

**IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE COURT OF APPEAL OF ENGLAND AND WALES
(CIVIL DIVISION)**

B E T W E E N:

**(1) OPTIS CELLULAR TECHNOLOGY LLC
(2) OPTIS WIRELESS TECHNOLOGY LLC
(3) UNWIRED PLANET INTERNATIONAL LIMITED**
(collectively, Optis)
Respondents/Claimants

and

**(1) APPLE RETAIL UK LIMITED
(2) APPLE DISTRIBUTION INTERNATIONAL LIMITED
(3) APPLE INC**
(collectively, Apple)
Appellants/Defendants

and

THE MOTION PICTURE ASSOCIATION, INC
Rule 24 Intervener

SUBMISSIONS OF THE MOTION PICTURE ASSOCIATION

I Introduction

1. The Motion Picture Association, Inc. (MPA) is a not-for-profit trade association founded in 1922 to address issues of concern to the motion picture industry. MPA makes this written intervention in relation to Ground 4 of the Appellants' Grounds of Appeal (the treatment of past sales and limitation periods in F/RAND determinations).
2. MPA and its members are concerned that the Court of Appeal has established an approach to valuation and recovery of licensing fees for use of SEPs which is inconsistent with both industry practice and established principles of statutory limitation. Those have been regarded as applicable to licensing negotiations in the film and television industry. The jurisdiction of the English court to determine F/RAND licences on a global basis is not

challenged by MPA but it is MPA's position that decisions made within such jurisdiction ought not to be fundamentally contrary to industry practice around the world.

II MPA's interest in the appeal

3. MPA's members include Amazon Studios, LLC; Netflix Studios, LLC; Paramount Pictures Corporation; Universal City Studios LLC; Walt Disney Studios Motion Pictures; Warner Bros. Entertainment Inc.; and Sony Pictures Entertainment Inc. These companies and their affiliates are the leading producers and distributors of filmed entertainment in the theatrical, television, and streaming sectors.
4. MPA's members invest in, produce, distribute, stream and market content across the globe, including making substantial investments in the UK, which is the largest motion picture and television sector in Europe.
5. Technological advances over the past few decades have significantly changed the ways in which consumers can access audiovisual content. Historically, motion pictures were predominantly viewed in cinemas. When VHS and DVD were developed, consumers could view films at home on dedicated players. Since the 1980s, higher-resolution video began to be transmitted over fibre optics networks such as the Internet, and video codecs were developed to make transmission of video more feasible by compressing the size of video files transmitted.
6. Today streaming services form a key component of the distribution of video content. Streaming involves allowing consumers to access video content outside of traditional distribution networks (e.g., cable services), typically over the Internet.
7. Many standardised technologies relate to the ability to stream content, such as Internet transport protocols, WiFi, digital rights management (DRM), and, notably, audio/video codecs.
8. MPA's members have an interest in various aspects of the case but wish to make submissions here only on Ground 4 of the appeal.
 - 8.1. MPA's members need, as a practical matter, to take licences to implemented SEPs (which are required to be licensed on F/RAND terms) to carry on their businesses. When confronted by demands from SEP holders, MPA members face an asymmetry of bargaining leverage. SEP holders contend that MPA members must

take licences on the SEP holders' terms, given what the standards require. And if the MPA members do not immediately agree to those demands—because they do not believe those demands provide F/RAND terms—their streaming services are vulnerable to disruptive litigation and injunctions.

