedings. Rather, what is sought is a stay under Article 30(1) of Regulation (EU) 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (**Brussels I Recast**). Article 30 of Brussels I Recast provides:

"(1) Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

(2) Where the action in the court first seised is pending at first instance, any other court may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

(3) For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings."

In the alternative to an Article 30(1) stay, as I have noted, Vodafone seeks a case management stay.

5. Whatever the basis for the stay, Vodafone really only seeks a stay pending the outcome of a substantive appeal by TOT in the Madrid Proceedings, TOT having substantially lost in relation to its claims against Huawei in those proceedings. The essence of Vodafone's contention is that a stay is appropriate in that the claims against it – Vodafone – in the Second UK Proceedings are substantially a re-run of the Madrid Proceedings, but against Vodafone, not Huawei, which is in itself abusive.

6. Vodafone made clear in its submissions to me that it fully reserved the right to contend that the Second UK Proceedings were an abuse of process of this court. Vodafone did not invite me to determine this question and, indeed, contended that I could not do so, given the uncertainties in the outcome of the Madrid Proceedings and the fact-specific nature of the abuse jurisdiction. However, Vodafone did say that the potential for abuse – and an application to strike out for this reason – was a matter that was relevant to the

[2] There was a conditionality as to when the stay could be applied to be lifted, but that conditionality is now satisfied, and there is nothing stopping any party from applying to lift the stay.

question of a stay on jurisdictional or case management grounds, and should be taken into account by me.

7. In fact, as the hearing before me proceeded, it became clear that there were so many procedural points that Vodafone was minded to bring in the future in the Second UK Proceedings (including, but not limited to, applications to and for: strike-out for abuse of process; strike-out for want of particularity of pleadings; strike-out on grounds of limitation; security for costs) that even if no formal stay were ordered the parties might well be mired in major procedural skirmishing, having little to do with the substance of the dispute, for many months to come. The only point I make – at this stage – is that the difference between the parties in Vodafone seeking a stay and in TOT opposing it was not, in practice, as extreme as it first appeared. TOT made clear that a number of heavy procedural applications needed to be dealt with – and should not be precluded by Vodafone's application. Whilst Vodafone did not accept this, it was accepted by Vodafone that limited steps might be taken in the Second UK Proceedings without causing Vodafone the sort of prejudice it said it would incur if no stay were ordered.

8. There is, thus, in this case, something of an elision between a stay on jurisdictional grounds under Brussels I Recast; a stay for case management reasons related to the fact that there are foreign proceedings on foot; and the ordinary case management of a complex dispute between two – and maybe three, if one includes Huawei – parties.

9. I approach these questions, and this judgment is structured, in the following way. First, in Section B, I describe the (voluminous) material that was before the court. Section C describes, in a little greater detail, the three sets of proceedings that I have already referred to. Section D seeks to describe the reasons advanced by Vodafone in support of a stay. Section D is, essentially, a factual assessment of these factors, done independently of the criteria relevant to a stay. Section E then considers the question of a stay by reference to Article 30 of Brussels I Recast and the inherent jurisdiction to grant a stay independently of Article 30.

B. MATERIAL BEFORE THE COURT

10. This application was heard over two days – 17 and 19 November 2020 – with one day's pre-reading. The written material before the court was substantial and as follows:

SUBMISSIONS	
Vodafone Skel	Vodafone's written submissions in support of the application, running to some 108 pages, plus annexes.
TOT Skel	TOT's written submissions in opposition, running to 36 pages.
Vodafone Supp Skel	Vodafone's supplementary note.
VODAFONE'S EVIDENCE	
Hoar 1	The first witness statement of Mr Dominic Hoar, a solicitor in the firm retained by Vodafone (27 pages plus exhibits).
Hoar 2	The second witness statement of Mr Hoar (33 pages plus exhibits and annexes).
Hoar 3	The third witness statement of Mr Hoar (4 pages).

Paz 1	The first witness statement of Ms Maria Lorenzo Paz, a Spanish lawyer in the firm retained by Vodafone (14 pages plus exhibits)
Paz 2	The second witness statement of Ms Paz (2 pages).
TOT'S EVIDENCE	
Nunn 1	The first witness statement of Mr Peter Nunn, a solicitor in the firm retained by TOT (25 pages plus exhibits and annexes).
Llevat 1	An expert report of Mr Jorge Llevat, a Spanish lawyer instructed by TOT's solicitors in these proceedings, describing the Madrid Proceedings and associated questions of Spanish law (43 pages plus annexes).
Nunn 3	The third witness statement of Mr Nunn (2 pages).

11. In addition, in excess of seventy authorities (plus extracts from legislation and other texts) were produced in order to elucidate the legal principles at play in this application.

C. THE THREE PROCEEDINGS

(1) The technology at issue

12. The background to all three claims concerns the use or mis-use of confidential information and/or intellectual property said to belong to TOT (the **TOT Technology**) and used for the management of signals in 3G mobile telecommunications networks. Although the technology is, of course, complex, for the purpose of the present application it can be described at a high degree of abstraction and generality.

13. I should say that much of the importance and originality of the TOT Technology is in dispute. Vodafone's evidence and submissions are replete with references intended to minimise the significance of the TOT Technology, just as TOT's evidence and submissions go in the opposite direction, and seek to maximise its importance. I do not need to consider, and certainly do not need to determine, such substantive questions. The following description should not, in any way, be taken as favouring TOT's claims over Vodafone or *vice versa*. I am only concerned with the question of jurisdictional stay.

