

IN THE SUPREME COURT OF THE UNITED KINGDOM UKSC/2025/0058

ON APPEAL FROM

THE COURT OF APPEAL (CIVIL DIVISION)

NEUTRAL CITATION: [2025] EWCA CIV 193

BETWEEN:

(1) TESLA, INC.

(2) TESLA MOTORS LIMITED

Appellants/Claimants

- AND -

(1) INTERDIGITAL PATENT HOLDINGS, INC.

(2) INTERDIGITAL HOLDINGS, INC.

(3) AVANCI, LLC

Respondents/Defendants

INTERDIGITAL'S WRITTEN RESPONSES TO INTERVENERS

Introduction

1. The First and Second Respondents (together “**InterDigital**”) seek the Court’s permission to respond in writing to the interventions filed by the Computer & Communications Industry Association (“**CCIA**”), the Motion Picture Association (“**MPA**”), ACT | The App Association (“**ACT**”), and the Fair Standards Alliance (“**FSA**”). InterDigital does not seek to respond in writing to the intervention of the International Centre for Law & Economics (“**ICLE**”). The submissions InterDigital wishes to make in writing are set out below.

[6/160]
[10/218]

[8189]
[9/204]

[7/174]

2. The orders of the Court granting permission for the interventions directed that the written submissions were “*not to include contentious evidence*”. Further, Supreme Court PD 4.54 provides: “*4.54 Interveners’ submissions, whether written or oral, should focus on advancing the intervener’s argument on a legal issue before the court. They should avoid repeating material that is in the parties’ written cases. They should not challenge findings of fact. They should not ordinarily seek to introduce new evidence, especially where that would cause procedural unfairness to a party or undermine the basis on which the legal issues were considered by the courts below. They should not introduce new legal issues or seek to expand the*”

[SDB 4/13]
[SDB 5/14]
[SDB 6/15]
[SDB 7/16]
[SDB 8/17]

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case.” However, the submissions of the CCIA, the MPA, ACT and the FSA each stray beyond the proper role of interveners, and in particular, (i) seek to advance contentious assertions of fact unsupported by the existing evidence in the case, including contradicting findings of fact; and (ii) duplicate Tesla’s arguments. We submit it will be of assistance to the Court to indicate the respects in which the new factual assertions are controversial and to respond briefly to new legal arguments. Where arguments made by the interveners duplicate Tesla’s arguments, or points made by Arnold LJ, or otherwise raise arguments that fall within the scope of the existing debates and/or do not require a written response, they will be addressed orally.

Response to the CCIA

3. The CCIA’s submissions fail to respect the Court’s direction and PD 4.54. They are focussed on re-arguing the facts in ways which are controversial, contradict Fancourt J’s findings, go beyond the evidence, and are not argued by Tesla.

[6/162; 169-70] 4. At §§9 and 31, the CCIA engages in a partisan re-characterisation of the undertaking given by Tesla, wrongly asserting that Tesla has provided an undertaking to take a licence on whatever terms are declared by the English court to be FRAND. In fact, Tesla’s undertaking, [16/354-5] as pleaded at PoC §44, is qualified and is only to take a licence to “*the entirety of the Avanci pool*” (not to a bilateral licence from InterDigital). In oral submissions in the Court of Appeal, Tesla floated the idea that it might be “*prepared*” to expand its undertaking, but this [12/295-7] was rejected by the Court of Appeal (CAJ §§240-241). Tesla does not appeal this. The CCIA’s point is not taken by Tesla. The CCIA also is not aware of Tesla’s evidence for service out, which made further clear that its undertaking is with regard to a Platform licence only [31/502] (Hopewell 1 §68). These issues are addressed in InterDigital’s Written Case at §83. [4/84-5]

