IIC (2026) 57:488–523
https://doi.org/10.1007/s40319-026-01698-6

OPINION

United Kingdom Patent Decisions Overview 2025

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Published online: 17 March 2026

Abstract This report highlights a selection of the most important UK patent decisions from 2025, including: seven Court of Appeal judgments (three relating to interim and anti-suit relief in the context of standard essential patent licensing disputes, one concerning the applicability of FRAND obligations to patent platforms, one appeal of a FRAND licence determination, and two appeals relating to the validity of life science patents and SPCs), and six Patents Court judgments (including three FRAND disputes, two life science infringement claims and one decision relating to the formalities of obtaining an SPC waiver).

Keywords SEPs · FRAND · RAND · Interim licence declaration · Anti-suit injunction · Jurisdiction · Comity · Life sciences · Obviousness · SPCs · SPC waiver · Doctrine of equivalence

Cases *Accord Healthcare Ltd & Ors v. Regents of the University of California & Anor* [2024] EWHC 2524 (Pat); [2024] 10 WLUK 127; *Accord Healthcare Ltd & Ors v. Regents of the University of California & Anor* [2025] EWCA Civ 936; [2025] 7 WLUK 443; *Acer Incorporated & Ors v. Nokia Technologies OY* [2025] EWHC 3331 (Pat); [2025] 12 WLUK 443; *Actavis UK Limited and others v. Eli Lilly and Company* [2017] UKSC 48; [2018] 1 All E.R. 171; *Alcatel Lucent SAS v. Amazon Digital UK Ltd* [2024] EWHC 1921 (Pat); [2024] 7 WLUK 479; *Alcatel Lucent SAS v. Amazon Digital UK Ltd & Ors* [2025] EWCA Civ 43; [2025] 1

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WLUK 340; *Amazon.Com, Inc v. Interdigital VC Holdings, Inc & Ors* [2025] EWHC 2708 (Pat); [2025] 10 WLUK 298; *Amazon.com, Inc & Ors v. Interdigital VC Holdings, Inc & Ors* [2025] EWHC 3170 (Pat); [2025] 12 WLUK 126; *Amazon.com, Inc & Ors v. Interdigital VC Holdings, Inc & Ors* [2025] EWHC 3334 (Pat); [2025] 12 WLUK 560; *BSH Hausgeräte GmbH v. Electrolux AB*, Case C-339/22; *Comptroller-General of Patents, Designs and Trade Marks v. Emotional Perception AI Limited* [2024] EWCA Civ 825; [2025] 1 All E.R. 790; *Formycon AG & Anor v. Regeneron Pharmaceuticals Inc & Anor* [2025] EWHC 2527 (Pat); [2025] 10 WLUK 103; *HL Display AB v. Black Sheep Retail Products B.V.* UPC_CFI_386/2024; *Huawei Technologies Co. Ltd v. ZTE Corp* [2015] EUECJ C-170/13; *Iconix Luxembourg Holdings SARL v. Dream Pairs Europe Inc* [2025] UKSC 25; [2025] 4 All E.R. 711; *InterDigital Technology Corporation & Ors v. Lenovo Group Ltd & Ors* [2023] EWHC 539 (Pat); *InterDigital Vc Holdings, Inc & Ors v. Amazon.Com, Inc. & Ors* UPC_CFI_936/2025; *Lenovo Group Ltd & Ors v. Telefonaktiebolaget LM Ericsson (PUBL) & Anor* [2024] EWHC 2941 (Pat); [2024] 11 WLUK 311; *Lenovo Group Ltd & Ors v. Telefonaktiebolaget LM Ericsson (PUBL) & Anor* [2025] EWCA Civ 182; [2025] 2 WLUK 541; *Merck Serono SA v. Comptroller-General of Patents, Designs, and Trade Marks* [2025] EWCA Civ 45; [2025] 1 WLUK 339; *Neurim Pharmaceuticals (1991) Ltd v. Comptroller-General of Patents*, Case C-130/11; *Newron Pharmaceuticals SpA v. Comptroller General of Patents, Trademarks and Designs* [2024] EWCA Civ 128; [2024] 2 WLUK 216; *Optis Cellular Technology LLC & Ors v. Apple Retail UK Limited & Ors* [2023] EWHC 1095 (Ch); [2023] 5 WLUK 465; *Optis Cellular Technology LLC & Ors v. Apple Retail UK Ltd & Ors* [2025] EWCA Civ 552; [2025] 5 WLUK 8; *Panasonic Holdings Corp v. Xiaomi Technology UK Ltd* [2024] EWCA Civ 1143, [2025] 3 All E.R. 66; *Pozzoli SPA v. BDMO SA* [2007] EWCA Civ 588, [2007] 6 WLUK 524; *Regeneron Pharmaceuticals, Inc & Anor v. Alvotech HF & Anor* [2025] EWHC 3050 (Pat); [2025] 11 WLUK 349; *Samsung Bioepis UK Ltd v. Alexion Pharmaceuticals Inc* [2025] EWHC 1240 (Pat); [2025] 5 WLUK 331; *Samsung Electronics Co., Ltd & Anor v. ZTE Corporation & Ors* [2025] EWHC 1432 (Pat); [2025] 6 WLUK 506; *Samsung Electronics Co., Ltd & Anor v. ZTE Corporation & Ors* [2025] EWCA Civ 1383; [2025] 10 WLUK 575; *Santen SAS v. Directeur général de l'Institut national de la propriété industrielle*, Case C-637/18; *Tesla Inc & Anor v. IDAC Holdings Inc & Ors* [2025] EWCA Civ 193; [2025] 3 WLUK 55; *Vestel Elektronik Sanayi Ve Ticaret AS v. Access Advance LLC (formerly HEVC Advance LLC)* [2021] EWCA Civ 440; [2021] 4 W.L.R. 60; *Warner Bros. Discovery Inc & Anor v. Nokia Corporation & Anor* [2025] EWHC 2888 (Pat); [2025] 11 WLUK 54; *Wölken v. Commission*, Case T-784/25.

