

Case summary

Issue(s)

1. Does the English court have the power or jurisdiction, or is it a proper exercise of any such power or jurisdiction without the parties' agreement:
 - ┆ to grant an injunction restraining infringement of a UK SEP unless the defendant enters into a global licence under a multinational patent portfolio;
 - ┆ to determine the rates/terms for such a licence; and
 - ┆ to declare that such rates/terms are FRAND?
2. If the answer to (i) is "yes", is England the proper forum for such a claim in the circumstances of the Conversant proceedings?
3. What is the meaning and effect of the non-discrimination component of the FRAND undertaking and does it mean that materially the same licence terms as offered to Samsung must be offered to Huawei in the circumstances of the Unwired case?
4. Does the CJEU's decision in Huawei v ZTE mean that a SEP owner is entitled to seek an injunction restraining infringement of those SEPs in circumstances such as those of the Unwired case??

Facts

The cases concern a number of patents, which are declared to be essential to the practice of numerous telecommunications standards, held by the Respondents in both sets of proceedings, who commenced proceedings against the respective Appellants for infringing those patents. The Respondents are under an obligation to make available standard essential patents ("SEPs") on fair, reasonable and non-discriminatory terms ("FRAND") terms.

In Unwired, two of Unwired's patents were found to be valid and essential to the standards, and Unwired obtained an injunction against Huawei for the latter's infringement of the SEPs. Huawei, with the permission of the first-instance judge, appealed to the Court of Appeal on three grounds, namely Issues (1), (3) and (4). Huawei's appeal was dismissed and Huawei now appeals to the Supreme Court.

The proceedings in Conversant were brought after the High Court judgment was handed down in Unwired. The defendants in the Conversant proceedings challenged the jurisdiction of the English court, raising issues (1) and (2). The application was dismissed but Huawei and ZTE appealed to the Court of Appeal. The appeal was dismissed and Huawei and ZTE now appeal to the Supreme Court.