IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)

BETWEEN:

(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

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I. THE RELEVANT FACTUAL BACKGROUND

1. This appeal relates to "**Trial E**", which was the last of six trials in these proceedings. Trial E was heard by Marcus Smith J and resulted in two judgments: the "**Main HC Judgment**" of 10 May 2023 ([2023] EWHC 1095 (Ch)) and the "**Consequentials HC Judgment**" of 14 February 2024 ([2024] EWHC 197 (Ch)). The Court of Appeal's judgment on appeal from Marcus Smith J is referred to as the "**CA Judgment**" ([2025] EWCA Civ 553). **[17/344-628]** **[18/629]** **[15/282-338]**

(A) Cellular Standards, SEPs, SSOs and the ETSI System

2. This is a case about patents which are declared essential to cellular telecommunications standards ("**standard essential patents**" or "**SEPs**"). More specifically, it relates to the terms of a fair, reasonable and non-discriminatory ("**FRAND**") licence from Optis to Apple under Optis' portfolio of SEPs. The basic background to cases of this kind is set out in [2]-[6] of the Supreme Court's judgment in ***Unwired Planet v Huawei*** [2020] UKSC 37 ("***Unwired SC***"), of which the following is a summary. **[166/3417-3468]**

3. To promote the development of the international telecommunications industry, and also related industries, the infrastructure equipment and devices produced by competing manufacturers need to communicate and inter-operate with one another, and phones and devices such as laptop computers and tablets need to be available for use internationally by consumers who travel with them from one jurisdiction to another. Two attributes of patent law (that are discussed in *Unwired SC*) have militated against this development.

   (a) First, the prima facie entitlement of the owner of a valid and infringed patent (setting aside the FRAND context) to prohibit by injunction the use of its invention within a national jurisdiction has the potential to disrupt a global market for equipment using that invention.

   (b) Secondly, the national nature of patent monopolies, which forces the patent owner seeking to protect its monopoly to raise proceedings in individual national courts, makes it very difficult, if not wholly impracticable, for a patent owner to protect an invention which is used in equipment manufactured in another country, sold in many countries and used by consumers globally.

4. Organisations involved in the telecommunications industry and related industries have sought to address those issues by establishing Standard Setting Organisations ("**SSOs**"). SSOs aim to promote both technological innovation, which is made available to the public,

and competition between manufacturers, and thereby to benefit consumers through more convenient products and services, interoperability, lower product costs and increased price competition.

5. Participants in SSOs have an incentive to put forward their technology to a proposed standard as inclusion in the standard ensures a market for the technology. Alternative technologies which are not included in a standard may well disappear from the market. Participants who choose voluntarily to have their IPR-protected technologies included in a proposed standard being developed by an SSO are also generally asked to voluntarily (but irrevocably) declare the relevant IPRs that may be essential to the implementation of that standard.

6. The relevant SSO in this case is the European Telecommunications Standards Institute ("**ETSI**"), which is a French association formed in 1988 and which has adopted an intellectual property rights ("**IPR**") policy and contractual framework governed by French law. ETSI's purposes, as set out in article 2 of its Statutes, include the production of "*the technical standards which are necessary to achieve a large unified European market for telecommunications* [etc]" and "*to contribute to world-wide standardization*" in that field. **[126/2390]**

7. The relevant ETSI cellular telecommunications standards in these proceedings are:

   (a) 2G (the 2G technology in Europe is known as Global System for Mobile Communications or "**GSM**");

   (b) 3G (the 3G technology in Europe is Universal Mobile Telecommunications System or "**UMTS**");

   (c) 4G (the most widely-accepted 4G technology worldwide is Long Term Evolution or "**LTE**"); and

   (d) 5G (widely used to encompass fifth-generation cellular telecommunications standard specifications released or published by the 3rd Generation Partnership Project ("**3GPP**") in cooperation with the ITU's IMT-2020 programme such as 5G "**New Radio**").

(B) The ETSI IPR Policy **[119/2340-2351]**

8. ETSI is recognised as the SSO in the European Union telecommunications sector. The European Commission (the "**Commission**") was closely involved in the development of

ETSI's IPR policy, including the undertaking required by Clause 6.1 of that policy (as set out in §15 below) (the "**FRAND Undertaking**") reflecting the importance of FRAND from the point of view of competition policy: *Unwired Planet v Huawei* [2017] EWHC 2988 (Pat) ("*Unwired HC*"), [89]. **[163/3199]**

9. The ETSI IPR regime is governed by the "**ETSI IPR Policy**". This document and its effect are described in [6]-[14] of *Unwired SC*. **[119/2340]** **[166/3424-3428]**

10. The ETSI IPR Policy is a contractual document, governed by French law. It binds the members of ETSI and their affiliates. In summary: **[119/2340]**

    (a) Owners of patented inventions and patent applications which they believe may be or may become essential to the standard voluntarily declare those patents to ETSI.

    (b) When considering whether to include a technology in a standard, ETSI requires the patent owner to enter into an irrevocable undertaking or contract with it to allow implementers of the standard to obtain a licence to use the relevant patented technology on **fair, reasonable and non-discriminatory** ("**FRAND**") terms.

    (c) If the declared patented invention (a SEP) is included in a standard and it is not possible to make, sell, use or operate etc equipment or methods which comply with the standard without infringing that IPR, it is treated as an "**Essential IPR**". The irrevocable undertaking to give a licence on FRAND terms to implementers applies to any such declared Essential IPRs.