- 8.2. Typically, the type of licence required is a licence to the global portfolio of the relevant patent owner's SEPs relating to the ability to stream content. The nature and content of the portfolio sought to be licensed is almost never governed by the laws of a single jurisdiction. SEP licensing negotiations can be complex, with MPA members needing to account for the legal frameworks of multiple jurisdictions.
- 8.3. It is common for account to be taken of the relevant statutory limitation periods, which form an important commercial backdrop and consideration in F/RAND licensing negotiations across all standards, including for setting royalty terms.
- 8.4. Whilst the decision of the Court of Appeal in the instant case nominally relates to the licence terms for a portfolio of cellular SEPs, it has established principles concerning the (in)applicability of limitation periods to royalties for past sales, which are being relied upon in both F/RAND licensing negotiations and litigation concerning other SEP portfolios and other standardised technologies.
- 8.5. MPA is particularly concerned that the Court of Appeal's approach to statutory limitation periods appears to provide a mechanism for circumventing the limitation periods relevant to patents issued under the laws of the UK and other jurisdictions. These patents, in turn, are the subject matter of F/RAND contractual claims, and thus there is nothing exceptional that warrants the Court of Appeal's approach which disregards the relevant legal principles limiting total F/RAND royalties that may be claimed in relation to those patents.
- 8.6. Indeed, reliance on the principles set forth by the Court of Appeal is leading to further disputes in F/RAND licensing negotiations and risks provoking further jurisdictional disputes if undertakings consider that pursuing claims in the UK means that they can circumvent limitation periods in other countries. Moreover, the approach can lead to delays in addressing claims since without any effective limitation constraint it is possible for SEP owners to sit back while a potentially large and unpredictable liability for royalties accrues.

8.7. Audio/video codec licensors did not attempt to charge significant royalties on content streaming until nearly two decades after the approval of the Advanced Video Coding (AVC) standard and over a decade after the approval of the High Efficiency Video Coding (HEVC) standard. The approach of SEP owners has changed meaning that unpredicted (and unpredictable) liabilities may have accrued without limitation of time. For example, Access Advance has recently attempted to start a licensing program for video streaming activities (the Video Distribution Platform Program or “VDPP”) contrary to the earlier promise it made in 2018 to “no longer license nor seek royalty fees for non-physical HEVC content distribution including Internet streaming, cable, over-the-air broadcast, and satellite”.¹

8.8. MPA’s members, in common with all businesses, rely on limitation periods in planning and conducting their businesses. Failure to abide by those limitations periods is significantly problematic, particularly where licensors seek to disrupt the industry practice of decades not to seek licences for streaming services. The disapplication of limitation periods will ultimately have adverse consequences for streaming services and the consumers of such services, including increased prices, reduced choice of content and reduced quality of the content produced.

III MPA’s submissions

(i) Reliance placed on court decisions by parties to F/RAND negotiations

9. Digitisation and streaming have altered the way in which audiences can access audiovisual content. Many standardised technologies are involved in streaming content, including those standards relating to connectivity and the transmission of data (whether wired or wirelessly), and standards enabling the encoding and decoding of audiovisual data (i.e. audio/video codecs).
10. Industry application of standards relating to the audio/video codecs used in streaming are important to MPA’s members. Relevant standards include the H.264 Advanced Video Coding (AVC) Standard, H.265 High Efficiency Video Coding (HEVC) Standard, and

¹ “HEVC Advance Eliminates Content Distribution Royalty Fees and Reduces Certain Royalty Rates and Caps”, Access Advance, 13 March 2018, accessible at: <https://accessadvance.com/2018/03/13/hevc-advance-eliminates-content-distribution-royalty-fees-and-reduces-certain-royalty-rates-and-caps/>.

the H.266 Versatile Video Coding (VVC) Standard. These standards are promulgated by the International Telecommunication Union (ITU) and so subject to the same RAND licensing obligations.

11. As with the ETSI FRAND obligation, the ITU RAND obligation is not accompanied by a mandatory dispute resolution mechanism. This is a point already noted by this Court in *Unwired Planet v Huawei* [2020] UKSC 37 (*Unwired Planet SC*) at [90] as an issue relating to the enforcement of F/RAND commitments generally.
12. There is an increasing amount of litigation in several jurisdictions involving such standards e.g. *Acer v Nokia*,² *ASUS v Nokia*,³ *Hisense v Nokia*,⁴ *InterDigital v Amazon*,⁵

² Parties involved in litigation in the UK, Case No. HP-2025-000030; the UPC, Case No. ACT_15096/2025 (Local Division, Munich); Germany, Case Nos. 7 O 4100/25 (Munich), 7 O 4101/25 (Munich), the US, Case Nos. 1:25-cv-01106 (Delaware District Court), 1:25-cv-00523 (Texas Western District Court); Brazil, Case No. 1052350-65.2025.8.26.0100; India, Case No. CS(COMM) 644/2025 (Delhi High Court).