14. A 3G mobile telecommunications network involves the use of base stations to communicate with mobile devices/handsets according to standardised signalling protocols. One aspect of signal control concerns the transmission power between the mobile device/handset and the base station. The transmission power must neither be too low nor too high but – just as with Goldilocks and the three bears – "just right". If the power of the received signal at the base station is too low, there will be too many received errors in the transmission. On the other hand, excess power creates interference and reduces the capacity of the network.

15. The TOT Technology concerns two aspects of signal control between the mobile device/handset and the base station:

(1) First, an algorithm responsible for determining the transmission power of the signal from the mobile device/handset, such that it can be received at the base station at the desired level. This technology is sometimes (but not consistently) referred to as

Outer Loop Power Control technology. It is, on occasion, referred to as the **Outage-Based Solution(s)**.

(2) Secondly, a method of evaluating the operation of the Outer Loop Power Control technology and its effect on network capacity and user quality, referred to (at least in the First UK Proceedings) as the **Metric**.

16. It will readily be appreciated that the distinction between the implementation of signal strength control (via Outer Loop Power Control technology) and the measurement of the effectiveness of that implementation (via the Metric) are – or must be – closely connected. Although both TOT and Vodafone were in firm disagreement as to the nature of the technologies at issue in the three different proceedings that I have described, my sense is that the difference lay less in the technology and more in the way the lawyers for each side chose to describe that technology. Clearly, it suited TOT to differentiate between the technology at issue in the Madrid Proceedings and the technology at issue in the Second UK Proceedings, because that way the two sets of proceedings would appear less "related" for Article 30(1) purposes. Conversely, it suited Vodafone to assert that the technology was the same in the two sets of proceedings, for exactly the same reason (namely, the two sets of proceedings would appear more "related" for Article 30(1) purposes).[3]

17. It is obviously difficult to resolve contentious questions regarding the nature of the technology at issue in the course of what is, after all, an interlocutory application. In this case, it is Vodafone that is asserting that I should stay the Second UK Proceedings and I propose to assess the assertions of fact that Vodafone makes in light of the "good arguable case" test expounded in *Canada Trust Co v. Stolzenburg (No 2)*,[4] as clarified by Lord Sumption in *Four Seasons Holdings Inc v. Brownlie*:[5]

> "In my opinion [the test in *Canada Trust*] is a serviceable test, provided that it is correctly understood. The reference to 'a much better argument on the material available' is not a reversion to the civil burden of proof which the House of Lords had rejected in [*Vitkovice Horni a Hutni Tezirstvo v. Korner*]. What is meant is (i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway; (ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so; but (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it. I do not believe that anything is gained by the word 'much', which suggests a superior standard of conviction that is both uncertain and unwarranted in this context."

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[3] Thus, by way of example only, Vodafone asserts in Vodafone Skel/§27 that the technology in the Madrid Proceedings is substantially the same as that in the Second UK Proceedings, while (*per* Vodafone Skel/§28) the technology in the First UK Proceedings is different. According to Vodafone, the technology in the First UK Proceedings is the Metric, whilst it is the Outer Loop Power Control technology that is in issue in the other two sets of proceedings.
By contrast, TOT asserts, in the Annex to Nunn 1, that what is at issue in the Madrid Proceedings "is not the subject matter of the [Second] UK Proceedings" (at paragraph 3) and that "[t]here is no overlap between the TOT OLPC Solution (as defined in the first instance Madrid Proceedings) and the TOT Confidential Information (as defined in the UK2 Proceedings)" (at paragraph 6).
[4] [1998] 1 WLR 547.
[5] [2017] UKSC 80 at [7].

I appreciate, of course, that this application is not concerned with the application or otherwise of jurisdictional gateways, but with the question of a stay on jurisdictional grounds. Nevertheless, this application throws up precisely the same sort of factual disputes, on which I must reach a view. In this case, not only was the nature of the technology at issue in the three sets of proceedings that I have described contentious, but also the precise scope and ambit of the matters at issue in the Madrid Proceedings (which is, for me, a question of fact) and indeed the true nature (to the extent this turned on factual questions) of the matters alleged in the First and Second UK Proceedings.[6]

18. Approaching these difficult and contentious questions of fact in this light, I conclude that the differences between the various technologies at issue lie more in the manner of their description than in their essence, and that there is an essential similarity even between the Outer Loop Power Control and the Metric measuring that control. However, since both parties did not appear to assert such an essential similarity as between Outer Loop Power Control and the Metric, I am prepared to proceed on the basis that at least these aspects of the technologies at issue are distinctly pleaded and different.

19. However, it seems to me that the Outer Loop Power Control technology featuring in the Madrid Proceedings and the Outage-Based Solutions featuring in the Second UK Proceedings are (technologically speaking) the same, although the manner in which the cases are put is different.

20. Accordingly, and simply addressing the question of technology at issue:

(1) The First UK Proceedings concentrate on the Metric.

(2) The Madrid Proceedings and the Second UK Proceedings are concerned (and concerned solely) with the Outer Loop Power Control technology, which I will treat (in technical terms) as synonymous with Outage-Based Solutions. The technology at issue in the Madrid Proceedings and the Second UK Proceedings is, therefore, and for present purposes only, the same.

(2) The Second UK Proceedings

21. The Second UK Proceedings are against Vodafone alone: there is no claim asserted against Huawei. The technology at issue – which is described in paragraphs 4 to 31 of the Confidential Particulars of Claim – is, as I have found, the Outer Loop Power Control technology.