    (d) ETSI is not under an obligation to (and does not) check whether patents declared to be essential are in fact essential. Nor does ETSI make any judgement on the validity or status of any such patents. Those are matters for the relevant national courts. ETSI leaves it to the relevant parties, if they so wish, to resolve those questions by court proceedings or alternative dispute resolution.

11. Clause 3.1 of the ETSI IPR Policy states that it: **[119/2340]**

> *"seeks to reduce the risk to ETSI, MEMBERS, and others applying ETSI STANDARDS and TECHNICAL SPECIFICATIONS, that investment in the preparation, adoption and application of STANDARDS could be wasted as a result of an ESSENTIAL IPR for a STANDARD or TECHNICAL SPECIFICATION being unavailable. In achieving this objective, the ETSI IPR POLICY seeks a balance between the needs of standardization for public use in the field of telecommunications and the rights of the owners of IPRs."*

12. Clause 3.2 states: **[119/2340]**

"IPR holders whether members of ETSI and their AFFILIATES or third parties, should be adequately and fairly rewarded for the use of their IPRs in the implementation of STANDARDS and TECHNICAL SPECIFICATIONS." **[119/2340]**

13. Clause 3.3 states: **[119/2340]**

> *"ETSI shall take reasonable measures to ensure, as far as possible, that its activities which relate to the preparation, adoption and application of STANDARDS and TECHNICAL SPECIFICATIONS, enable STANDARDS and TECHNICAL SPECIFICATIONS to be available to potential users in accordance with the general principles of standardization."*

14. A member of ETSI is obliged to use its reasonable endeavours to inform ETSI in a timely manner of Essential IPRs during the development of a standard or technical specification. If a member submits a technical proposal for a standard or technical specification it is obliged **[119/2340]** to inform ETSI of its IPRs which might be essential (clause 4.1). Clause 4.3 provides that this obligation of disclosure applies to all existing and future members of a "patent family".

15. Clause 6.1 provides: **[119/2340-2341]**

> *"When an ESSENTIAL IPR relating to a particular STANDARD or TECHNICAL SPECIFICATION is brought to the attention of ETSI, the Director-General of ETSI shall immediately request the owner to give within three months an irrevocable undertaking in writing that it is prepared to grant irrevocable licences on fair, reasonable and non- discriminatory ('FRAND') terms and conditions under such IPR …"*

16. Clause 6bis instructs members of ETSI to use one of the declaration forms annexed to the Policy (since 14 April 2021, such declarations have been submitted online, *per* Appendix A to the IPR Policy). The licensing declaration includes an irrevocable declaration by the declarant and its affiliated legal entities that, to the extent that disclosed IPRs are or become and remain Essential IPRs, they (a) are prepared to grant irrevocable licences in accordance with clause 6.1, and (b) will comply with clause 6.1bis. **[119/2341]**

17. Clause 15 of the ETSI IPR Policy includes the following definitions: **[119/2346]**

> *6 **"ESSENTIAL"** as applied to IPR means that it is not possible on technical (but not commercial) grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization, to make, sell, lease, otherwise dispose of, repair, use or operate EQUIPMENT or METHODS which comply with a STANDARD without infringing that IPR. For the avoidance of doubt in exceptional cases where a STANDARD can only be implemented by technical solutions, all of which are infringements of IPRs, all such IPRs shall be considered ESSENTIAL.*
>
> *7 **"IPR"** shall mean any intellectual property right conferred by statute law including applications therefor other than trademarks. For the avoidance of doubt rights relating to get-up, confidential information, trade secrets or the like are excluded from the definition of IPR.*

11 ***"STANDARD"*** *shall mean any standard adopted by ETSI including options therein or amended versions and shall include European Standards (Ens), ETSI Standards (Ess), Common Technical Regulations (CTRs) which are taken from Ens and including drafts of any of the foregoing, and documents made under the previous nomenclature, including ETSs, I-ETSs, parts of NETs and TBRs, the technical specifications of which are available to all MEMBERS, but not including any standards, or parts thereof, not made by ETSI.* **[119/2346]**

12 ***"TECHNICAL SPECIFICATION"*** *shall mean any Technical Specification (TS) adopted by ETSI including options therein or amended version including drafts, the Technical Specifications of which are available to all MEMBERS, but not including any technical specifications, or parts thereof, not made by ETSI.*

18. ETSI has produced a "Guide on IPRs" which includes the following:

(a) §3.2.1 provides that "*[a]s a general principle, ETSI does not perform any check on the status and validity of any Essential IPRs notified to ETSI.*" **[124/2371]**

(b) §4.1 provides that "*Specific licensing terms and negotiations are commercial issues between the companies and shall not be addressed within ETSI.*" **[124/2372]**

(c) §4.3 provides that "*ETSI members should attempt to resolve any dispute related to the application of the IPR Policy bilaterally in a friendly manner.*" "*However, it should be noted that once an IPR (patent) has been granted, in the absence of an agreement between the parties involved, the national courts of law have the sole authority to resolve IPR disputes.*" **[124/2372]**

(d) §4.4 provides that "*ETSI expects its members (as well as non ETSI members) to engage in an impartial and honest Essential IPR licensing negotiation process for FRAND terms and conditions.*" **[124/2373]**

(e) §4.5 is entitled "*Financial Contingency*" and provides: **[124/2373]**

"Members developing products based on standards where there may be Essential IPRs, but there is uncertainty, have mechanisms available which they can use to minimize their risk. As a non-exclusive example, a member might wish to put in place financial contingency, based on their assessment of "reasonable", against the possibility that further/additional license fees might become payable."