[6/164] 5. At §15, the CCIA engages in argument as to the nature of the pleadings, contending that Tesla’s case “*embraces*” a bilateral. That contradicts the findings of Fancourt J (HCJ §9) and [15/310] the Court of Appeal that Tesla did not make a bilateral claim (CAJ §§240-241, 243). A [12/295-7] pleading issue like this is not a legal issue of the sort on which an intervener should seek to make submissions. Further, the CCIA is unaware of the context of Tesla’s evidence which, InterDigital submits, makes further clear that Tesla did not make a bilateral claim. These issues are addressed in InterDigital’s Written Case at §§78-86. [4/83-5]

[6/164-5; 169] 6. At §§16-17, 30, the CCIA puts forward factual assertions as to the licensing practices of InterDigital and the other Licensors. These assertions do not reflect the evidence, ignore the facts as agreed in the SOFI, and are not advanced by Tesla:

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[6/164-5] (i) §16 seeks to create the impression that InterDigital is not prepared to grant bilateral licences to Tesla. But the evidence (not disputed by Tesla) is that InterDigital is, and always has been, prepared to grant bilateral licences to its portfolio (including the Challenged Patents) to any implementer: SOFI §32, Brodie 2 §46.4; Brodie 3 §§14, 30¹. No bilateral licence offer has been made to Tesla because Tesla has not asked for one (SOFI §34). It has never been suggested that InterDigital has refused to grant Tesla, or anyone else, a bilateral licence.

[1/16]
[33/522]
[40/588]
[SDB 9/19]

[1/16] (ii) At §17 the CCIA seeks to imply, by the words “*InterDigital is not alone in adopting this stance ...*”, that other unnamed Licensors decline to license bilaterally. This is false, unsupported by the evidence, and contrary to the findings of the Court of Appeal at CAJ §233: “*Neither is it suggested that any owner has declined to engage in bilateral negotiations for a FRAND licence in reliance on the fact that its portfolio of SEPs is available on the Avanci 5G Platform*”. The CCIA refers to Fancourt J’s finding that some Licensors have no “*programme for granting bilateral licences*” (§13) but the absence of a “*programme*” is not the same thing as declining to license bilaterally, which on the evidence has not occurred, and Tesla never suggested it had. See further §13 below.

[15/310]

[6/169] (iii) §30 insinuates that the Platform licence is the only licence that is “*made available*” to InterDigital’s portfolio. This is false for the reasons explained above in the context of CCIA §16. InterDigital is always prepared to grant a bilateral licence to discharge its ETSI Undertaking.

[6/165; 172-3] 7. At §19 and Annex, the CCIA seeks to adduce contentious new evidence as to SEP owners allegedly relying on platform/pool offers as discharging their F/RAND undertakings. The issues in this regard are addressed in InterDigital’s Written Case at §32. The CCIA’s Annex is inaccurate, and misleading, including (without limitation) in that the heading to section A; “*Avanci 4G / 5G Vehicle Pool*” implies that some of the examples relate to the Avanci 5G Platform. This is wrong: the four examples in section A of the Annex all concern solely the Avanci 4G Platform which is not the subject of this litigation. The first three examples are also duplicative of Tesla’s evidence. The examples in sections B, C and D of the Annex all relate to other platforms/pools under different SSO rules with differently worded undertakings subject to different governing laws, and so the points made below in this regard

[6/172-3]

[33/522] ¹ Brodie 2, §46.4: “[*InterDigital*] remains prepared to grant bilateral licences on FRAND Terms to its own portfolio in accordance with its ETSI undertaking”. Brodie 3 §14: “[*InterDigital*] satisfies its ETSI Undertaking by continuously being prepared to offer bilateral licences to its cellular SEPs on FRAND terms.” Brodie 3 §30: “In any event, *InterDigital* is, and would be, prepared to grant Tesla a bilateral licence to its 5G SEP portfolio in compliance with its ETSI Undertaking, which includes the Challenged Patents which are the subject of the Patent Claims.”

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in relation to MPA, ACT and FSA below, also apply. Otherwise we do not here address this new detail.

