

**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**

**Respondents/Claimants**

**and**

- (1) APPLE RETAIL UK LIMITED**
- (2) APPLE DISTRIBUTION INTERNATIONAL LIMITED**
- (3) APPLE INC**

**Appellants/Defendants**

**and**

**TUNSTALL GROUP HOLDINGS LIMITED**

**Rule 24 Intervener**

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**TUNSTALL'S SUBMISSIONS**

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## **A INTRODUCTION**

1. Tunstall Group Holdings Limited (“Tunstall”) is an innovative British company that develops technology enabled care products for the healthcare industry. Its products enable individuals with chronic health and age-related conditions to live independently for longer in their own homes. As a relatively small British company operating in the community healthcare sector, Tunstall brings a unique perspective to the issues concerning the principle of legal certainty that arise on this appeal.
2. Tunstall has been granted permission under Rule 24(3)(a) of the Supreme Court Rules 2024 to intervene in this appeal. Whilst it has permission to make written submissions in relation to Apple’s Grounds 2, 4 and 5, to avoid duplication with Apple’s written case, Tunstall’s submissions will be limited to Grounds 2 and 4.

## **B TUNSTALL’S INTEREST IN THIS APPEAL**

3. Since its establishment in 1957, Tunstall has become a leader in the provision of health and care technology solutions. It has a team of around 3,000 employees operating in 13 countries to support more than 5 million elderly and chronically ill people to live safely and with dignity in the community. Many of Tunstall’s direct customers are national or local governments, who are particularly cost sensitive due to constrained public finances.
4. Tunstall’s products include panic buttons and sensors connected to alarm response centres that enable the provision of telecare and telehealth services. Such products primarily operate over telephone lines. However, the transition from analogue to digital telephone lines has necessitated the use of standardised connectivity technologies, such as 4G, by way of secondary back-up connectivity because often Tunstall’s devices are delivering a life-critical service. Licensors of the patents underpinning these standardised connectivity technologies are under an obligation to be prepared to offer licences in respect of those patents on FRAND terms.
5. Tunstall considers public judgments to be an important data point for assessing what licence fees are FRAND because of the information asymmetry that is present in SEP

licensing negotiations – licensors hold (and frequently do not disclose) all the information necessary to understand whether their royalty requests are in fact FRAND. Therefore, Court decisions in FRAND valuation cases do not merely resolve the dispute between the parties before the Court. They also influence FRAND licensing negotiations between other parties, including those operating in other industries (such as healthcare). Such decisions are not only influential where the same standards are implemented (e.g., 4G) but also where different standardised technologies are used because the valuation methodologies adopted by the Court will have relevance.

6. The principle of legal certainty, which has long been recognised as an important facet of the rule of law that promotes trade and economic growth<sup>1</sup>, is of real importance in this area. Public judgments constitute invaluable data points for FRAND licensing negotiations. As such, it is not merely desirable but vital that cases emanating from the same jurisdiction that concern the same standardised technology produce similar results: if the results are widely different, the ability to rely upon such judgments as data points will be lost. It is also important that long-standing statutory protections that commercial parties rely upon as limiting liability, such as limitation periods, are not disappplied.
7. An inability to rely upon public judgments as reliable data points and the loss of statutory limitation periods is a matter of real prejudice to smaller technology companies such as Tunstall, who have little to no resources in terms of time, expertise and finance to dedicate to the issue of FRAND licensing. An inability to reliably predict what a FRAND royalty will be is likely to cause such smaller technology companies disproportionate harm as it seriously impedes their ability to make future economic plans concerning investment and growth.
8. There were three matters of particular concern to Tunstall arising from the Court of Appeal's decision:
  - 8.1. The dramatic increase in the royalty award from the decision at first instance, which produced a rate which implied an aggregate royalty burden ("ARB") for 4G that

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<sup>1</sup> See the pithy summary set out by Lord Bingham extra-judicially in Tom Bingham, *The Rule of Law* (London, Allen Lane, Penguin Press 2010) at pp38-39.

was completely different to (and seemingly irreconcilable with) that of the Court of Appeal’s judgment in *InterDigital v Lenovo* [2024] EWCA Civ 743; [2024] RPC 24 (“*InterDigital v Lenovo*”). This wide variation in implied aggregate royalty burden for a single standardised technology (4G) makes it incredibly difficult, if not impossible, for implementers such as Tunstall to make sensible provision for the FRAND royalties that they may owe (both now and in the future).