(C) The ETSI Database

19. Declarations of IPRs pursuant to the ETSI IPR Policy are recorded in a database maintained by ETSI: Main HC Judgment, [104]. The number of patents (including patent applications) that have been declared as essential to any given cellular telecommunications standard set by ETSI is colloquially known as the "**Stack**". The number is very large, measuring in the tens **[17/400]**

of thousands: Main HC Judgment, [15(i)]. The number also varies over time. It is not possible **[17/358]** to ascertain the number of such declared patents from the ETSI database: Main HC **[17/387]** Judgment, [67]; [111]. **[17/402]**

20. Moreover:

(a) As noted in §10(d) above, ETSI itself is not obliged to (and does not) check whether **[17/387]** rights declared to be essential are in fact so.: Main HC Judgment, [67]; ETSI Guide, **[124/2371]** §3.2.1; *Unwired SC*, [6]. **[166/3425]**

(b) ETSI has no system for the 'de-declaration' of patents – for instance, because they have ceased to be essential (or arguably essential) because the relevant standard has changed (or indeed because they were not essential and/or invalid from the outset): Main HC Judgment, [105(v)]. **[17/400]**

(c) Both the patents and the standards are complex, and there are difficulties in interpreting them: *Unwired SC*, [44]. Questions as to whether a particular patent 'maps **[166/3434]** onto' a given standard, whether it is actually essential and whether it is valid are not straightforward to resolve; Main HC Judgment, [105(ii)-(iii)]. **[17/400]**

21. Partly by reason of the matters outlined above and partly due to other matters (including the "*perverse incentive*" for patent owners that is created by counting the number of patents within a portfolio in order to obtain royalties for them), there is a problem of 'over-declaration' of patents as being essential to standards, as parties seek to take advantage of the system: *Unwired SC*, [44]. **[166/3434]**

22. It is not possible to state with any particular reliability the extent of the over-declaration problem: Main HC Judgment, [106]. The Court of Appeal has recognised that the problem **[17/400]** is "*substantial*": Unwired Planet v Huawei [2018] EWCA Civ 2344 ("***Unwired CA***"), [92]. **[165/3378]**

(D) The Parties

23. Optis owns a portfolio of patents ("**the Portfolio**" or "**the PO Portfolio**") which have all been declared to ETSI in relation to certain of the standards listed in §7 above and are all subject to the FRAND undertaking. In the present litigation some of the UK patents in the PO Portfolio have been held to be valid, essential and infringed at trial (including appeals). The PO Portfolio comprises patents that were acquired from Ericsson, LGE and Panasonic

pursuant to three Master Sales Agreements in 2013, and from Samsung via one transaction in 2016 as follows:

(a) Ericsson, LG and Optis Cellular Technology LLC.

(b) Ericsson, Panasonic and Optis Wireless Technology LLC.

(c) Unwired Planet and Ericsson.

(d) Unwired Planet and Samsung.

24. Under the Master Sale Agreements, there were "*revenue sharing arrangements whereby royalty payments to Optis were shared with the transferors*": Main HC Judgment, [28(ii)]. **[17/365]**

25. The PO Portfolio comprised, at the time of the trial before Marcus Smith J, 135 patent families (or 83, when certain patent families originating from Ericsson are excluded due to a direct licence between Apple and Ericsson – which exclusion was not controversial between the parties in the Court of Appeal). For the purposes of the proceedings, the PO Portfolio was treated as being of "*average*" quality by the Judge and in the Court of Appeal: Main HC **[17/438 & 565]** Judgment, [182] and [409]; CA Judgment, [27]. **[15/289]**

26. Apple and its products are well-known. Apple is a major commercial presence in the mobile and other connected devices sectors.

(E) Negotiations and Licence Offers

27. The negotiations between Optis and Apple were the subject of detailed findings at Main HC Judgment [354]-[360]. In summary, Optis first approached Apple with a view to concluding **[17/534]** a licence to the PO Portfolio in late 2016/early 2017. (Marcus Smith J held on the evidence before him that holders of SEPs that they wish to license generally come forward and assert those SEPs to prospective licensees, not *vice versa*: Main HC Judgment, [499].) **[17/611]**

28. There followed approximately two years' negotiations, which did not reach a conclusion. The royalty offers made by Optis and Apple in the course of those negotiations were structured differently, Apple's as a lump sum and Optis's as per unit fees, some expressed as a percentage of the selling price or as a fixed sum per unit use (commonly known, respectively, as "***ad valorem***" and "**dollar per unit**"/"**DPU**")). The offers were summarised by the Judge **[17/533]** as follows:

Date	Offer description	Rate offered
Mar 2017	Oral offer made by Optis to Apple, receipt of which is denied by Apple	0.6% of ASP [average selling price] (capped at US$250)
Aug/Sep 2017	Oral offer made by Optis, confirmed or re-made in writing in September	US$0.86 per unit
Dec 2017	Written offer by Optis	0.192% per unit (capped at US$600), US$1.15/unit equivalent)
Apr 2018	Written offer by Apple	Lump sum of US$35 million
Feb 2019	Offer made in the documents issuing proceedings	0.410% [of net selling price]

[17/533]

(F) The Litigation and Trials Before the FRAND Trial

29. A history of this claim and the parallel US proceedings is set out in CA Judgment, [169]-[222] and, in accordance with Practice Direction 5, §5.6, a chronology with a list of key dates is annexed to this Statement of Facts and Issues. **[15/315-329]**

(i) The Commencement of Proceedings in the UK and the US

30. Optis brought these proceedings on 26 February 2019, alleging infringement of seven UK patents (the "**Asserted Patents**") and seeking the determination by the UK court of the terms of a (global) FRAND licence to the PO Portfolio.