22. From about 2006, TOT and Vodafone entered into a number of agreements – called non-disclosure agreements – made for the purpose of facilitating the exchange of information

[6] Judging by the comments that I received from both parties in relation to the judgment that I circulated in draft, the manner in which I characterise the proceedings, the issues and the technology is a matter of acute sensitivity to both parties. That, no doubt, is partly out of a laudable desire that I express matters precisely, clearly and correctly in this judgment. But mainly it is a reflection of the fact that these matters are controversial as between the parties and that there is a concern on the part of all of the parties that statements that I make in this judgment may be deployed in the context of another application. It is important to be very clear that I have focussed on characterising the proceedings, the issues and the technology solely for the purposes of this (jurisdictional) application. It would be very dangerous to read across into another, different, application anything that I say regarding the characterisation of the proceedings, the isses and the technology which I have done to the standard I have described and only for the purposes of this application.

and discussions between themselves in connection with this technology. More specifically, these agreements were:

(1) An agreement between TOT and Vodafone dated 4 April 2006 (the **2006 NDA**);

(2) An agreement between TOT, Vodafone and Huawei dated 6 March 2007 (the **2007 NDA**);

(3) A collaboration agreement comprising a 22 July 2008 memorandum of agreement (the **MOA**) and a similarly dated **Framework Agreement**.

23. In breach of these agreements – or some or any of them – TOT alleges that Vodafone was implicated in Huawei's (alleged) abuse of TOT's confidential information concerning the Outer Loop Power Control technology.[7] The claims advanced by TOT are essentially contractual (namely that Vodafone breached its obligations of confidence), but there are alternative claims regarding breach of the common law duty of confidence and infringement of TOT's trade secrets under the Trade Secrets (Enforcement, etc) Regulations 2018.[8]

24. There is a separate claim alleging infringement by Vodafone of a patent of which TOT is the registered proprietor, that is European Patent (UK) 1 926 224 B1 (the **Patent**).

25. The remedies sought by TOT include a final injunction and damages.

26. To date, Vodafone has sought to reserve its position on jurisdiction (about which I say nothing), and has not served a defence. Vodafone's position is that the Confidential Particulars of Claim are embarrassing for their want of particularity, and that they require further particularisation.

(3) The Madrid Proceedings

27. Although I was provided with translations of the Spanish equivalent of pleadings and various judgments of the Madrid courts, I am not particularly qualified in Spanish law, and my assessment of the Madrid Proceedings is generally based on the explanation of those proceedings contained in the witness statements before me, in particular Llevat 1.[9]

28. Like the Second UK Proceedings, the Madrid Proceedings concern allegations by TOT of breach of contract and infringement of TOT's intellectual and industrial property rights.[10] The claim was initially advanced against both Vodafone and Huawei. The

[7] I have had to put this somewhat elliptically. The factual case is both complex and contested, and the precise nature of *(i)* Huawei's alleged abuse of confidential information and *(ii)* Vodafone's role in this is very far from common ground. Even attempting to summarise nature of the (controversial) issues arising has resulted in detailed substantive submissions from Vodafone on the draft of this judgment. It would be inappropriate – given the nature of this application – to set out in detail the precise ambit of the various controversies between TOT and Vodafone, and still less appropriate to resolve them in any determinative way. My approach to such controversial questions has been as described in paragraph 17.
[8] SI 2018/597.
[9] Llevat 1 is in the form of an expert report, and Mr Llevat specifically records his compliance with Part 35 of the Civil Procedure Rules.
[10] Llevat 1/§13.

contracts relied upon were the same as – or substantially the same as – those pleaded in the Second UK Proceedings.[11]

29. Early in the proceedings, Vodafone contended that there was a lack of international jurisdiction in relation to the claims brought against it. That was because of various exclusive jurisdiction clauses in favour of the courts of England and Wales contained in various of the agreements relied upon by TOT in its claims against Huawei. The Madrid courts upheld this challenge to jurisdiction in relation to contractual claims against Vodafone, as well as various unfair competition actions derived from those contracts. TOT's claim for infringement of a patent enforceable in Spain was found to be subject to the jurisdiction of the Madrid courts.[12] Huawei did not seek to challenge jurisdiction and substantially all of TOT's claims against Huawei proceeded. As regards Vodafone, essentially, all contractual and unfair competition actions against Vodafone were excluded, as were contractual and unfair competition actions against Huawei to the extent they were connected with the 2007 NDA.[13]

30. In terms of substance, the issues before the courts in Madrid (both at first instance and on appeal) are stated in Vodafone Skel/§42:

"In overview, the Madrid claim and appeal fell and fall into two parts:

(a) The Madrid Confidence/Unfair Competition Claims against Vodafone and Huawei, relating to alleged use of TOT's technology. These were run against both Vodafone and Huawei at first instance, but on appeal are advanced against Huawei only, and are now framed in three ways: a breach of licence claim, a breach of confidence claim under Article 13 of the Spanish Law of Civil Damages…; and an unfair competition claim stemming from alleged misappropriation of the TOT's technology under Article 11.

(b) The Madrid Patent Infringement Claims pursued against both Vodafone and Huawei, at first instance and on appeal, in relation to a family of patents, which includes a Spanish patent related to the Patent in issue here."

31. The reason, of course, that the Madrid Confidence/Unfair Competition Claims ultimately proceeded only against Huawei was because of Vodafone's (successful) jurisdictional challenges.

32. There is no point in setting out in any detail the outcome of the first instance proceedings in Madrid, because these are under appeal. Vodafone contended that TOT's claims at first instance against Huawei had been substantially unsuccessful, but Vodafone recognised that that position might well change on appeal. It seems to me that I would be most unwise, for the purposes of this application, to anticipate the outcome of the Madrid appeal, but rather should consider matters on the bases that TOT may completely succeed alternatively may completely fail in its claims on appeal or that the outcome may be somewhere in-between these two extremes. That, in substance, is how the parties addressed me, and I consider that they were correct not to seek to anticipate the outcome of the Madrid appeal.