- 8.2. The disapplication of statutory limitation periods in respect of past sales, thereby removing a further important aspect of legal certainty i.e., how far back in time provision for FRAND royalties (and interest on such royalties) needs to be accounted for.
- 8.3. The reliance upon the outcome of foreign litigation, which further increases uncertainty as to what rate is likely to be found FRAND in the UK.
9. The considerable uncertainty concerning assessment of FRAND royalties following the Court of Appeal’s judgment is having a knock-on effect for product innovation because of the need to make provision for potentially unreasonably high SEP liabilities. This ultimately harms Tunstall’s consumers through more limited choice and higher prices. Many of Tunstall’s direct customers are national or local governments who have extremely constrained and reducing budgets, which is already creating downwards pressure on what they can afford. In the face of uncertain or rising costs, the only option for such buyers is to scale back the provision of the products Tunstall manufactures which reduces the opportunity for vulnerable elderly and chronically unwell people to be cared for at home.
10. Accordingly, Tunstall, its direct customers and the end users of its devices have a direct interest in this appeal given the prejudice they will suffer if the decision of the Court below is left undisturbed.

## **C SUBMISSIONS**

11. In its Rule 16 submission and Rule 24 application Tunstall highlighted its agreement with the Appellants’ Grounds 2, 4 and 5. Having considered Apple’s written case, Tunstall maintains its support for Ground 5 but does not make any additional arguments on that issue. Instead, its submissions are focussed on Apple’s Grounds 2 and 4.

## Reliance on Court decisions

12. The parties to this appeal are substantial undertakings, with significant resources and a focus on global licensing of cellular SEPs for mobile telephones. Whilst a company of the size of Apple may have the resources to extensively test the assertions made by a prospective licensor during negotiations, and if needs be to litigate, Tunstall and its peers are not in the same position.
13. Tunstall is a smaller British company operating in a significantly different industry (technology enabled care alarms), with a limited geographic footprint. The industry in which Tunstall works is necessarily influenced by considerations of public sector financing and ensuring the best outcome for the vulnerable device end-users. The product innovators in this sector are far smaller than the global entities involved in making mobile telephones and the average selling prices of their products are far lower than mobile telephones. As an example, the average selling price of a Tunstall device is \$150 compared to the representative average selling price of an iPhone which the Court of Appeal identified as being \$1000 (or even a Google Android phone at \$470)<sup>2</sup>.
14. Accordingly, Tunstall and its peers have far fewer resources in terms of money, time and experience to address SEP licensing. This limits their ability to scrutinise the demands of SEP licensors and ultimately to litigate, making them particularly vulnerable to the abusive SEP licensing practices of those seeking supra-FRAND royalties. The vulnerability of smaller firms in SEP licensing due to their limited resources has been recognised in judgments such as *Interdigital Technology Co. v. Lenovo Group Ltd* [2023] EWHC 1583 (Pat); [2023] RPC 13 at [609], where it was held that licences with smaller companies were not reliable comparables at all due to the fact that the licence rates were driven by fear of litigation costs rather than by a rigorous (or indeed any) valuation of the portfolio in question.
15. These disadvantages smaller companies face are further compounded by the nature of SEP licensing, which is characterised by a systemic lack of transparency as to: (i) which declared SEPs are, in fact, essential; and (ii) what is the appropriate FRAND value for a

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<sup>2</sup> *Optis v Apple* [2025] EWCA Civ 552; [2025] RPC 18 at [145].

licence. Often the information required to make such assessments is in the hands of the SEP licensor and will not be disclosed to the prospective licensee.

16. The UK Intellectual Property Office (“IPO”) has recognised these issues as particularly affecting smaller companies. In its Consultation on Standard Essential Patents (“SEPs”) published on 15 July 2025<sup>3</sup>, the IPO noted that (emphasis added to the quotes below):

*“33. As licence rates are privately negotiated between businesses, pricing information is protected by non-disclosure agreements (NDAs). **This lack of public information on pricing makes it difficult for licensees to establish if a rate offered by a SEP holder is FRAND or competitive.** For example, the IPO’s 2023 SME survey revealed that 83% of respondents involved in SEP licensing said they did not feel they had sufficient information on pricing. Information on pricing is important for licensees to plan their costs, construct business plans, and access finance from investors.*

...

*“36. A lack of pricing transparency means that licensees can overpay for licences, and we have seen **evidence emerging through litigation that licensing offers made by SEP holders have exceeded court adjudicated rates by 4-500 times.** Further, not all licensees, and especially SMEs, can currently afford to challenge suspected supra-FRAND rates through litigation.*

*“37. There is a growing body of evidence indicating that, because SEP holders have all the information on their patent (e.g. on its essentiality and value), there is information asymmetry between them and the SEP licensees. It may be difficult for licensees and implementers to know which patents are truly essential to a standard, and therefore whether a licence is needed and what the licensing obligations are.*

...