31. More or less simultaneously, Optis filed a complaint against Apple in the US District Court for the Eastern District of Texas ("**EDTX**") alleging infringement of seven, later reduced to five, US patents (the "**US Asserted Patents**"). In the original US complaint and a subsequent amended complaint filed in May 2019, Optis indicated that it was seeking a determination in the UK of terms of a worldwide FRAND licence to the PO Portfolio.

(ii) The Technical Trials: Trials A-D

32. The issues of validity and essentiality/infringement of the Asserted Patents were heard in four Technical Trials, referred to as "**Trials A-D**".

33. Trial A, concerning European Patent (UK) No. 1 230 818 ("**EP818**"), was heard by Birss J (as he then was) in October 2020. On 16 October 2020 Birss J handed down judgment ([2020] EWHC 2746 (Pat)), finding that EP818 was valid, essential to the relevant standards

and had been infringed by Apple. EP818 expired on 20 October 2020. Before it expired, Apple gave in October 2020 an undertaking which was summarised to have the following effect by Meade J *Optis v Apple* [2021] EWHC 2564 (Pat) ("***Trial F (HC)***") [21]-[22]: "Apple undertakes, if it is found to have infringed a valid and essential patent (which it has following Trials A and B), to take the licence which the Court determines to be FRAND at Trial E, subject to two provisos. Those two provisos are these: (i) If it is Finally Decided (which means appeals are exhausted) that Apple does not need to give the undertaking in order to enforce Optis' undertaking to ETSI to give FRAND licences. (ii) If it is Finally Decided that Apple ought to be injuncted even if it gives the undertaking." On 10 November 2021 the Court of Appeal found EP818 to be not infringed, reversing the findings of the High Court on essentiality and infringement, but not the finding of validity ([2021] EWCA Civ 1619). **[22/702]**

34. Trial B, concerning European Patent (UK) No. 2 229 744 ("**EP744**"), was heard by Meade J in April 2021. On 25 June 2021 Meade J handed down judgment ([2021] EWHC 1739 (Pat)), finding that EP744 was valid, essential to the relevant standards, and had been infringed by Apple. On 13 June 2022 the Court of Appeal dismissed Apple's appeal against Meade J's judgment regarding validity in Trial B ([2022] EWCA Civ 792).

35. Trial C, concerning European Patents (UK) Nos. 2 093 953, 2 464 065 and 2 592 779, was heard by Meade J in October 2021. On 25 November 2021 Meade J handed down judgment ([2021] EWHC 3121 (Pat)), finding that the patents were invalid. On 25 April 2023 the Court of Appeal allowed Optis' appeal against Meade J's judgment in Trial C ([2023] EWCA Civ 438), holding that the patents in question were valid, essential and infringed.

36. Trial D, concerning European Patents EP (UK) Nos. 2 187 549 and 2 690 810, was heard by Meade J in January 2022. On 15 March 2022 Meade J handed down judgment ([2022] EWHC 561 (Pat)), finding that the patents were valid, essential and had been infringed. On 4 July 2023 the Court of Appeal dismissed Apple's appeal against Meade J's judgment in Trial D ([2023] EWCA Civ 758).

(iii) Trial F

37. On 13 July 2020, Optis re-amended its pleadings to contend that Apple was not entitled to enforce Optis' FRAND commitment; alternatively, that Apple was not entitled to do so unless it gave an unconditional commitment to enter into the licence finally determined by the Court to be FRAND (the "**Court-determined licence**") to the PO Portfolio. Optis sought an unqualified injunction to restrain Apple from infringing the Asserted Patents;

alternatively, an injunction restraining Apple from infringing the Asserted Patents which would cease to have effect if Apple entered into a licence on FRAND terms (referred to as a "**FRAND injunction**").

38. Apple's position was that "The implementer is only obliged to take a licence (or else be injuncted) once both (a) a SEP has been found valid and infringed and (b) the FRAND terms of a licence have been determined.": *Optis v Apple* [2022] EWCA Civ 1411 ("***Trial F (CA)***"), [65]. **[23/804]**

39. This dispute was tried in a trial referred to as Trial F, by Meade J in July 2021. He decided that Apple was not, as matters stood, entitled to rely on Optis' undertaking to ETSI under clause 6.1 of the ETSI IPR Policy; that Apple could only rely on Optis' undertaking to ETSI if it (Apple) committed to enter into the FRAND licence determined at Trial E, and that Optis was entitled to a FRAND injunction unless Apple undertook to take the Court-determined licence: *Trial F (HC)*. On 25 October 2021 Meade J accepted an undertaking by Apple in those terms without prejudice to Apple's right to appeal. **[97/2340]** **[20/692]**

40. On 27 October 2022, Apple's appeal against Meade J's judgment was dismissed by the Court of Appeal: *Trial F (CA)*. On 28 November 2022, Apple applied to this Court for permission to appeal. On 6 April 2023 the Supreme Court granted permission to appeal. **[23/782]**

41. Following the Main HC Judgment, Apple applied to the Supreme Court for permission to withdraw the Trial F appeal on 15 September 2023. This was granted by the Supreme Court on 16 October 2023.

(iv) The US Proceedings

42. In the US proceedings, following a jury trial in the EDTX in August 2020, a first verdict was given that awarded Optis US$506.2 million in damages for infringement of five US Asserted Patents for 18 months of past use beginning from February 2019. The damages part of the jury verdict was subsequently vacated in April 2021 by the trial judge, because it had not been assessed on a FRAND basis.