[11] Llevat/§19(i).
[12] Llevat/§17.
[13] Llevat/§38. There are pending appeals which may affect this situation in limited respects.

33. The timing of that outcome of that appeal is, however, something that I ought to bear in mind. As matters stand, and fully recognising the uncertainties, the outcome of the appeal is anticipated at the end of 2021 at the very soonest.[14]

(4) The First UK Proceedings

34. As I have described, the First UK Proceedings were commenced in response to TOT's claims against Vodafone in the Madrid Proceedings, and are properly seen as an attempt to underline or reinforce the jurisdictional contentions that Vodafone was advancing in Spain. As I have also described, TOT brought a counterclaim in the First UK Proceedings, based upon the Metric. TOT has stated an intention to amend the counterclaim so as to substitute for the allegations pleaded in the counterclaim allegations similar to those advanced by it in the Second UK Proceedings. That, as I understand it, is in order to maximise the claims that are not time barred, the First UK Proceedings being earlier in time than the Second UK Proceedings.

D. THE BASIS FOR THE STAY: FACTUAL ASSESSMENT

(1) The central issue

35. Vodafone advanced a number of points in support of its contention that the Second UK Proceedings should be stayed until after the conclusion of the appeal in the Madrid Proceedings. The central point made by Vodafone was that there was a significant overlap between the core allegations in the Madrid appeal and the core allegations in the Second UK Proceedings.

36. Of course, Vodafone could not say – and did not say – that this overlap involved issues articulated against Vodafone. Whilst elements of the Madrid Proceedings do still involve Vodafone – see paragraph 30 above – the overlap on which Vodafone principally relies is the overlap between the claims advanced by TOT against Huawei in the Madrid Proceedings and the claims advanced by TOT against Vodafone in the Second UK Proceedings. That overlap involved overlapping technology (that is, the Outage Loop Power Control Technology) and overlapping factual questions (specifically, the manner in which Huawei and Vodafone are said to have implemented TOT's technology, in breach of TOT's rights).

37. The point is put very starkly in Vodafone Skel/§65:

> "Overall, common to both claims is that the alleged wrongdoing is based on inferences that Huawei has implemented the same technology into the same equipment in the same manner. Such inferences are said to arise from the same documents and the same circumstances of alleged disclosure of the confidential information. Success in those claims in Madrid is a necessary but insufficient condition for TOT's success in [the Second UK Proceedings], since its claims against Vodafone are essentially derivative from those made against Huawei."

38. Although there is some room for quibbling here, I consider that this assertion is, at heart, correct. The problem for Vodafone – which I shall come to explore in greater detail below – is twofold:

[14] See Paz 2.

(1) First, even assuming total success for TOT against Huawei in the Madrid Proceedings, that success is not going to translate into any kind of cause of action or issue estoppel as between Vodafone and TOT. If TOT were to proceed against Vodafone, it would have to make its case all over again. (Of course, Vodafone contended that in this eventuality, there would be no need for TOT to claim against Vodafone at all, because Huawei would hold TOT harmless against its losses. This is a point I shall return to.)

(2) Secondly, Vodafone could have submitted to the Madrid Proceedings, rather than asserting its rights under the exclusive jurisdiction clauses in favour of the courts of England and Wales. There can be no question of "punishing" Vodafone for asserting its jurisdictional rights – Vodafone was entitled to rely on the jurisdiction clauses in its favour, and both the Spanish and these courts will respect that – but equally it lies ill in the mouth of Vodafone to complain about the consequences of the very course it has embarked upon. The effect of Vodafone's perfectly proper assertion of its jurisdictional rights was to split what would otherwise have been unified proceedings in Spain against both Huawei and Vodafone into proceedings against Huawei in Spain from which Vodafone had procured its own exclusion.

(2) Evaluation of specific points

39. The question is whether, in light of these issues, the progression of the Madrid Proceedings and the Second UK Proceedings at the same time is such as to render a stay of the Second UK Proceedings appropriate. Having set out the general background to this question – both in terms of the broadbrush factors favouring Vodafone's application (paragraphs 35 to 37 above) and those that appear to militate against it (paragraph 38 above) – I turn to the specific points that Vodafone made in favour of a stay:

(1) *Traversing the same facts and matters.* Vodafone contended that "the basis for TOT's complaint about misappropriation/misuse of the TOT OLPC Solution is founded upon inferences arising from many of the same alleged facts, communications and documents in both Madrid and UK2 which are said to contain details of the TOT Confidential Information".[15] In light of my conclusions regarding the allegations advanced in both the Madrid Proceedings and the Second UK Proceedings, it seems to me that there is a great deal of force in what is said here. No doubt the same issues will have to be considered twice over, which is intrinsically inefficient. However, it must be borne in mind:

(a) That the issues in the Madrid Proceedings are directed against Huawei and are informed by Spanish law. On the other hand, the issues in the Second UK Proceedings are directed against Vodafone and will be informed by English law. There is a danger in overstating the degree of overlap.

(b) That Huawei and Vodafone are distinct parties in these proceedings. Although it was quite clear that Vodafone was maintaining a keen interest in the Madrid Proceedings and that Huawei was similarly maintaining a keen interest in the Second UK Proceedings – and that to that end there were communications between their respective lawyers – what unites Huawei and Vodafone is a common desire to defeat TOT's claims. That common front

[15] Vodafone Skel/§86.

will rapidly unravel were TOT to succeed in its claims either against Huawei or Vodafone, as no doubt the paying defendant (be that Huawei or Vodafone) would seek to recover some form of contribution to damages from the other.