8. It remains the case that there is no evidence that suggests any Licensors of the 5G Platform have sought to rely on that Platform licence as discharging their ETSI Undertakings. In any event, InterDigital does not do so.

9. None of the material identified assists any argument that commercial practice is inconsistent with Licensors discharging their ETSI Undertakings by bilateral licensing.

[6/170-1] 10. §§34-35 seek to argue that implementer claims and SEP owner claims should be characterised in the same way for the purposes of *forum*. This is not an argument advanced by Tesla and it is wrong for the reasons explained in InterDigital's Written Case at §§87-91. In SEP owner claims the FRAND issues arise by way of defence to patent infringement and are therefore dependent on claims for infringement of UK patents. Implementer claims do not depend on patent claims as to infringement or non-infringement, or invalidity or inessentiality, of UK patents. They are claims about worldwide licensing brought in reliance on worldwide contractual obligations (in this case under French law). The CCIA's argument does not engage with the logic of the judgments in the SEP owner cases nor the logical difference of the causes of action in the implementer cases. [4/85-7]

Response to the MPA, ACT and the FSA

Reliance on other platforms/pools under different SSO rules with differently worded undertakings governed by different laws

11. It is convenient to address these submissions together as each of the MPA, ACT and the FSA advances contentious assertions of new facts as to other platforms/pools under different SSO rules under different laws. For example:

[10/226] (i) MPA §§19-20 assert that "*many licensors*" in pools administered by Access Advance are "*not in practice prepared to engage in bilateral negotiations*" and that licensors rely on pool licences as fulfilling their RAND obligations. The Access Advance pools concern ITU-T standards which are governed by Swiss law. No basis or example is given for any suggestion that many licensors are not prepared to licence bilaterally. Further, this does not involve InterDigital.

[8/191-2; 197] (ii) ACT §§10 (third sentence) and 26 (first sentence) assert that some SEP owners refuse to enter into bilateral negotiations. No examples or concrete evidence are given but there is no suggestion this relates to the Avanci 5G Platform at issue in this case, and

it is apparent ACT is concerned about other standards. §12 refers to the importance of the IEEE-SA Wi-Fi standard (governed by New York law) and ITU-T audio/video codec standards (governed by Swiss law) to the internet of things (IoT), to which the activities of ACT and its members are said to relate. Further, this does not involve InterDigital.

[8/192]

[9/207] (iii) FSA §§10-11 assert that members of patent pools “*routinely*” rely on pool licences to discharge FRAND obligations and “*regularly*” refuse to grant bilateral licences. The only examples given by the FSA of reliance on pool licences relate to the Sisvel Wi-Fi 6 Pool (FSA §§12-15) under the IEEE-SA 802.11ax standard which is governed by New York law. No examples are given of refusal to license bilaterally. Further, this does not involve InterDigital.

[9/208-9]

12. These assertions are unsupported by any evidence in the case. InterDigital has no knowledge of the underlying facts concerned and does not engage with the detail. However, it is submitted that the position regarding other platforms/pools under different SSO rules, undertakings and different laws is not relevant to the present appeal. Phillips LJ’s judgment is about the French law ETSI Undertaking and does not articulate a general principle applicable to all platforms/pools; Whipple LJ’s judgment focusses on the absence of a coherent cause of action in Tesla’s pleaded case (CAJ §§222-231, 244-245). It is also apparent that the terms of the other SSO rules, IPR policies and F/RAND undertakings (as quoted by the Interveners), and their governing laws, are different. They were not considered below and there is no evidence about them from the parties. Further, the different laws by which they are governed may well be relevant to this question and/or to the legal relationship between platform/pools and licensors.