43. On 13 August 2021, a second jury awarded Optis US$300 million in damages, based on the infringement verdict from the first trial, assessed as a lump sum reasonable royalty in respect of infringements by the accused LTE Products during the period from 25 February 2019 until August 2020, such lump sum relating to all past and future sales.

44. On 16 June 2025, the CAFC vacated the infringement and damages judgments as violating Apple's Seventh Amendment rights under the U.S. Constitution; and remanded the proceedings for a new trial on both liability and damages. The CAFC dismissed Optis' cross-appeal to reinstate the original jury verdict of US$506.2 million and did not reach the arguments Optis raised.

45. The new trial began on Friday 6 February 2026. On 12 February 2026 a third jury verdict found that Apple had not infringed any asserted claim of the five US Asserted Patents. Judgment was ordered and signed by Judge Gilstrap on 4 March 2026.

46. The deadline for the parties to file their final post-trial motions is 2 April 2026.

(G) Trial E – The FRAND Trial and High Court Judgments

47. Trial E was the trial of all other issues in the proceedings, in particular the issues relating to the terms of the FRAND licence between Optis and Apple to the PO Portfolio. The parties exchanged position statements and evidence setting out their positive cases in January 2022. Trial E began on 13 June 2022 and ran to 8 July 2022.

48. Both parties advanced cases on valuation that included variations of comparables and top-down approaches. Each of Optis and Apple disclosed 19 global portfolio patent licensing agreements: Main HC Judgment, [232] and [238]. **[17/476 & 479]**

49. The Main HC judgment was handed down confidentially on 17 May 2023. The public handing down of the non-confidential redacted judgment was on 7 June 2023.

50. There were three days of argument on consequential matters on 25-27 July 2023; one and a half further days of argument on 18-19 December 2023; and a further hearing on 13 February 2024. On 3 August 2023, Optis gave an undertaking to enter into the Court-determined licence. The Consequentials HC Judgment was handed down on 14 February 2024. **[18/629-687]**

(H) The Appeal and Court of Appeal Judgment

51. Optis appealed against the Main and Consequentials HC Judgments on 25 grounds of appeal, for which Arnold LJ gave permission on 2 May 2024 (later reduced to 20 grounds). The appeal began on 25 February 2025 and ran to 3 March 2025.

52. The CA Judgment was handed down, in both confidential and non-confidential forms, on 1 May 2025. The decision to allow Optis' appeal is recorded in the Court of Appeal order of 1 **[15/282-338]**

May 2025, and, on 30 May 2025, the Court of Appeal made a further order declaring that the terms of the licence which is annexed at Annex 1 to that order were FRAND as between Optis and Apple.

II. THE ISSUES

There are four principal issues that arise before this Court, namely,

(a) Whether the Court of Appeal erred in respect of the principles applicable and the correct approach to be used in determining the FRAND royalty in a worldwide licence to Optis' portfolio of SEPs (the "**Valuation Issues**"/ Grounds 1 - 2); **[1/18-24]**

(b) Whether, having rejected the trial Judge's valuation method and resulting FRAND rate, the Court of Appeal erred in law in coming to its own determination of the FRAND rate, rather than remitting the matter, in all the circumstances (the "**Remittal Issue**" / Ground 3); **[1/24-25]**

(c) Whether the Court of Appeal erred in its approach to the question of payment of royalties on past sales in FRAND licences (the "**Past Sales Issue**" / Ground 4); and **[1/25-26]**

(d) Whether the Court of Appeal erred by including as a term of the global FRAND licence that the final non-appealable judgment in the US proceedings should serve as a "floor" for the amount of global royalties to be paid (the "**Foreign Proceedings Issue**" / Ground 5). **[1/27-28]**

ANNEX 1: CHRONOLOGY OF THE PROCEEDINGS

DATE	EVENT
12 September 2012	Apple launches LTE enabled iPhone.
2013	Master Sale Agreements under which Ericsson, LG, and Panasonic all transfer patents to two Optis companies, forming part of the Optis portfolio. The Master Sale Agreements contain revenue-sharing arrangements whereby royalty payments to Optis are shared with the transferors.
2016	Optis' parent company acquires Unwired Planet, and Samsung subsequently transfers certain patents to Unwired Planet as part of a litigation settlement.
Early 2017	Negotiations between Optis and Apple begin.
25 February 2019 (Date due to time zone difference)	Optis files complaint against Apple in the United States District Court for the Eastern District of Texas ("EDTX"), asserting infringement of and seeking damages for seven patents.
26 February 2019 (Date due to time zone difference)	Optis files these proceedings against Apple in the Patents Court of the High Court of England and Wales for patent infringement in relation to the Asserted Patents and as part of the relief arising from that patent infringement seeking determination of a global licence to the patents in the Optis portfolio including those listed in Schedule 1 to Optis' Particulars of Claim. Schedule 1 includes the seven patents asserted in the EDTX.
4 March 2019	Optis files Moss 2, explaining the interaction of EDTX and UK proceedings for the purposes of service out of jurisdiction.
28 March 2019	Apple files an application notice challenging the jurisdiction of the English courts and seeking a stay on the basis that the EDTX proceedings would have overlapping relief.
23 April 2019	Apple files a motion to dismiss Count VIII (namely declaratory judgment that [Optis] have not violated FRAND or competition law) for a lack of subject matter jurisdiction.
13 May 2019	In EDTX, Optis files First Amended Complaint stating that it is seeking an adjudication in the UK of FRAND terms for its "worldwide portfolio".
4 November 2019	Optis files Reply and Defence to Apple's Counterclaims stating that the worldwide FRAND licence to be determined by the UK Court would be one for the whole PO Portfolio.
17 December 2019	Apple withdraws points based on Unwired Planet v Huawei pending Supreme Court appeal and Apple's jurisdiction challenge and application seeking a stay is dismissed.
19 March 2020	Apple files its FRAND Defence in which it is asserted that the FRAND licence should be confined to those SEPs which have been found to be valid, infringed, essential and enforceable in a decision of