(c) That whilst Huawei (as opposed to Vodafone) will have incurred costs in defending the Madrid Proceedings, it will be Vodafone (as opposed to Huawei) that will incur costs in defending the Second UK Proceedings. Of course, it may be that Huawei would be brought into the Second UK Proceedings, but (as I shall describe) the issues that would arise would be very different from those arising in the Madrid Proceedings.

(2) *Relitigation of defeat in Spain and the risk of double recovery.* These are advanced as separate points by Vodafone,[16] but are actually reverse sides of the same coin. As to this:

(a) The first contingency arises if TOT loses the appeal in the Madrid Proceedings, whilst the Second UK Proceedings have been on-going in the meantime. In that case, it appeared to be Vodafone's contention that this was abusive re-litigation on the part of TOT.[17]

(b) Of course, a court in this jurisdiction has a wide-ranging (although not necessarily broad) power to control abuses of its process. The general principle was articulated by Lord Diplock in *Hunter v. Chief Constable of the West Midlands Police*:[18]

> "…[abuse of process] concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right thinking people. The circumstances in which abuse of process can arise are very varied…It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power."

(c) It seems to me that where one party brings civil proceedings against another, in circumstances where there are earlier and related civil proceedings, absent some form of *res judicata* (whether by way of cause of action estoppel or issue estoppel) the later proceedings will not be abusive. Vodafone cited a wealth of law on the question of abuse, but accepted that the question of whether there was an abuse was "an overall fact-sensitive assessment and will focus on the crucial question: whether in all the circumstances a party is abusing or misusing the court's process".[19] Because

[16] Vodafone Skel/§§91*ff* and Vodafone Skel/§§101*ff*.
[17] See Vodafone Skel/§95.
[18] [1982] AC 529 at 536.
[19] Vodafone Skel/§95(a). In commenting on the draft, Vodafone took issue with this statement of the law. I have not changed the terms of this judgment as a result of Vodafone's substantive comments, as it seems to me that as a general statement of the law this paragraph is unexceptionable. See further *Allsop v. Banner Jones*, [2021]

the facts were developing (specifically, the outcome of the Madrid Proceedings was unknown), Vodafone quite deliberately did not press me to decide the question of abuse on this application. Rather, Vodafone urged me not to decide the question, because of the potential for development, but to bear in mind (when considering the appropriateness of a stay) the future potential for the Second UK Proceedings to be abusive.

(d) Although, in his submissions, Mr Raphael, QC, leading counsel for Vodafone, denied it, this looks suspiciously like having one's cake and eating it: I do not consider that Vodafone can suggest abusive conduct, and invite a stay on that basis, without establishing the abuse. The potentiality for an abuse argument is not enough. That is particularly the case where the potential for abuse is, as here, elusive. For my part, I can see nothing abusive in TOT litigating its claims against Vodafone, whilst at the same time litigating similar claims against Huawei. Had TOT quite deliberately engineered related claims in different jurisdictions against different parties, then that might be a relevant factor. But, as I have described, that is not this case. It is Vodafone that has forced the fragmentation of what was once a unitary set of proceedings before the Spanish courts.

(e) I turn to the second contingency, which is the risk of double recovery. Here the hypothesis is that TOT succeeds against Huawei in the Madrid Proceedings, but (notwithstanding such victory) nevertheless continues to litigate against Vodafone in the Second UK Proceedings. It appears – and for present purposes I am prepared to accept – that the quantum of loss claimed in both sets of proceedings is exactly the same.[20] The amount claimed is €508.9 million. Vodafone's concern was that, in this case, TOT might obtain recovery twice over.[21] I consider this concern to be fanciful: the law in this jurisdiction – and I have no doubt that the same is true of Spanish law – is astute to prevent a claimant recovering more than its actual loss.

(f) Vodafone's real point was that TOT's claim in this jurisdiction was, essentially, pointless:[22]

> "…success in the Madrid Appeal for the sums claimed would on TOT's own case in Madrid compensate TOT fully for the entirety of the Huawei Infrastructure claim in UK2 against Vodafone because it would satisfy TOT's entire claim for what is said to be a single overall commercial loss."

I do not consider that there is anything in this point: it assumes that TOT succeeds in the Madrid Proceedings. That is by no means a given. It is quite possible that TOT loses in Spain, in which case the question of double-

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EWCA Civ 7. Of course, as Lord Diplock made very clear in *Hunter v. Chief Constable of the West Midlands Police*, [1982] AC 529 at 536, it is wrong to regard the abuse jurisdiction as limited to fixed categories. The jurisdition is a potentially wide-ranging one, and nothing in this paragraph should be taken as suggesting otherwise. But the theoretical exceptional case should not be used to characterise the general rule: it may be – when Vodafone's abuse application comes to be made, if it is made – that the case is indeed an exceptional one. But I am certainly not going to presume the exceptional: it must be demonstrated.

[20] See Vodafone Skel/§101.

[21] See Vodafone Skel/§§106-107.

[22] To quote from Vodafone Skel/§105.

recovery does not arise. It certainly cannot be said that were TOT to lose in the Madrid Proceedings, TOT's claim against Vodafone would be doomed to fail. Vodafone did not go so far as to assert this, and rightly so: I cannot properly presume TOT's claims to be unarguable – and if that is Vodafone's position, then Vodafone should apply to strike out the Second UK Proceedings.

(3) *Claims against Huawei.* Although this aspect of the litigation did not feature largely in Vodafone's written submissions, it was considered in Vodafone's evidence before me:

(a) The point was made that Vodafone had potential claims for contribution against Huawei in the event that Vodafone was found liable to TOT. I was not taken in detail to the basis for such claims, but I understand that they arise out of contractual indemnities provided by Huawei to Vodafone in the contracts between them.

