

Unwired Planet v Samsung & Huawei

UK Court finds SEP valid and necessarily infringed through compliance with LTE standard

The UK Patents Court handed down judgment earlier this week in [the first technical trial in a dispute concerning a number of patents owned by Unwired Planet](#). These patents had been acquired by Unwired Planet from Ericsson. It was alleged by Unwired Planet that the patent in this case was essential to an LTE standard, and that accordingly it was infringed through compliance of that standard in devices produced by Samsung and Huawei. In contrast to many previous cases involving standards essential patents (SEPs) heard in the UK, the judge in this case, Mr Justice Birss, held that [the patent was valid and infringed](#) through compliance with the relevant LTE standard. Further technical trials are set for 2016 for five other Unwired patents, with a non-technical trial to determine FRAND license and competition issues set to take place following completion of all of the technical trials.

In arriving at his decision, Mr Justice Birss considered a number of issues relating to claim construction, priority entitlement, patentability and infringement/essentiality of the LTE standard in question. On claim construction and infringement/essentiality, there was an interesting analysis of how the draft LTE standard would be implemented and whether the claims necessarily covered options within the standard. Ultimately, it was decided that broad claim interpretations held and that compliance with the LTE standard based on these interpretations would necessarily mean infringement. On priority entitlement, with a broad interpretation of the claims having been decided, the question arose as to whether the patent was entitled to priority across the scope of the claims since the detailed description of the priority document only set out specific

implementation examples. Ultimately, it was held that the scope of the claims was “commensurate with the technical contribution made by the priority document” and thus the claimed priority was valid.

A final point of interest concerned the date of publication of a draft of a working document disclosing the invention and submitted by Ericsson (the original applicant for the patent), and the date of filing of the priority document, namely a US provisional patent application filed at the USPTO. The defendants contended that the availability of the Ericsson working document to the public on a calendar day which preceded the calendar day of filing of the US provisional patent application in a particular timezone (Hawaii) meant that the working document was prior art, and thus the claimed invention would lack novelty. Mr Justice Birss rejected this argument as a point of law, stating that relevant timezone was that of the USPTO where the priority document was filed; since in this timezone, both the priority document and working document were respectively filed and disclosed on the same day, the working document did not constitute prior art. This point is of interest to parties involved in standards setting organisations (SSOs) who routinely at very short notice file patent applications and submit working documents to the SSOs. At least as far as the UK is concerned, the prevailing view seems to be that the time frame of reference is the one in which the patent application is filed.

The full judgment can be found [here](#).

Author: [John Brunner](#)

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