DATE	EVENT
	this Court, and that in any event that the FRAND licence should not cover the United States in light of the parallel EDTX proceedings.
13 July 2020	Optis files its Re-Amended Particulars of Claim, in which it pleads the issues to be determined at "Trial F" (as to which, see below).
27 July 2020	Apple files its Re-Amended FRAND Defence to address the issues to be determined at "Trial F" (as to which, see below).
27 July 2020	"Trial F" is listed for June to July 2021 to resolve whether Apple was required to commit to take the UK court-determined licence rather than retain an option to cease sales in the UK, otherwise "*Apple is not entitled to enforce Optis's FRAND obligations*" and Optis would therefore be entitled to injunctive relief.
3 August 2020	First jury trial in EDTX begins.
11 August 2020	First jury trial in EDTX results in first verdict awarding Optis US$506m for certain past sales only (later vacated).
8 September 2020	Apple files proposed findings of fact and conclusions of law in EDTX noting the UK proceedings would determine the worldwide rate for Optis' portfolio. Apple seeks a conclusion of law as follows: "*Accordingly, Plaintiffs are ordered to dismiss this case in favor of proceeding with the United Kingdom case alone (consistent with their claim that this case will be "subordinate" to that case) or, at a minimum, show cause why their actions do not violate their representations that the cases do not conflict, why they should be permitted to pursue two overlapping cases, and how doing so does not undermine this Court's role either in adjudicating Count VIII or in determining FRAND royalties for the patents-in-suit.*"
5-7, 12-13 October 2020	Trial A (validity and infringement of EP (UK) 1 230 818).
7 October 2020	Apple files its Re-Re-Amended FRAND Defence, which included materially the same pleas with respect to the scope of the FRAND licence as in its original FRAND Defence (summarised above).
16 October 2020	Technical Trial A judgment *Optis v Apple* [2020] EWHC 2746 (Pat): EP (UK) 1 230 818 found valid and infringed after a 5-day hearing.
25 February 2021	EDTX issues judgment (after jury verdict) adjudging infringement of five US patents and awarding Optis US$506m as a royalty for past sales for the period 25 February 2019 to 3 August 2020 (later vacated because damages were not evaluated on a FRAND basis).
14 April 2021	EDTX grants Apple's motion to vacate the US$506m damages award because it was not evaluated on a FRAND basis and for a retrial on damages on a FRAND basis, but denies Apple's motion for a new trial in all other aspects including liability.
16-28 April 2021	Trial B (validity, infringement and enforceability of EP (UK) 2 229 744).
29 April 2021	Apple requests that the EDTX court order Optis "*to show cause how their simultaneous pursuit of royalties for the same patents in the United States and*

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	United Kingdom is proper and does not pose a risk of an improper double recovery against Apple".
13 May 2021	Optis tells the EDTX court that it is "*seeking relief in the U.K. proceeding, the outcome of which would be the setting of a worldwide royalty rate that Apple could accept in lieu of a U.K. injunction.*".
2 June 2021	EDTX issues an order concluding that the UK proceedings did not at that time present a basis for staying or delaying the retrial proceedings, but noting that if and when Apple believes Optis has obtained a double recovery, Apple can raise the issue at the appropriate time and seek relief in the appropriate jurisdiction.
25 June 2021	Technical Trial B judgment *Optis v Apple* [2021] EWHC 1739 (Pat): EP (UK) 2 229 744 found valid and infringed; Apple's enforceability defence rejected after a 9-day hearing.
I July 2021	Order of Marcus Smith J ordering parties to set out their positive cases in respect of the issues to be determined at Trial E by way of: (a) Position Statements stating the parties' cases; and (b) the written evidence of fact and expert opinion relied upon in support of the same.
19-22, 26-27 July 2021	Trial F (willingness and the proper application of the ETSI regime) heard over 6 days.
10 August 2021	Second jury trial on damages in EDTX begins.
13 August 2021	Second jury trial on damages in EDTX results in second verdict awarding Optis US$300m for past and future sales (later vacated on appeal). The jury was given an instruction that the patents in suit were subject to an obligation to license on FRAND terms.
8 September 2021	EDTX issues final judgment (after jury verdict) awarding Optis US$300m as a lump sum for past and future sales (later vacated on appeal).
21 September 2021	In lieu of bond pending appeal, Apple gives undertaking to EDTX to pay the US judgment within 30 days after it becomes final and unappealable.
27 September 2021	Trial F judgment *Optis v Apple* [2021] EWHC 2564 (Pat). **[22/696-781]**
5-7, 13-14 October 2021	Trial C heard over 5 days (validity and infringement of EP (UK 2 093 953, EP (UK) 2 464 065, and EP (UK) 2 592 779).
11 October 2021	Trial F form of order hearing where it is ordered that, if Apple wish to rely on Optis' ETSI undertaking, Apple must give the following undertaking: "*Apple undertakes to enter into a licence in the form that is determined to be FRAND at Trial E in these proceedings or, to the extent that there are any appeals of the judgment in Trial E, a licence that is finally determined to be FRAND on appeal.*"
20-21 October 2021	Trial A appeal heard over 2 days (validity and infringement of EP (UK) 1 230 818).
25 October 2021	Order following Trial F recording Apple's undertaking that *Apple*