³ Parties involved in litigation in the UK, Case No. HP-2025-000039; the UPC, Case Nos. CC_CFI_384/2026 (Local Division, Munich), ACT_15048/2025 (Local Division, Munich); Germany, Case Nos. 7 O 4102/25 (Munich), 7 O 4103/25 (Munich), the US, Case No. 2:25-cv-03053 (California Central District Court); India, Case No. CS(COMM) 643/2025 (Delhi High Court).

⁴ Parties involved in litigation in the UK, Case No. HP-2025-000032; the UPC, Case No. ACT_15109/2025 (Local Division, Munich); Germany, Case Nos. 7 O 4104/25 (Munich), 7 O 4105/25 (Munich); the US, Case Nos. 1:25-cv-01871 (Georgia Northern District Court), 2:25-cv-01091 (Texas Western District Court); Brazil, Case Nos. 5071632-55.2025.4.02.5101, 1049035-29.2025.8.26.0100; India, Case No. CS(COMM) 645/2025 (Delhi High Court).

⁵ Parties involved in litigation in the UK, Case No. HP-2025-000043; the UPC, Case Nos. CFI_1376/2025 (Local Division, Mannheim), COA_12/2026 (Court of Appeal, Luxembourg), CFI_2045/2025 (Local Division, Mannheim), CFI_1481/2025 (Local Division, Mannheim), CFI_1482/2025 (Local Division, Mannheim); Germany, Case No. 21 O 12112/25 (Munich); the US, Case Nos. 7:26-cv-00064 (Texas Western District Court), 1:25-cv-02390 (Virginia Eastern District Court), 2:25-cv-00822 (Virginia Eastern District Court), 1:25-cv-01365 (Delaware District Court); Brazil, Case Nos. 3021485-26.2025.8.19.0001, 1109939-15.2025.8.26.0100.

Dolby v Roku,⁶ *Paramount v Nokia*,⁷ *Warner Bros. v Nokia*,⁸ *InterDigital v. Disney*,⁹ and *Huawei v. Disney*.¹⁰

13. Although the decision of the court below was made in the context of cellular SEPs for the telecommunications industry, its significance goes beyond cellular technologies and affects the audiovisual industry relevant to MPA's members. It is true, as Mellor J recently observed in *Acer and ors v Nokia* [2025] EWHC 3331 (Pat) (*Acer*) at [39], that each F/RAND regime must be analysed on its own merits. However, as was found at first instance and accepted on appeal, the key aims and practical effect of the RAND obligations applicable to audio/video codecs are effectively the same as the FRAND obligations applied by ETSI¹¹.
14. Because of the similar nature of F/RAND obligations and the lack of prescribed dispute resolution mechanisms, any court decision concerning the F/RAND valuation is of great significance to parties to F/RAND licensing negotiations. This is so even where the court decision in question may concern a different standard and/or a different industry. The experience of MPA and its members is that there is often little option but to place reliance

⁶ Parties involved in litigation in the UPC, Case No. APL_15039/2025 (Court of Appeal, Luxembourg); Germany, Case No. 21 O 8296/25; the US, Case Nos. 2025-02015 (USCA Federal Circuit), 5:24-cv-04660 (California Northern District Court First instance); Brazil, Case No. 3016299-22.2025.8.19.0001.

⁷ Parties involved in litigation in the UK, Case No. HP-2025-000055; the UPC, Case Nos. CC_CFI_739/2026 (Local Division, Mannheim), CFI_975/2025 (Local Division, Mannheim); Germany, Case Nos. 21 O 12377/25 (Munich), 21 O 12378/25 (Munich); the US, Case No. 1:25-cv-01054 (Delaware District Court); Brazil, Case No. 5005161-23.2026.4.02.5101.

⁸ Parties involved in litigation in the UK, Case No. HP-2025-000053; the UPC, Case No. CFI_1390/2025 (Local Division, Mannheim); Germany, case number unknown (Munich); the US, Case No. 1:25-cv-01337 (Delaware District Court).