Legislation Regulation (EC) No. 469/2009 concerning the supplementary protection certificate for medicinal products; Amending Regulation (EU) 2019/933 amending Regulation (EC) No. 469/2009 concerning the supplementary protection certificate for medicinal products; European Union (Withdrawal) Act 2018 (as amended); Retained EU Law (Revocation and Reform) Act 2023; Civil Procedure Rules.

Other ETSI Intellectual Property Rights Policy; European Patent Convention (17th edn.).

1 Introduction

The English Patents Court and Court of Appeal continued to be busy in 2025. Standard essential patent (SEP) licensing disputes dominated the courts last year, with escalating jurisdiction and comity issues towards the end of the year. There were also a number of important life sciences patent disputes, including two relating to supplementary protection certificates (SPCs) in the post-Brexit landscape. However, there were no patents decisions from the Supreme Court in 2025, despite a decision in *Emotional Perception v. Comptroller General*[1] having been expected. This review article will focus on a selection of the most notable decisions from the Court of Appeal and Patents Court handed down during the course of 2025.

2 Interim Licences and Anti-suit Relief

In 2025, the issue of interim licence declarations and anti-suit relief in SEP licensing disputes continued to feature heavily in both the Patents Court and the Court of Appeal. We have grouped together some of the most important decisions on these topics.

2.1 *Alcatel Lucent SAS v. Amazon Digital UK Ltd & Ors*

In January, the Court of Appeal gave its first notable (F)RAND-related decision of the year in proceedings between Alcatel and Nokia, and Amazon.[2] Alcatel is a member of the Nokia group,[3] so we will refer to these parties collectively as "Nokia" throughout. The court considered effect of its decision in *Panasonic v. Xiaomi*,[4] ultimately deciding that that decision was not confined to its facts and had wider applicability.

In *Panasonic*,[5] the court had upheld Xiaomi's appeal, granting a declaration that a willing licensor in the position of Panasonic would enter into an interim licence with Xiaomi.[6] The court had also made a declaration, outlining the FRAND terms of such a licence that would be agreed by such a licensor and licensee.[7]

[1] [2024] EWCA Civ 825; [2025] 1 All E.R. 790. *See* last year's case overview for further details. IIC 56:533–565 (2025), https://doi.org/10.1007/s40319-025-01573-w.

[2] [2025] EWCA Civ 43; [2025] 1 WLUK 340.

[3] *Supra* 2, [5].

[4] [2024] EWCA Civ 1143, [2025] 3 All E.R. 66.

[5] *Ibid.*

[6] *Supra* 4, [101]–[102].