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	undertakes to enter into a licence in the form that is determined to be FRAND at Trial E in these proceedings or, to the extent that there are any appeals of the judgment in Trial E, a licence that is finally determined to be FRAND on appeal." Apple has liberty to apply to be released from the undertaking following the outcome of any appeals against the Trial F judgment or technical trial judgments.	
26 October 2021	Apple files its appeal in Trial F seeking *inter alia* an order that "*The Defendants are released from the Court Approved Undertaking*".	
10 November 2021	Technical Trial A appeal judgment *Optis v Apple* [2021] EWCA Civ 1619 reversing first instance: EP (UK) 1 230 818 found valid but not infringed following a 2-day hearing.	
25 November 2021	Technical Trial C judgment *Optis v Apple* [2021] EWHC 3121 (Pat): EP (UK) 2 093 953, EP (UK) 2 464 065, and EP (UK) 2 592 779 found invalid following a 5-day hearing.	
17 January 2022	Parties exchange Trial E Position Statements and evidence setting out positive cases pursuant to Order of 1 July 2021.	**[43/1143]** **[44/1182]**
18-21, 26-27 January 2022	Trial D (validity and infringement of EP (UK) 2 187 549 and EP (UK) 2 690 810).	
15 March 2022	Trial D judgment *Optis v Apple* [2022] EWHC 561 (Pat): EP (UK) 2 187 549 and EP (UK) 2 690 810 found valid and infringed following a 5-day hearing.	
6 April 2022	Optis' mark-up of Apple's April 2018 draft licence. Optis states that the appropriate non-FRAND royalty terms were those offered by Optis on 26 February 2019 (i.e., Annex 2 to the SoC on FRAND).	
29 April 2022	Optis files Trial E Responsive Position Statement and evidence setting out responsive case.	**[45/1201]**
4-5 May 2022	Trial B appeal.	
15 May 2022	Apple mark-up of Optis' April 2022 draft licence (later exhibited to Ankenbrandt 2). Apple's mark-up includes the EDTX proceedings in the release clause.	
16 May 2022	Apple files Trial E Responsive Position Statement and evidence.	**[46/1212]**
2 June 2022	Blasius 7 and Stasik 3 served in response to the Apple mark up of Optis' April 2022 draft licence and Ankenbrandt 2.	
13 and 15 June 2022	Apple files its Notice of Appeal and Optis files its Notice of Cross-Appeal to the US Court of Appeals for the Federal Circuit ("CAFC").	
13-16, 20-24, 27-30 June, 1, 6-8 July 2022	Trial E heard over 17 days between 13 June and 8 July 2022.	
13 June 2022	Technical Trial B appeal judgment *Optis v Apple* [2022] EWCA Civ 792: EP (UK) 2 229 744 maintained as valid and infringed following a 2-day hearing.	
14 October 2022	Apple files its Opening Brief in the US appeals.	

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18-19 October 2022	Trial F appeal.	
27 October 2022	Trial F appeal judgment *Optis v Apple* [2023] R.P.C. 1; [2022] EWCA Civ 1411 (upholding the decision of Mr Justice Meade following a 2-day hearing).	**[23/782-812]**
1 November 2022	Court of Appeal denies Apple permission to appeal its Trial F judgment to the Supreme Court.	
11 November – 1 December 2022	Parties write to the Judge in respect of the interaction between the EDTX proceedings and the Court's FRAND licence.	
28 November 2022	Apple files application to the Supreme Court of the United Kingdom seeking permission to appeal from the Court of Appeal's decision in the Trial F appeal.	
13 February 2023	Optis files Opening and Response Brief in the US appeals.	
9 March 2023	Judge sends draft Trial E Judgment to the parties. He indicates that he wishes the parties to review the draft for typographical and "*other errors*", and requests that "*the parties provide him with a list as follows: (i) Agreed typographical and similar corrections. (ii) Corrections that are not agreed, but one party nevertheless maintains. The Judge anticipates that such corrections will need to be explained and justified. (iii) Any points relating to the FRAND licence which require further articulation in order for the licence to be settled . . .*".	
13 March 2023	The Judge writes to the parties stating that the parties should check the calculations in the draft judgment which may be "substantively wrong" and indicating that the draft judgment was "*(i) without prejudice to substantive changes being made (if calculations prove to have been incorrect) and (ii) in no way intended to confine the parties in their ability to seek consequential orders*".	
14-15 March 2023	Trial C appeal.	
6 April 2023	UK Supreme Court grants Apple's permission to appeal in Trial F.	
20 April 2023	Parties send the Judge corrections on the draft Trial E judgment, including submissions and new sets of tables produced by both parties' valuation experts.	
25 April 2023	Technical Trial C appeal judgment *Optis v Apple* [2023] EWCA Civ 438 reversing first instance: EP (UK) 2 093 953, EP (UK) 2 464 065 and EP (UK) 2 592 779 found valid and infringed following a 2-day hearing.	
10 May 2023	Trial E Judgment handed down subject to correction of typographical errors (confidential).	
15 May 2023	WilmerHale writes to the Judge providing corrections which include further mathematical corrections from Apple's valuation expert.	
16-18 May 2023	Trial D appeal.	
17 May 2023	The Trial E Judgment is amended and is handed down confidentially in final form *Optis v Apple* [2023] EWHC 1095 (Ch).	
7 June 2023	Trial E (public) judgment [2023] EWHC 1095 (Ch).	**[17/344]**