⁹ Parties involved in litigation in the UPC, Case Nos. CFI_86/2025 (Local Division, Mannheim), CFI_297/2025 (Local Division, Dusseldorf), CFI_651/2025 (Local Division, Dusseldorf), CFI_292/2025 (Mannheim); Germany, Case Nos. 7 O 4335/25 (Munich), 7 O 1297/25 (Munich), 7 O 1311/25 (Munich), 7 O 5087/25 (Munich), 6 U 3677/25 e (Munich Court of Appeal); the US, Case Nos. 2:25-cv-00895-WLH-RAO (California Central District Court), 25-cv-996-MN (Delaware District Court); Brazil, Case Nos. 0811901-50.2025.8.19.0001, 3017870-28.2025.8.19.0001.

¹⁰ Parties involved in litigation in the UPC, Case No. CFI_352/2026 (Local Division, Mannheim); Brazil Case Nos. 3019978-93.2026.8.19.0001 and 3042073-20.2026.8.19.0001; Germany, Case Nos. 7 O 15364/25 (Munich), 7 O 15365/25 (Munich).

¹¹ "In effect, it is an obligation to grant RAND licences with the same meaning as ETSI FRAND" (*Acer* at [111] the judge adopts the characterisation of the claimants in that case which he had earlier summarised at [45](i)). See also Arnold LJ in *Acer and Anr v Nokia* [2026] EWCA Civ 564 at [1].

on such decisions because there are so few publicly available datapoints concerning how SEP licences ought to be valued.

(i) Commercial practices regarding the treatment of past sales and limitation periods

15. Apple has dealt with industry practice concerning the treatment of limitation periods and the underlying reasons for this in its written case (e.g. at paragraphs [97] and [109]).
16. The experience of MPA's members is that in F/RAND licence negotiations, both licensors and licensees acting in good faith recognise and give effect to the various international limitation periods. That is the industry practice, which is underpinned by the same commercial and practical reasons summarised by Apple's written case (e.g. at paragraphs [117] and [188]). That is in line with the guidance of this Court in *Unwired Planet SC* at [62] that the English court "...should look to and draw on commercial practice in the real world", which the Court of Appeal did not do in the present case.

(ii) Jurisdictional overreach

17. In applying its earlier decision from *InterDigital v Lenovo* [2024] EWCA Civ 743 (*InterDigital CA*), the Court of Appeal did not reflect globally accepted, and in the case of the US, which is an important jurisdiction in the context of SEP licensing, statutorily expressed, limitation periods for past damages.
18. Not all jurisdictions accept the concept of a court determining F/RAND terms on a global basis and MPA respectfully submits that it is important that, if and in so far as the jurisdiction is exercised, this should be done in a way that respects foreign laws and industry practice.
19. The issue is more acute in this case because the portfolio in question (in common with most SEP portfolios) consists of predominantly non-UK SEPs. The practical effect of the Court of Appeal's decision is to permit recovery of patent licence fees for a period during which they would be irrecoverable (on any basis) under the laws of the patents in question.
20. In *InterDigital CA* at [190], the Court of Appeal correctly recognised that limitation periods pursue "*universally recognised policy objectives.*" This includes to prevent oppression by stale claims, and bringing finality and certainty. These policy objectives

are reflected in US law and those of the laws of other jurisdictions as has been recognised in US law for many years.¹²

21. The Court of Appeal in *Lenovo CA* at [191] sought to justify that limitation periods do not apply to a F/RAND determination because the royalties due under the determined licence are not “*damages for breach of contract or tort.*” However, this is not a difference that, as far as MPA is aware, has been accepted in any other jurisdiction and the English court is an outlier in having adopted such a position.
22. This would be concerning (and in MPA’s view still an error of law) if only disapplying UK statutory limitation for UK SEPs. However, the ability of the English court to determine a global licence means that statutory limitation applicable to non-UK patents is also being overridden.
23. MPA believes the approach of the court below represents a form of jurisdictional overreach, contrary to comity and the longstanding respect for the laws of other countries and the territorial limits of each court’s enforcement jurisdiction.¹³ Within this context foreign limitation periods are acknowledged as having special importance both by the legislature and the English court. The Court will be aware for example of the UK provisions which (summarising) are as follows:
 - 23.1. Section 1 of the Foreign Limitation Periods Act 1984 specifically requires the English court to apply foreign limitation periods “*where in any action or proceedings in a court in England and Wales the law of any other country falls (in accordance with rules of private international law applicable by any such court) to be taken into account in the determination of any matter.*”
 - 23.2. The observations of Leggatt J (as he then was) in *Alseran and others v Ministry of Defence* [2019] QB 1251 at [827] that “*...in the field of limitation law, which involves striking a balance between allowing claimants to assert their legal rights*