[7] *Ibid.*

In the present case, Amazon was seeking a licence to use a global portfolio of patents, owned by Nokia, relating to various video encoding and decoding technologies.[8] Nokia's portfolio includes patents that have been declared essential to two International Telecommunications Union Standardisation Sector (ITU-T) video coding standards, as well as several non-essential patents (NEPs).[9] Amazon had given an undertaking to enter into a licence on the terms determined by the English Patents Court to be RAND, and contended that such a licence should also include an option to obtain rights to use the NEPs (which it said it would exercise).[10] The parties had been engaged in negotiations for several years, but had been unable to agree financial terms of a licence.[11]

In 2023 Nokia commenced a "worldwide campaign of litigation" against Amazon, alleging infringement by Amazon of both its SEPs and NEPs, which includes the present proceedings.[12] In response, Amazon served its defence and counterclaim and a Part 20 claim, contesting the validity of certain patents and disputing infringement. It also relied on Nokia's RAND obligations in respect of the SEPs by way of defence, and sought declaratory relief (including the determination of what terms are RAND) and an order for specific performance of Nokia's RAND obligations.[13]

In July 2024, Amazon, among other things, made an application to amend its pleadings to include: (i) a declaration that willing licensor in the positions of Nokia would enter into an interim licence over the portfolio; and, (ii) an order for specific performance compelling Nokia to offer Amazon an interim RAND licence.[14]

In his first instance judgment, Zacaroli J (as he then was) refused Amazon's application to make these amendments to its pleadings. He found that there was not a "sufficiently arguable case" that Nokia's RAND obligations (which are governed by Swiss law) required it to grant an interim licence to Amazon.[15] As such, amendments to the pleadings that argued this were not allowed. The judge also noted that regardless of the lack of merit in Amazon's claim, he would have been "inclined to refuse – on case management grounds – to give directions for the resolution of the terms of an Interim Licence".[16]

In considering the appeal, Arnold LJ reiterated that the appropriate standard to apply when considering amendments to a statement of case is whether it raises an issue that has a real prospect of success.[17] Amazon contended that the judge was wrong to hold that the claim for an interim licence had no real prospect of success

[8] *Supra* 2, [7], [10].

[9] *Supra* 2, [7].

[10] *Supra* 2, [10].

[11] *Supra* 2, [11].

[12] *Supra* 2, [12], [21].

[13] *Supra* 2, [22].

[14] [2024] EWHC 1921 (Pat); [2024] 7 WLUK 479, [23], [27].

[15] *Supra* 14, [79].

[16] *Supra* 14, [90].

[17] *Supra* 2, [35].

and that, insofar as Amazon had been refused permission on case management grounds, the High Court was also wrong.[18]

In doing so, Amazon relied on the decision in *Panasonic*,[19] submitting that the present case was indistinguishable, and that the court should make a declaration that a willing licensor in the position of Nokia would agree to enter, and would enter into, an interim licence.[20] In fact, it argued that the availability of specific performance under Swiss law allowed the court to go further than it did in *Panasonic*,[21] and order Nokia to enter into the interim licence.[22]

In contrast, Nokia argued that *Panasonic*[23] should be distinguished from this case because of the factual differences between the two cases. It maintained that these differences included the fact that, unlike Panasonic: (i) Nokia did not commence proceedings in the UK seeking the determination of RAND terms or even to enforce SEPs; (ii) Nokia had not undertaken to the Patents Court to enter into a licence of its SEPs on terms determined to be RAND by the Patents Court; and, (iii) Nokia is seeking to enforce NEPs against Amazon.[24]

In a unanimous decision, the Court of Appeal overturned Zacaroli J's judgment, granting Amazon permission to amend its pleadings.[25] Arnold LJ (delivering the main judgment) held that, "Amazon have a real prospect of successfully arguing that none of these factual differences is material, and thus that *Panasonic v. Xiaomi* is legally indistinguishable".[26]

The decision reinforced the Court of Appeal's findings in *Panasonic v. Xiaomi*[27] and demonstrated that the decision was not confined to its facts – the Court of Appeal's reasoning could apply more widely. It also confirmed the court's view that interim licence declarations can serve a useful purpose in SEP cases involving multiple parallel proceedings. Arnold LJ issued some encouragement that future interim licensing declarations may be determined quicker given these precedents set by the court, and the fact that financial terms would be subject to a reconciliation or true-up process during determination of the final licence terms.[28]

The Court of Appeal also repeated a common comment that any SEP holder and any licensee will be willing if the royalty rate is sufficiently high or low (respectively) and that, therefore, one has to decide what rate is (F)RAND before one can separate the willing from the unwilling.[29] Overall, the decision is a reminder that the English courts' consideration of willingness is secondary, and

[18] *Supra* 2, [36].