(b) In Hoar 1 and Hoar 2, Vodafone asserted an intention – if the Second UK Proceedings progressed – to join Huawei as a third party to those proceedings for the purposes of contribution or indemnity pursuant to these provisions. However, as was explained in Hoar 3/§7, the position was not as straightforward as asserted in Hoar 1 and Hoar 2:

> "Having sought to reconfirm that position last night and during the course of today, it appears that the position is more complicated than I, and our instructing client, had understood, there being over one hundred contracts governing the relationship globally between Huawei and Vodafone. Some of those contracts are subject to arbitration clauses while others may not be. The question of which contracts are relevant to any claim by Vodafone for indemnity/contribution from Huawei in relation to the breaches of confidence alleged by TOT in UK2 and which (if any) have been revised, is being investigated. The exercise is complicated by the fact that I understand TOT's breach of confidence claims not to be limited, as concerns Huawei's products, to the use of those products in the UK or to particular or identified models of Huawei equipment. That investigation is ongoing and during the course of the day it has become apparent that, given its scope, it may take some time to be resolved."

(c) It seems to me that the contribution claim by Vodafone against Huawei[23] – whether brought as a part of the Second UK Proceedings or in separate arbitration proceedings – is a substantial irrelevance to the question of a stay. If the Second UK Proceedings progress against Vodafone, then Vodafone will have to consider its position in the litigation, which may or may not involve a claim for contribution or indemnity against Huawei. The notion that the claim against Vodafone is a disguised attack on Huawei misrepresents the true position. Hoar 3/§11 states:

> "…it remains the case that the UK2 Confidence Claims appear to be an attack on Huawei through Vodafone and/or relitigate the position against Huawei, giving rise to abuse. It also remains the case that as and when Vodafone do pursue Huawei

[23] Which, of course, has yet to be formulated by Vodafone. I was not shown any material to enable me to understand how this claim would or might be framed.

for contribution/indemnity (if such was refused), there is a real prospect that Huawei would seek to rely on the Madrid decisions…"

There is a great deal wrong with this assertion, which I reject:

(i) I do not understand how decisions in the Madrid Proceedings could bind Vodafone.[24]

(ii) It is entirely wrong to characterise TOT's claims against Vodafone as an attack on Huawei. TOT's claims are against Vodafone, and they will stand or fall on their own merits. Vodafone has an independent (albeit related) claim for an indemnity or contribution against Huawei in relation to its own liability to TOT.

(iii) If and to the extent that the contribution claim by Vodafone against Huawei constitutes an abuse, that is a point that Huawei, and not Vodafone, should advance at the appropriate time.

E. ANALYSIS AND CONCLUSIONS

40. I heard much submission on the operation and scope of Article 30 of Brussels I Recast, as well as the scope of court's inherent jurisdiction to grant a stay on case management grounds. In particular, a great deal of time was spent on whether the Madrid Proceedings and the Second UK Proceedings constituted "related proceedings" within the meaning of Article 30(3).

41. Briggs describes the function of Article 30 extremely clearly:[25]

> "Article 30 is best thought of as the provision which may apply if the English court is seised second but the conditions for the application of Article 29 are not met. It contributes to the coordination of adjudication, but in a discretionary fashion. It permits a court seised second simply to stay its proceedings to await the outcome of an action which is still pending in the court seised first, whether it is pending at first instance or on appeal. It also allows it to decline jurisdiction over the action before it, if this action may be consolidated into the action which is pending at first instance in the court seised first, though only if the court seised first would have, independently, jurisdiction over the action which is proposed to be dismissed: this is because Article 30 does not provide a ground for jurisdiction over the second claim but provides only a mechanism for consolidation of two actions over each of which the first court does or would have jurisdiction. And, of course, it also allows the court to conclude that neither of these things is appropriate, but to press on and adjudicate. In particular, if proceedings in the court seised first are going to be slow, and especially if the foreign court will take proper account of an English decision given in the meantime, it may well be correct to refuse to grant relief but require the parties to get on with it in England."

42. A great deal turns on when actions can be said to be "related". In my judgment, this is a definition – contained in Article 30(3) of Brussels I Recast – that is to be read widely. It

[24] Vodafone suggested that this paragraph was incorrect. In draft, the paragraph read: "I do not understand – and Vodafone does not explain – how decisions in the Madrid Proceedings could bind Vodafone." I have deleted the underlined words, because Vodafone did suggest in the course of its submissions that section 1(5) of the Contribution Act 1978 might render a Spanish judgment binding in English proceedings. The submission was not pressed hard, and on its terms section 1(5) applies to "[a] judgment given in any action brought in any part of the United Kingdom". It seems to me appropriate to remove the underlined words.

[25] Briggs, *Civil Jurisdiction and Judgments*, 6th ed (2015) at [2.282].

seems to me that the purpose of Article 30 is best served by having a wide ambit – and hence a consequential wide discretion to stay or consolidate contained in Articles 30(1) and 30(2) – which discretion must then be used to determine which course (stay; consolidation; carrying on regardless) is the most appropriate in all the circumstances. A wide construction is supported by the following:

(1) The wording of Article 30(3) impels a wide reading: it is actions – not causes of action – that are deemed to be related where it is expedient – not necessary – to hear and determine them together in order to avoid the risk – not anything higher than that – of irreconcilable judgments.

(2) Briggs notes:[26]

> "Though it is easy enough to understand in principle, and is often a matter of common ground Between the parties, the application of this definition to the facts of actual cases may sometimes give rise to difficulty. It was held in *The Tatry* the actions are related for the purpose of what is now article 30 if they would involve the risk of conflicting decisions, without necessarily involving the risk of giving rise to mutually exclusive legal consequences. This gives the expression 'irreconcilable' as used in Article 30 a relatively loose meaning. This is perfectly sensible – a flexible rule which is designed to prevent the occurrence of conflicting judgments is perfectly comfortable alongside a narrow and restrictive one applicable when it is sought to withhold recognition from a judgement which is already, after what maybe much effort and cost, being given."