¹² *Wood v Carpenter*, 101 U.S. 135 (1879), p.139: “[s]tatutes of limitation ... are found and approved in all systems of enlightened jurisprudence” (US Supreme Court).

¹³ See e.g., Lord Justice Males’ comments in *SAS Institute Inc. v. World Programming Limited* [2020] EWCA Civ 599 at [111] that “*comity is a two-way street, requiring mutual respect between courts in different states*” and that the “*need for mutual respect means that comity requires a recognition of the territorial limits of each court’s enforcement jurisdiction, in accordance with generally accepted principles of customary international law*”.

and protecting defendants against stale claims. Different legal systems may legitimately strike this balance in different ways. An English court should for this reason be very slow to substitute its own view for the solution adopted by a foreign legislature” (emphasis added).

24. The US Supreme Court has on two relatively recent occasions confirmed the importance of judicial respect for the statutory limitation periods in the field of intellectual property.
25. First, with respect to limitation periods in intellectual property cases, in *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663 (2014), in rejecting the role of an additional equitable defence of laches with respect to claims brought within the limitation period the majority of the Supreme Court said as follows (as summarised in *SCA Hygiene v. First Quality Baby Products* 580 U. S. 328 (2017) (slip opinion) at page 4):

“When Congress enacts a statute of limitations, it speaks directly to the issue of timeliness and provides a rule for determining whether a claim is timely enough to permit relief. Id., at 677 (slip op., at 11). The enactment of a statute of limitations necessarily reflects a congressional decision that the timeliness of covered claims is better judged on the basis of a generally hard and fast rule rather than the sort of case-specific judicial determination that occurs when a laches defense is asserted. Therefore, applying laches within a limitations period specified by Congress would give judges a “legislation overriding” role that is beyond the Judiciary’s power.”

26. The case emphasised the importance of the Judiciary not usurping the power of Congress to legislate for limitation periods by providing additional defences (in that case laches barring a claim in the limitation period). The Court said that relevant statute of limitations “allows plaintiffs . . . to gain retrospective relief running only three years back from the date the complaint was filed” (*Petrella* at pages 6 to 7) and that “[A] successful plaintiff [can] gain retrospective relief only three years back from the time of suit” (*Petrella* at 1(a) on page 2). The Court also described the Copyright Act’s statute of limitations as “a three-year look-back limitations period” (*Petrella* at page 4).
27. This approach was followed with respect to patent claims by the majority of the Supreme Court in *SCA Hygiene v. First Quality Baby Products* 580 U.S. 328 (2017) (slip opinion). The majority referred to *Holmberg v. Armbrecht*, 327 U. S. 392, 395 (1946) (“[i]f

Congress explicitly puts a limit upon the time for enforcing a right which it created, there is an end of the matter”, *SCA Hygiene* at page 10) and held that the principles articulated in *Petrella* applied just as much to patent claims (*SCA Hygiene* at page 10 and footnote 5). Section 286 of the (Federal) Patent Act says: “*Except as otherwise provided by law, no recovery shall be had for any infringement committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action.*” 35 U. S. C. §286.