[19] *Supra* 4.

[20] *Supra* 2, [60].

[21] *Supra* 4.

[22] *Supra* 2, [60].

[23] *Supra* 4.

[24] *Supra* 2, [62].

[25] *Supra* 2, [80].

[26] *Supra* 2, [64].

[27] *Supra* 4.

[28] *Supra* 2, [76]–[78].

[29] *Supra* 2, [51].

behaviour is only really a factor when the courts consider a party to not be acting in good faith.[30]

2.2 *Lenovo Group Ltd & Ors v. Telefonaktiebolaget LM Ericsson (PUBL) & Anor*

Next, in February, the Court of Appeal dealt with its third appeal on interim licence declarations in quick succession (after *Panasonic v. Xiaomi*[31] and *Alcatel Lucent v. Amazon*[32]). In this case,[33] the dispute concerned portfolios owned by both Lenovo and Ericsson. Both parties have portfolios of SEPs declared essential to the European Telecommunications Standards Institute (ETSI) 4G and 5G standards.[34] Lenovo had been manufacturing and selling devices that implemented these standards since 2008.[35] Lenovo relied on a 2011 global patent licence between Ericsson and Motorola (later acquired by Lenovo), which endures until the last of the licensed patents expires.[36] Equally, Ericsson has been manufacturing and selling devices that use SEPs owned by Lenovo without a licence.[37] Ericsson claims to have been trying to negotiate a cross-licence with Lenovo since 2008, arguing that Lenovo's behaviour constitutes an example of hold-out by an implementer.[38]

Concurrent with its latest offer of terms for a cross-licence, Ericsson brought legal actions in North Carolina and at the US International Trade Commission.[39] Ericsson also brought claims in Brazil and Colombia.[40] In response, Lenovo issued three claims in the English Patents Court: (i) seeking determination of FRAND terms for a global cross-licence; (ii) seeking determination of which Motorola products are licensed under the 2011 licence; and (iii) an infringement claim relating to one of Lenovo's patents.[41] While Lenovo gave an undertaking to the English Patents Court that it would enter into the FRAND licence determined by it, Ericsson declined to give any such undertaking.[42]

This decision concerned Lenovo's subsequent application for a declaration that willing parties in the positions of Lenovo and Ericsson would consent to an interim

[30] *Ibid.*

[31] *Supra* 4.

[32] *Supra* 2.

[33] [2025] EWCA Civ 182; [2025] 2 WLUK 541.

[34] *Supra* 31, [41].

[35] *Supra* 31, [45].

[36] *Supra* 31, [49].

[37] *Supra* 31, [46].

[38] *Supra* 31, [45].

[39] *Supra* 31, [53].

[40] *Supra* 31, [75]–[76].

[41] *Supra* 31, [69].

[42] *Supra* 31, [72]–[74].

cross-licence pending determination of FRAND terms for a final licence.[43] At first instance, Richards J declined to make such a declaration.[44] Lenovo appealed.

Again, the key question on appeal was whether *Panasonic*[45] was confined to its facts or whether the underlying reasoning applied more widely. Arnold LJ (giving main judgment and with whom the other judges agreed) stated that it was hoped that this decision could provide the Patents Courts with "sufficiently clear guidance to avoid, or at least reduce, the need for further such appeals".[46]

The Court of Appeal set out guidance on a number of issues. Firstly, it dealt with the issue of good faith. The key question here is what is the purpose of pursing foreign proceedings? In this case, what was Ericsson's purpose in pursuing foreign patent infringement proceedings and attempting to exclude Lenovo's products from those markets when they were guaranteed to receive whatever the English courts decided was FRAND plus interest?[47] The first instance judge had not answered this question.

As was the case in *Panasonic*,[48] the Court of Appeal held that Ericsson was, "… aiming to coerce Lenovo into accepting terms more favourable to Ericsson than the English courts would determine to be FRAND, or at the very least to avoid the risk that the English courts would determine that FRAND terms are less advantageous to Ericsson than those sought by Ericsson".[49]

Ericsson had argued that it was simply exercising the legal rights available to it in other jurisdictions and that could not be contrary to its obligation of good faith. The Court of Appeal disagreed with that argument, noting that the point of a SEP owner's obligation to ETSI is that it is a derogation from the patentee's normal entitlement to enforce its patent by way of an injunction, and the purpose and effect of the good faith obligation is to act as a constraint on a party's ability to enforce its strict legal rights solely with regard to its own interests.[50]

Arnold LJ concluded:

> To put it bluntly, Ericsson's position amounts to saying that they are entitled to use their raw legal power to compel Lenovo to submit. That might well have been a legitimate response to a long period of hold out by Lenovo, but as explained above Lenovo are no longer holding out even if they were previously. On the contrary, Lenovo have now accepted that they must pay Ericsson whatever an independent and impartial court determines to be FRAND plus interest. In those circumstances coercion by Ericsson is no longer justified. Accordingly, Ericsson are in breach of their obligation of good faith.[51]

[43] *Supra* 31, [92].