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20 June 2023	Apple files Response and Reply Brief in the US appeals.
4 July 2023	Technical Trial D appeal judgment *Optis v Apple* [2023] EWCA Civ 438: EP (UK) 2 187 549 and EP (UK) 2 690 810 maintained as valid and infringed following a 3-day hearing.
7 July 2023	EIP writes to WilmerHale notifying an additional issue in dispute in relation to the draft licence relating to the US Judgment and "*The licence provisions, and in particular the release, will need to include a "carve out" with regard to the US award of damages, and any variation of the same on appeal*".
25-27 July 2023	Trial E Consequentials Hearing, Part I, heard over 3 days.
26 July 2023	Optis files unopposed motion at the CAFC to extend time for Optis to file its Reply Brief in the US appeals by 90 days (originally due on 1 August 2023).
31 July 2023	Letter from Apple to Optis, unconditional offer to withdraw Trial F Supreme Court appeal.
2 August 2023	CAFC's Order staying the briefing schedule pending consideration of Optis' unopposed motion.
3 August 2023	Order recording Optis' undertaking to "*enter into a licence in the form that is determined to be FRAND pursuant to the Trial E Judgment ("the Court Determined Licence") or, to the extent that there are any appeals of the Trial E Judgment and / or the Court Determined Licence, a licence that is finally determined to be FRAND on appeal.*"
31 August 2023	CAFC's Order staying the briefing schedule and directing Optis to file a status report by 29 November 2023 informing the CAFC how the case should proceed.
15 September 2023	Apple applies to the UK Supreme Court to withdraw Trial F appeal.
16 October 2023	UK Supreme Court's Order as to withdrawal of Apple's Trial F appeal.
29 November 2023	Following agreement between the parties, Optis files status report at the CAFC requesting the CAFC to continue the stay of the briefing schedule, with Optis to provide a further status report in 60 days.
18 December 2023	CAFC's Order stating that the appeals remain stayed, and directing the parties to file a status report by 6 February 2024 informing the court how they believe the appeals should proceed.
18-19 December 2023	Trial E Consequentials hearing, Part II, heard over two days.
13 February 2024	Trial E Consequentials Hearing, Part III, heard over 1 day.
14 February 2024	Trial E Consequentials Judgment *Optis v Apple* [2024] EWHC 197 (Ch). **[18/629-687]**
16 February 2024	Trial E Final Order sealed with the First Instance Court-Determined Licence annexed thereto.
16 February 2024	Parties file status report filed at the CAFC requesting that the CAFC continue the stay of the briefing schedule and direct the parties to file a status report no later than 60 days from the CAFC's order informing

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	the Court as to how they believe the appeals should proceed.
11 March 2024	Apple pays $63.7m into Court in respect of Trial E judgment.
15 March 2024	CAFC's Order lifting the stay of the US appeals and requiring Optis to file its reply brief by 14 May 2024.
17 April 2024	Optis files its reply brief in the US appeals.
24 April 2024	Apple files the appendix in the US appeals.
26 April 2024	Apple files a motion asking the CAFC to stay the US appeals of the EDTX case pending resolution of Optis' UK appeal and execution of a global FRAND licence.
6 May 2024	Optis files its opposition to Apple's motion to stay the US appeals of the EDTX case.
13 May 2024	Apple files its reply supporting its motion to stay the US appeals pending resolution of Optis' UK appeal and execution of a global FRAND licence.
14 June 2024	CAFC orders that Apple's motion to stay the appeal is deferred for consideration by the merits panel assigned to the US appeals.
25 February – 3 March 2025	Trial E Appeal heard by the Court of Appeal over 5 days.
1 May 2025	Trial E Appeal Judgment *Optis v Apple* [2025] EWCA Civ 553 [Confidential]; [2025] EWCA Civ 552 [Public] and First Trial E Appeal Order allowing the appeal and setting aside parts of the Trial E Final Order. **[15/282-338]**
30 May 2025	Second Trial E Appeal Order which declares the Court of Appeal Court Determined Licence.
16 June 2025	US CAFC issues decision in Optis v Apple, Case No: 22-1925, which vacates liability and damages judgments and remands for further proceedings. The CAFC comments in footnote 9 on the Court of Appeal's Trial E Appeal Judgment.
31 October 2025	UK Supreme Court grants Apple permission to appeal the First and Second Trial E Appeal Orders.
4 December 2025	EDTX issues order that the parties "*meet and confer and to thereafter provide the Court with a joint status report apprising the Court of the status of this case. In light of the earlier remand from the Federal Circuit, the parties should include their positions on what matters, if any, are necessary to be addressed prior to a re-trial herein.*"
9 December 2025	Parties file joint status report. Apple indicates that a stay is appropriate pending this Supreme Court appeal and that it will file a motion to stay. Optis requests that the case be set for trial "as soon as feasible" and states its opposition to a stay.
12 December 2025	Apple files motion to stay EDTX remanded trial.
23 December 2025	EDTX denies motion to stay.

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30 December 2025	Trial ordered to be listed to commence in early February 2026.
6 February 2026	EDTX retrial begins.
12 February 2026	Jury verdict that none of the five US Asserted Patents were infringed by Apple.
4 March 2026	Judgment ordered and signed to the effect that Apple has not infringed the asserted claims of the asserted patents, and that Optis shall take nothing against Apple.