28. In the context of US patent infringement claims the majority of the US Supreme Court said that the ordinary limitation period “*necessarily reflects a congressional decision*” and that “*courts are not at liberty to jettison Congress’ judgment on the timeliness of suit*”.¹⁴
29. Second, although Breyer J dissented in *SCA Hygiene*, the nature of the dissent is significant. His view at the final paragraph on page 2 and first paragraph on page 3 of Breyer J’s dissenting judgment in *SCA Hygiene* was that there remained scope for a further defence of laches in respect of claims brought within the limitation period to restrict the ability of patentees to wait until a product had become successful before bringing a suit. Thus, no member of the US Supreme Court doubted that, under the United States’ statutory scheme, if a claim for infringement was brought, damages could only be claimed for a period of six years before the filing of the complaint or that there should be scope for recovery of financial relief in a period prior to that date. This continued certainty in the law has been relied upon by both licensees and licensors for decades and its importance cannot be understated.

Commercial practice

30. This approach of respect for the backstop of a limitation period is accepted in the video content industry and reflected in commercial practice during negotiations (see paragraphs 15 and 16 above) since such periods are applied by the courts of other jurisdictions.

¹⁴ See the final paragraph at page 4 of *SCA Hygiene*, “The enactment of a statute of limitations necessarily reflects a congressional decision that the timeliness of covered claims is better judged on the basis of a generally hard and fast rule rather than the sort of case-specific judicial determination that occurs when a laches defense is asserted. Therefore, applying laches within a limitations period specified by Congress would give judges a “legislation overriding” role that is beyond the Judiciary’s power. *Id.*, at ___ (slip op., at 14). As we stressed in *Petrella*, “courts are not at liberty to jettison Congress’ judgment on the timeliness of suit.” *Id.*, at ___ (slip op., at 1).

31. MPA submits that given that no claim could be made for a financial remedy 6 years before the claim was commenced under US patents which form part of the portfolio and that this has been reflected in licensing practice in this area, it would be inappropriate for the English court to hold that it was F/RAND for a SEP owner to require payment of SEP licence fees extending beyond what is regarded as a normal limitation period in the jurisdictions where the patents are registered.

Limitation periods for patent claims in other countries

32. Apple’s case is that industry practice is such that “*royalties on past sales should be limited by reference to the applicable periods of limitation for the jurisdiction where the substantial proportion of the portfolio was filed (normally 6 years prior to commencement of the infringement proceedings)*” (paragraph [4]). The Supreme Court may be assisted in knowing the position as regards limitation periods for patent claims in other countries.
33. No major jurisdiction provides for recovery of financial relief for use of patent technology prior to 6 years before commencement of the claim. The limitation periods for patent damages claims in major patent jurisdictions are set out in Annex 1 to these submissions.

IV Conclusion

34. MPA respectfully requests that if the courts of England and Wales settle terms for SEP licences, they should do so in a way that respects the law of limitation in countries in respect of which rights are licensed and which accords with what has hitherto been industry practice.

DANIEL ALEXANDER KC

KIRKLAND & ELLIS INTERNATIONAL LLP

22 MAY 2026

ANNEX 1 – LIMITATION PERIODS

Jurisdiction	Limitation Period	Source
England & Wales	6 years from the date on which the cause of action accrued.	Section 2 of the Limitation Act 1980.
Federal Republic of Germany	A standard limitation period of 3 years .	Section 195 of the German Civil Code (applicable to claims deriving from an infringement of a patent right pursuant to Section 141 of the German Patent Act 1980 (as amended)).
India	3 years from the date on which the right to sue accrues.	Article 113 of the Schedule to the Limitation Act 1963.
Japan	3 years from the time when the victim or legal representative thereof comes to know the damage and the identity of the perpetrator.	Article 724 of the Civil Code of Japan.
People’s Republic of China	3 years beginning from the date on which the patentee or interested party knows or should have known of the infringing act and the infringer.	Article 74 of the Patent Law of the People’s Republic of China (as amended).
Republic of Korea	3 years commencing from the date on which the injured party or their legal representative becomes aware of the damage and the identity of the person who caused it.	Article 766 of the Civil Code of the Republic of Korea.
Unified Patent Court	Not more than 5 years after the date on which the applicant became aware, or had reasonable grounds to become aware, of the last fact justifying the action.	Article 72 of the Agreement on a Unified Patent Court.
United States	No recovery for any infringement committed more than 6 years prior to the filing of the complaint or counterclaim for infringement in the action.	Title 35 United States Code § 286.