[12/292-4;
297]

13. Moreover, these assertions are inconsistent with the evidence and findings in relation to the Avanci 5G Platform. Thus, (1) Tesla’s evidence at its highest asserted only that a small number of licensors under the 4G Avanci Platform (not InterDigital) historically identified the offer of a Avanci 4G Platform licence as satisfying their obligations to be prepared to grant a FRAND licence (SOFI §26(c), (e)); (2) there is no evidence or suggestion that any of the Licensors under the Avanci 5G Platform have done so at any time with respect to 5G; (3) there is no evidence that any of the licensors of the Avanci Platforms have refused to make bilateral licenses available to anyone; as the Court of Appeal held (CAJ §233, quoted above); (4) while InterDigital does not know what other licensors do, there is evidence (provided by Tesla) that Tesla has engaged in bilateral licensing with Avanci Platform

[1/15]

[12/294]

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Licensors, both with L1 (5G) and Sharp (4G) (see Tesla letter of 20 May 2024); and also [65]
reached bilateral settlements with others (SOFI §26(f)); and (5) the uncontradicted evidence [1/15]
is that other Licensors of the 5G Platform, including 3 of the top ten (Qualcomm, Ericsson
and Nokia), have bilateral automotive licensing programmes for 5G (Brodie 2 §46.4). [33/522]

14. The uncontradicted evidence is that InterDigital has never refused to grant a bilateral licence, is prepared to grant bilaterals, and does not, and does not intend to, rely on the Avanci Licences as discharging its ETSI Undertakings and that it has no part in the alleged behaviours of other Licensors. See InterDigital's Written Case §§32, 78. [4/70; 83]

15. Further, none of the material identified assists any contention that commercial practice is inconsistent with Licensors discharging their ETSI Undertaking by bilateral licensing. Indeed, in the Wilus case referred to at MPA §15, it appears Wilus offered both. [10/224]

16. Finally, some of the factual assertions made by the interveners concern the conduct (in the context of other platforms/pools) of entities that are also Licensors of the Avanci 5G Platform (e.g. FSA §16 refers to Wilus, Phillips and Huawei; MPA §§20-22 refers to Dolby, Phillips, Ericsson; likewise CCIA Annex A refers to Phillips). If these assertions are relevant at all, this is a further point which goes to show how inappropriate it is that a case is brought against InterDigital only in the absence of the other Licensors. [10/226-8]

Miscellaneous other points raised by the MPA, ACT and the FSA

[9/209] 17. MPA §§27-38 argues there should be court review of SEP platforms analogous to the treatment of collective management organisations (CMOs) in the field of copyright. However, there is express statutory basis for the regulation of CMOs, including the establishment of the Copyright Tribunal under the Copyright, Designs and Patents Act 1988. The MPA is therefore in effect, without identifying a legal basis in the French law ETSI undertaking in issue in this case, suggesting the English courts should set themselves up as a global tribunal for SEP platforms, without a legal basis to do so. [10/229-32]

[9/212] 18. FSA §24 advances contentious assertions as to InterDigital's motives, namely that InterDigital is resisting jurisdiction in order to force prospective licensees to pay supra-FRAND rates. There is no basis for this and it has never been suggested by Tesla. InterDigital's clear evidence is that this is not its fight and that it takes no position on the Platform rate: see InterDigital's Written Case §§13, 63. [4/65; 78]

[9/215] 19. FSA §33 asserts vaguely that an "*equivalent*" jurisdiction to the jurisdiction in SEP owner infringement cases arises because the licensee's contractual rights are "*tied to other issues*

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[4/85-7] *concerning UK patent rights raised by the prospective licensee's pleaded case*". This does not identify a logical basis for jurisdiction, is not a point raised by Tesla, and anyway cannot work on the case pleaded here. See IDG Written Case §§87-91. Fancourt J and Arnold LJ both said the Licensing Claims are free-standing and independent of the Patent Claims. It would clearly be wrong to characterise the Licensing Claims, which are contractual global licensing claims under French law contracts, as about "*infringement*" of UK patents, and Tesla does not argue this.

Thomas Raphael KC

Maxwell Keay

Sophie Ryan

Instructed by Gowling WLG (UK) LLP

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