[44] [2024] EWHC 2941 (Pat); [2024] 7 WLUK 479.

[45] *Supra* 4.

[46] *Supra* 31, [1].

[47] *Supra* 31, [115].

[48] *Supra* 4.

[49] *Supra* 31, [128].

[50] *Supra* 31, [129].

[51] *Supra* 31, [129].

The Court of Appeal next dealt with the proposed interim licence. As the court had found in *Alcatel v. Amazon*,[52] an application for an interim licence declaration does not require the court to determine most of the issues that arise at a FRAND trial. The court will merely have to decide whether the applying party is entitled to an interim licence declaration and, if so, what terms are appropriate. The question of terms for an interim licence is quite different to that of a final licence as an interim licence need only, "hold the ring pending determination of the terms of the final licence", and any payments made pursuant to it will be adjusted as necessary when the final licence is determined.[53]

Next, the Court of Appeal proved again that it is willing to grant an interim licence declaration where it believes that it will serve a useful purpose. Here, it concluded that making the declaration sought by Lenovo would serve a useful purpose in forcing Ericsson to reconsider its position: "[i]t would not force Ericsson to change their mind, but in my judgment there is a realistic prospect that they will do so. Ericsson may not presently intend to change their position, but parties' intentions can change …".[54] This is in fact what happened as Lenovo and Ericsson settled their dispute.

Lastly, the court touched on issues of comity. As was the case in *Panasonic*,[55] the Court of Appeal accepted Lenovo's submission that if the declaration induced Ericsson to reconsider its position and to grant Lenovo an interim licence, that would, "promote comity because it would relieve the courts and tribunals of the USA, Brazil and Colombia of a great deal of burdensome and wasteful litigation", and if Lenovo ignored the declaration and continued the proceedings then it would be for those courts and tribunals to make their own assessment of the parties' conduct and decide what relief, if any, Ericsson would be entitled to.[56] As such, making the declaration was not contrary to comity. The first instance judge had not given reasons for rejecting this argument.[57]

Ultimately, the Court of Appeal followed the approach it took in *Panasonic*[58] in determining what terms would be FRAND. As such, the sum payable by Lenovo by way of royalty was the mid-point between that payable by Lenovo under Lenovo's and Ericsson's earlier offers for an interim licence plus interest.[59]

What is particularly interesting about this decision is that the court's conclusion that Ericsson was in breach of its good faith obligation under the ETSI IPR Policy[60] and the declaration that a willing licensor in the position of Ericsson would enter

[52] *Supra* 2.

[53] *Supra* 31, [136].

[54] *Supra* 31, [142].

[55] *Supra* 4.

[56] *Supra* 31, [149].

[57] *Supra* 31, [150].

[58] *Supra* 4.

[59] *Supra* 31, [156], [57(iii)].

[60] ETSI IPR Policy: https://www.etsi.org/images/files/IPR/etsi-ipr-policy.pdf (2022). Accessed: 3 February 2026.

into an interim licence did force Ericsson to reconsider its position, leading to the parties settling their dispute.

2.3 *Samsung Electronics Co., Ltd & Anor v. ZTE Corporation & Ors*

Later, in October, the Court of Appeal allowed ZTE's appeal,[61] setting aside Mellor J's declarations relating to his first instance finding of bad faith on the part of ZTE and Samsung's proposed interim licence.[62] The Court of Appeal confirmed that interim licence declarations may be a legitimate remedy in appropriate cases, with Birss LJ drawing a direct analogy with the provision of security under the guidelines set out by the Court of Justice of the European Union (CJEU) in *Huawei v. ZTE*.[63,64]

Samsung had commenced English proceedings in December 2024, seeking a global FRAND determination and an interim licence.[65] Although ZTE did not challenge the jurisdiction of the English courts, it brought parallel proceedings in the Chongqing Court in China and pursued infringement actions in multiple jurisdictions.[66] In response, Samsung brought its own infringement case in the English courts.

