

Court battle over Unwired Planet patents continues

The UK Patents Court recently handed down judgment in the ongoing dispute between Unwired Planet and various mobile phone and infrastructure manufacturers.

Facts

Unwired Planet asserted six of its European patents, which were acquired from Ericsson, in both the United Kingdom and Germany. Unwired Planet believed that this was necessary to “expedite ongoing licensing negotiations” and the UK and German courts were chosen by Unwired Planet due to these courts being “a well-respected forum for resolving intellectual property disputes”. Infringement and validity are normally heard together in technical trials in the United Kingdom, while the German courts have a bifurcated system which means that infringement and validity are heard in separate proceedings. After the technical trials have been completed in the United Kingdom – assuming that the proceedings continue – there will be a fair, reasonable and non-discriminatory (FRAND) trial to decide on the licensing dispute.

Decisions

The judgment from the first technical trial in the UK Patents Court was

handed down in November 2015 (for further details please see “[IP lawyer: UK court finds SEP necessarily infringed through compliance with standard](#)”. The patent in this case was alleged by Unwired Planet to be essential to a long-term evolution (LTE) standard, and that accordingly its compliance with that standard in devices produced by Samsung and Huawei resulted in infringement of the patent. Google had also been sued under the patent, but that dispute was settled. Mr Justice Birss held that the patent was valid and had been infringed through compliance with the relevant LTE standard. This judgment is in contrast to many previous UK cases involving standard essential patents.

In January 2016 the UK Patents Court handed down its judgment in the second technical trial. Two related patents derived from a single European patent application were dealt with in this second technical trial. In contrast to the first technical trial, there was no dispute over priority or claim construction. Further, Birss held that the patents were invalid for obviousness in light of a publicly available document detailing proposals made by Qualcomm for LTE

standardisation discussions. Therefore, it was not necessary for Birss to decide on infringement. This emphasises one of the benefits to defendants in the UK conjoined procedure, whereby both validity and infringement are handled simultaneously, in contrast to the bifurcated system of the German courts.

Meanwhile, the Dusseldorf District Court also handed down its judgment on infringement in respect of three of the six patents. Two of the three patents were found to be invalid in the United Kingdom by the UK Patents Court in its second technical trial. The defendants have filed separate nullity actions with the German Federal Patent Court alleging that the patents are invalid. The Dusseldorf District Court could have stayed its proceedings to await the outcome of the pending nullity actions. Instead, the court continued with the infringement action finding that handsets manufactured by Samsung, LG Electronics and Huawei infringed all three patents in Germany, and that the infrastructure manufactured by Samsung and Huawei infringed only one of the three patents. The Federal Patent Court’s decision on



the validity of these patents is now awaited. In light of the corresponding UK judgments, it will be interesting to see the outcome of the nullity action.

Next steps

Thus far, Unwired Planet has seen some success in both the UK and German courts. However, the courts still have further patents to consider. In the United Kingdom, a non-technical trial should take place in the final quarter of 2016 to determine FRAND terms and competition issues, as in the first technical trial the UK Patents Court held that one of the patents was valid and infringed through compliance with the relevant LTE standard. If this does take place, it will provide one of the first opportunities to see how a UK court views FRAND determination issues.

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