(3) Thus, Article 30 may apply to cases where the same cause of action is in dispute, but between different parties, or where there are different causes of action in proceedings between the same parties.

(4) The "wide" approach to Article 30 is consistent with the case law: the preference appears – entirely understandably – to be for a simple and wide test, that is not burdened by undue sophistication or complexity.[27]

(5) A wide approach correlates with Article 8(1). Article 8(1) provides:

> "A person domiciled in a Member State may also be sued:
>
> (1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings."

The similarity in wording between Article 8(1) and Article 30(3) is striking, and it seems to me that *(a)* the words ought to be read similarly and *(b)* Article 8(1) reinforces the need to read Article 30(3) widely. The whole point of Article 8(1) is to enable claims (not actions) against multiple defendants to be pooled before the courts of the domicile of any one of those defendants.

43. It seems to me, therefore, that this is indeed a case involving "related actions" within the sense of Article 30(3) of Brussels I Recast, and that I must consider whether it is

[26] At [2.283].
[27] See, for example, the approach of the House of Lords in *Sarrio SA v. Kuwait Investment Authority*, [1999] 1 AC 32.

appropriate – as the court second seised of a related action – for me to stay these proceedings pending the outcome of the Madrid Proceedings. Vodafone, entirely correctly, did not seek to contend that I should decline jurisdiction under Article 30(2): it was accepted by Vodafone that consolidation with the Madrid Proceedings was not, in this case, possible.

44. I am not, of course, obliged to stay: I "may" do so in light of the circumstances.[28]

45. In this case, I consider that it would be inappropriate to stay these proceedings for the following reasons:

(1) It seems to me that although I accept that there is a "risk" of irreconcilable judgments resulting from the separate Madrid Proceedings and these proceedings (as a result of which I have jurisdiction to consider staying these proceedings) that risk is actually a very attenuated one. The fact is that Huawei is being sued under Spanish law in Madrid and Vodafone is being sued under English law in this court. Even if TOT were to succeed against Vodafone and fail against Huawei (or *vice versa*), I do not see how differently framed causes of action, against different defendants, gives rise to outcomes that are in any way problematic.

(2) It is worth considering the permutations in a little greater detail:

(a) *TOT succeeds in the Madrid Proceedings.* In this case, it may well be that TOT – by virtue of its success in Spain – would be inclined to, or even obliged, to end these proceedings before trial. In such a case, TOT would obviously be at risk of paying Vodafone's costs, but if TOT is willing to run that risk – as obviously it is – I can see no reason in preventing TOT from pressing ahead with the Second UK Proceedings. As I have explained in paragraph 39(1) above, I do not consider the fact that the Second UK Proceedings and the Madrid Proceedings run in parallel rather than in sequence (thus involving what Vodafone contended was "re-litigation"[29]) to be a source of undue or inappropriate hardship to Vodafone or (to the extent that this matters) Huawei.

(b) *TOT fails in the Madrid Proceedings.* There is absolutely no reason why TOT cannot succeed in the Second UK Proceedings in this case, and it seems to me that a stay imposed on TOT against its will would be contrary to the basic principle that a claimant ought – absent good reason – to be entitled to bring its claim as expeditiously as possible (consistent, of course, with the interests of other court users). Again, for the reasons I have given, I do not consider that either Vodafone or Huawei have reason to complain if the Second UK Proceedings are progressed without a stay.

(3) This accords with my conclusion that the Second UK Proceedings are in no way an abuse of process, at least on the facts as they stand.

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[28] A suggestion that no such discretion arose was regarded as unarguable in *The Alexandros T*, [2013] UKSC 70 at [97].

[29] One person's parallel proceedings is another person's re-litigation: to my mind, Vodafone's extraction of itself from the Madrid Proceedings made this not a case of re-litigation (in the real sense) of the same or similar claims being run between the same or similar parties: Vodafone and Huawei are, as it seems to me, distinct.

(4) Moreover, this is a case where Vodafone has avoided – entirely properly – the jurisdiction of the Spanish courts by invoking the exclusive jurisdiction clauses in favour of England and Wales. Vodafone could have submitted to the jurisdiction of the Spanish courts under Article 26, but instead elected to invoke Article 25. As a result, proceedings involving all relevant parties (Vodafone and Huawei) and so eliminating any risk of irreconcilable judgments have not been possible. No criticism can be made of Vodafone in this: but, conversely, it seems to me perverse now to prevent the progression of the Second UK Proceedings in circumstances where the fragmentation of the originally constituted Madrid Proceedings against Huawei and Vodafone has occurred at Vodafone's insistence.

(5) Yet further, the parties have agreed that the contractual claims that TOT has against Vodafone are to be litigated in this jurisdiction. That is an agreement to which this court attaches considerable weight (even if Vodafone had not used those provisions to extract itself from the Madrid Proceedings). The fact is that TOT's claims are being heard in the jurisdiction where the parties have agreed they should be heard. Of course, Vodafone's point is that it is in no way seeking to prevent the litigation in England, but merely to put it off until the outcome of the Madrid Proceedings is known. But, given that the Madrid Proceedings can in no way give rise to any kind of estoppel that would bind TOT, and given my assessment in paragraphs 45(1) and (2) above, I can see no point in awaiting the outcome of the Madrid Proceedings unless TOT and Vodafone were together to agree that was an appropriate course. A court would, without blindly following such an agreement, attach some weight in granting a case management stay in such circumstances. But that is not this case: here, TOT wishes to proceed, and that, as it seems to me, is a right that Vodafone cannot unilaterally thwart by advancing the jurisdictional arguments that it has.