*“41. Due to the sheer volume of declared SEPs, it can be difficult for licensees to determine which SEPs they need to licence to implement a standard. This creates search costs for licensees seeking to understand which SEPs they need to licence, and who to*

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<sup>3</sup> Available at: <https://www.gov.uk/government/consultations/consultation-on-standard-essential-patents-seps/consultation-on-standard-essential-patents>.

obtain a licence from. This in turn can lead to legal uncertainty that may deter businesses from market entry.

*“42. This lack of certainty on which SEPs are essential is compounded by difficulties involved in establishing essentiality. Only courts can provide a definitive ruling on essentiality, but litigation is a costly route. In the absence of third-party checks (e.g. independent checks arranged by a patent pool) licensees must turn to commercial providers. There are some commercial SEPs mapping and landscaping services available. They provide information on essentiality of patents, but can be costly to access, especially for SMEs, and may not provide certainty’.*

*“43. A lack of transparency in relation to both pricing and essentiality can make it difficult for licensees to make informed licensing decisions and can lead to inefficient outcomes, including lengthy licensing negotiations, payment of supra-FRAND licenses, or court litigation. These factors can create uncertainty and could result in the slow uptake and diffusion of innovation by UK licensees. This risks the competitiveness of UK goods and services, less consumer choice and higher consumer prices. Barriers to innovation can be most strongly felt in the very newest industries, like green technology and streaming services.”*

...

*“53. On the other hand, licensing frictions may persist and may be more seriously felt in markets with emerging technologies. Transparency would increasingly be left to court determinations in high-profile SEPs cases. **Potentially lengthy cases may disproportionately affect SMEs. For example, we have seen some recent UK court determinations indicating that smaller businesses (which were not parties in the litigation) may agree to higher (‘supra-FRAND’) licence rates, potentially putting them at a competitive disadvantage in important technology fields. In addition, the cost of lengthy litigation may be beyond the reach of many SMEs.** The government therefore believes that we need to consider further actions to create the conditions for SMEs to grow and succeed in emerging technology markets.”*

17. Due to limited resources and the nature of the SEP licensing environment, Tunstall and similar companies have no choice but to place significant reliance on Court decisions,

both when planning their own commercial activities and when negotiating with SEP licensors:

- 17.1. Commercial Planning: Court decisions form a critical part of how companies such as Tunstall plan, account for and price risk, all of which are critical to the ability to secure investment, grow, commit resources to research and development (“R&D”) and viably compete in the marketplace. Court FRAND determinations are used to derive the ARB for access to a particular standardised technology such as 4G. This is an important metric enabling companies to understand the cost of adopting a technology, which in turn allows them to predict potential liabilities for use of such technology, plan R&D expenditure and secure investments.
- 17.2. SEP Licensing Negotiations: Court decisions also form an invaluable tool when it comes to negotiating licences with SEP holders. Public Court decisions provide a window to overcome the lack of transparency and information asymmetry inherent in SEP negotiations. As such, judgments in FRAND valuation cases do not merely resolve the dispute between the parties before the Court – they also influence FRAND licensing negotiations between other parties, including those in other industries.
18. However, the use of Court decisions, whether for business planning and/or licensing negotiations, is only meaningful if such decisions can be treated as a reliable source of information. That, in turn, depends on there being consistency across the judgments of a particular Court. If there is no consistency of approach from one decision to the next, then Court decisions become unreliable data points which are effectively useless for smaller companies such as Tunstall.
19. As a British company, it is especially important for Tunstall that such consistency exists in the decisions of the English Court. Of course, Tunstall accepts that there will be some degree of variation in the results obtained in different cases – different parties will bring different factual circumstances to bear. But within expected bounds of variation, there can still be consistency. Regrettably that was not present in the instant case. Firstly, the decision of the Court below led to a near-order of magnitude increase over the first instance royalty decision. Secondly, the aggregate royalty burden for 4G derived from

the Court of Appeal’s royalty decision in the instant case (\$39.47<sup>4</sup>) cannot be reconciled with that derived from the Court of Appeal’s previous royalty decision in *InterDigital v Lenovo* (\$6.02<sup>5</sup>). Given that in both cases the parties were all big beasts – the holders of very large SEP portfolios on the one hand and leading implementers on the other – this very substantial discrepancy is not explicable.

20. Tunstall considers this discrepancy in ARBs, if it had been considered, would have signalled to the Court of Appeal that it had fallen into error in its valuation exercise. The Court of Appeal would similarly have been alerted, if it had tested the implied ARB in the instant case against a more representative price for 4G enabled devices. The FRAND royalty is meant to represent the value of the patented technology, and it seems to Tunstall evident that assessing the implied ARB against the average selling price of an iPhone (i.e. one of the most expensive 4G enabled devices at \$1000) or even a Google Android device (at \$470) would not be representative of the price of the vast majority of 4G enabled devices which typically have average selling prices in the region of \$100, comparable to the average \$150 cost of Tunstall’s device identified above.