46. Because I have proceeded on the basis that Article 30 provides a broad power to stay proceedings, Vodafone accepted that a case management stay on grounds of overlapping foreign proceedings would only be granted in rare and compelling circumstances.[30] Vodafone Skel/§176 stated:

> "…if for any reason there is a technical gap in Article 30, which does not give a basis for a stay although one would be required consistently with the overriding objective, one should be granted."

I agree. This is not a case where Article 30 of Brussels I Recast has failed to operate on the grounds of a technicality. It confers on me the jurisdiction to stay the Second UK Proceedings, but (for the reasons I have given) it is entirely inappropriate for that jurisdiction to be exercised. In these circumstances, there is no basis for granting a stay outside Article 30 because of what is going on in another jurisdiction. Indeed, I consider that were I to grant a case management stay in this case, I would be thwarting rather than furthering the objectives of Article 30.

47. Accordingly, and for these reasons, Vodafone's application fails and must be dismissed. It seems to me necessary that – given the raft of applications mooted between the parties

[30] *Reichhold Norway ASA v. Goldman Sachs*, [2000] 1 WLR 173 at 183, 186; *Unwired Planet v. Huawei*, [2020] UKSC 37 at [99].

– close consideration be given to the speedy and efficient management of those applications. In practice, the resolution of these issues could delay the substantive hearing of the Second UK Proceedings until after the outcome of the Madrid Proceedings is known.[31] I should be clear that it seems to me that the best course is for the substance of the Second UK Proceedings to be resolved as quickly as possible, and without reference to what is going on in Spain. Unless the parties can agree a way forward, an early case management conference is indicated.

48. During the course of the hearing, I noted to the parties that this was a matter that cried out for "docketing" and that an approach to this effect ought to be made to the Chancellor of the High Court. In the meantime, given the extent to which I have read into this case, future applications are reserved to me.

[31] Hence the fact that the parties' positions were not so far apart as might be assumed, given the application: see paragraphs 7 and 8 above.

ANNEX 1

TERMS AND ABBREVIATIONS USED IN THE JUDGMENT

(paragraph 2, footnote 1)

TERM/ABBREVIATION	FIRST REFERENCE IN THE JUDGMENT
Brussels I Recast	Paragraph 4
First UK Proceedings	Paragraph 2(2)
Framework Agreement	Paragraph 22(3)
Huawei	Paragraph 2(1)
Madrid Proceedings	Paragraph 2(1)
Metric	Paragraph 15(2)
MOA	Paragraph 22(3)
Outage-Based Solutions(s)	Paragraph 15(1)
Outer Loop Power Control	Paragraph 15(1)
Patent	Paragraph 24
Second UK Proceedings	Paragraph 2
TOT	Paragraph 2
TOT Technology	Paragraph 12
Vodafone	Paragraph 2
2006 NDA	Paragraph 22(1)
2007 NDA	Paragraph 22(2)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)
PATENTS COURT
The Honourable Mr Justice Marcus Smith
Dated 14 January 2021

Claim No. HP-2019-000036

B E T W E E N:

(1) TOP OPTIMIZED TECHNOLOGIES, S.L.
(a company incorporated under the laws of Spain)
(2) TOT POWER CONTROL, S.L.
(a company incorporated under the laws of Spain)

Claimants

-and-

(1) VODAFONE GROUP SERVICES LIMITED
(2) VODAFONE GROUP PUBLIC LIMITED COMPANY
(3) VODAFONE LIMITED

Defendants

ORDER

UPON the Defendants' application dated 5 March 2020 (the "**Application**")

AND UPON hearing from Leading Counsel for the parties on 17-19 November 2020

AND UPON the application of the Claimant made at the hearing of the Application for an order pursuant to CPR r 31.22 on a *pro tem* basis to protect the alleged confidentiality of materials as the "Confidential Materials" (the "**Pro Tem Order**")

AND WHEREAS the Judge's reserved judgment (the "**Judgment**") will be handed down remotely by electronic circulation without attendance from the parties on 14 January 2021 **(**the "**Hand Down**"**)**

AND WHEREAS it is agreed that matters relating to consequentials be heard at a later hearing to be convened for that purpose (the "**Consequentials Hearing**")

AND WHEREAS it is recorded that Vodafone does not submit to the jurisdiction of the court or its exercise

1. The making of the substantive order on the Application, and orders on all matters consequential on the Judgment (including all questions of costs and stays pending appeal), and any application for permission to appeal against the Judgment or against any decisions made at the Hand-Down, shall all be adjourned to the Consequentials Hearing, which shall be listed for 19 January 2021.

2. The adjournment in paragraph 1 of this Order is an adjournment within paragraph 4.1(a) of Practice Direction 52A to Part 52 and accordingly the time for making any application for permission to appeal to the Judge be extended until the Consequentials Hearing.

3. Time for seeking permission to appeal from the appeal court and for filing any appellant's notice in respect of the Judgment and/or any decision made at the Hand-Down and/or this Order is extended, pursuant to CPR 52.12(2)(a), to 21 days after the making of the Court's order on the Consequentials Hearing. This is without prejudice to any further extensions thereof that may be appropriate and may be sought at the Consequentials Hearing.

4. Until the Consequentials Hearing the Pro Tem Order shall be continued and the Confidential Materials shall only be used for the purposes of these proceedings notwithstanding that they have been, or may have been, read to or by the Court or referred to at a hearing which has been held in public, subject to any further order that may be made at the Consequentials Hearing.

5. Costs are reserved to the Consequentials Hearing.

14 January 2021