### **Limitation periods**

21. As this Court made clear in *Unwired Planet v. Huawei* [2020] UKSC 37 (“*UPSC*”) at [62], “*courts should look to and draw on commercial practice in the real world*”. Tunstall’s experience is that relevant statutory limitation periods are respected and adhered to. The decision of the Court below to disapply the statutory protection provided by limitation periods, does not draw on commercial practice and is particularly unfair to smaller companies.
22. Tunstall is typical of all commercial undertakings that it has in good faith planned its business with the existence of statutory limitation periods in mind. Limitation periods are an important legal safeguard that provide the legal certainty that allows Tunstall to plan its business and secure investment. As the Respondents alluded to in their Notice in

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<sup>4</sup> See paragraph 74 of Apple’s written case.

<sup>5</sup> See paragraph 74 of Apple’s written case.

Response to Tunstall’s Rule 24 Application<sup>6</sup>, the financial circumstances for companies in Tunstall’s industry have been challenging. The reality is that smaller companies do not have the financial resources to make provision for an indefinite tail of indeterminate royalty demands for past use. To do so would have a materially adverse impact on their ability to secure investment, develop new products and compete effectively. Any attempt to address such a burden would inevitably mean having to increase prices, which is particularly difficult in Tunstall’s industry given the reliance on government customers with limited and ever stretched budgets. As noted above the consequence would likely be reduced provision of the technology to the vulnerable end users who rely on Tunstall’s devices to live safely in their own homes. These are the very type of consequences caused by stale claims that limitation periods exist to prevent.

23. The need for maintaining the protection afforded by limitation periods is further demonstrated by the fact that: (i) Tunstall’s need to adopt cellular connectivity into its products was driven by external factors outside of its control; and (ii) when it adopted cellular connectivity it did so in good faith unaware that there may be any liability upon it to license cellular SEPs.
24. Starting with point (i), Tunstall’s devices originally provided alarm connectivity over traditional analogue copper cable telephone lines, which did not require an independent power supply. However, the transition to digital telephone networks (which do not work if there is a power cut) created a new requirement to have secondary “back-up” connectivity, given the life-critical nature of Tunstall’s products. 2G and 3G connectivity remain sufficient for the back-up connectivity needed for Tunstall’s devices, but they are no longer viable long-term options given 3G has already been largely decommissioned in the UK and 2G being phased out from 2028.<sup>7</sup> The position is similar in many other jurisdictions. Therefore, Tunstall has had no choice but to move to 4G technology.
25. In relation to point (ii), Tunstall was unaware of any requirement to license SEPs at the time of first incorporating 2G cellular technology into its products (back in 2012). In common with its peers, Tunstall has no in-house technical expertise in cellular

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<sup>6</sup> See paragraph 4 of Optis’ Notice of Objection.

<sup>7</sup> See: <https://www.ofcom.org.uk/phones-and-broadband/coverage-and-speeds/2g-and-3g-switch-off-our-expectations-of-mobile-providers>.

technology. Instead, it relies on commercially available cellular modules to provide the necessary cellular connectivity for incorporation into Tunstall's products. Tunstall believed that, in common with the normal position when buying commercially available components for incorporation into its devices, the modules it purchased came with all the necessary intellectual property rights to use the technology. It is notable that despite first adopting cellular connectivity in 2012, no one disabused Tunstall of this belief until over 10 years later when it had begun to transition from 2G/3G to 4G. It was a further surprise for Tunstall to learn that the common reason why cellular modules were sold without an accompanying SEP licence was because SEP holders frequently refuse to provide such a licence to module makers, instead preferring to target end-device manufacturers.

26. The circumstances of Tunstall's adoption of cellular technology are typical of smaller companies. It is not an expert in the technology itself and instead buys in the capability in the form of commercially available modules. There is no knowledge of the potential requirement to license cellular SEPs, until many years after adoption when a licensing claim may arise, at which point it is "locked-in" to the standardised technology, with a long tail of past sales. Tunstall submits that this is another example of the very type of circumstance that limitation periods exist to prevent.
27. Finally, Tunstall notes that the Court of Appeal's decision to disapply limitation periods appears to be at odds with the approach taken in other jurisdictions. Together with the uncertainty created by the irreconcilable discrepancy in implied ARBs between the Court of Appeal's two FRAND decisions, this has already impacted on Tunstall's product development decisions, leading to Tunstall ceasing plans for the development of products incorporating 5G, resulting in a number of job losses in the process.

#### **D CONCLUSION**

28. For the reasons outlined above, Tunstall respectfully requests the Court to allow Grounds 2, 4 and 5 of Apple's appeal.

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**22 May 2026**