Both parties agreed that there should be an interim cross-licence and agreed on the terms, including the amount to be paid.[67] The only disagreement was whether the English court or the Chongqing Court should determine the final FRAND adjustment.[68]

At first instance, Mellor J granted Samsung four declarations: (i) ZTE was in breach of its obligation to act in good faith by seeking to pressure Samsung into accepting the jurisdiction of the Chongqing Court; (ii) what the terms of an interim licence would be; (iii) that the interim licence should be subject to adjustment by the English Patents Court; and (iv) that it would be in breach of ZTE's FRAND commitment for it to refuse to enter into the interim licence.[69]

The Chongqing Court had held substantive hearings in September and October 2025 and it was, therefore, a possibility that it might issue its final FRAND determination before the start of the English FRAND trial in January 2026 (or before the judgment is handed down).

ZTE appealed on four grounds, though ground 3 was not considered by the court as it was not developed by ZTE at the hearing. The first two grounds dealt with the issue of bad faith and the relevance of the court first seised. ZTE's central argument

[61] [2025] EWCA Civ 1383; [2025] 10 WLUK 575.

[62] [2025] EWHC 1432 (Pat); [2025] 6 WLUK 506.

[63] Case C-170/13.

[64] *Supra* 61, [84].

[65] *Supra* 61, [17].

[66] *Supra* 61, [21].

[67] *Supra* 61, [36].

[68] *Ibid*.

[69] *Supra* 62, [162].

was that the judge erred in treating the English courts being first seised as determinative in his bad faith analysis.[70] Samsung disagreed and further argued that the first instance decision should be upheld because international arbitration practice supports selecting a neutral forum to determine FRAND rates and ZTE's interim licence proposal amounted to a *forum non conveniens application "by the back door"*.[71]

However, the Court of Appeal was clear to distinguish earlier case law where SEP owners had been found to be acting in bad faith by attempting to force implementers to accept supra-FRAND terms by pursuing injunctive or equivalent relief abroad.[72] In contrast, the Court of Appeal held that the judge's decision to grant the first declaration was based "solely" on the conclusion that ZTE was acting in bad faith by bringing foreign claims to force Samsung to agree to a FRAND determination in Chongqing.[73]

The court held that ZTE's objective was to assert its forum preference, not to extract supra-FRAND rates, and therefore it unanimously held that, though it considered the behaviour to be "unattractive", absent a substantiated objection to the foreign forum (which there was not in this case), the approach was not sufficient to justify a finding of bad faith.[74] There could be no objection of principle to a party's desire to litigate in its home courts.[75] Indeed, jurisdiction rules are often based on a defendant's domicile, and when considering forum a party's location is a factor in favour of a forum, not against it.[76]

Although Samsung argued that ZTE's proposed interim licence terms amounted to a *forum non conveniens* challenge by the back door, the court rejected this as it was undisputed that the English courts have jurisdiction to determine Samsung's claims for a global FRAND determination.[77] It did not follow, however, that ZTE is obliged to commit to an English determination in preference to any determination by the Chongqing Court.[78]

Samsung's jurisdiction challenge before the Chongqing Court had failed and that court was already engaged in its own FRAND determination. This was true even if, in the Court of Appeal's view, the Chongqing proceedings were "*unnecessary and duplicative*", which led to "a significant increase in costs for both parties for no good reason", and created "a real risk of inconsistent decisions", given that this would apply either way depending on which court was first seised.[79]

ZTE's third ground of appeal related to whether the declaratory relief granted was unduly extensive. The ground was not pursued at the hearing, however, Birss LJ

[70] *Supra* 61, [69].

[71] *Supra* 61, [62]–[65].

[72] *Supra* 61, [82].

[73] *Supra* 61, [57].

[74] *Supra* 61, [70]–[73].

[75] *Supra* 61, [63].

[76] *Ibid.*

[77] *Supra* 61, [65].

[78] *Ibid.*

[79] *Supra* 61, [67]–[68].

stated that he would have liked to have heard "full argument" about the merits and proportionality of declarations designed to force a party to do or not do something they are unwilling to do.[80] This issue will necessarily be fact specific but whether specific performance can be ordered via an interim licence declaration will be an issue for another time.

The final ground of appeal related to issues of comity. The Court of Appeal noted that there was a "real concern" about comity in this case, although it did not need to decide the ground given its conclusions on bad faith.[81] In a short supplemental judgment, Birss LJ made comments addressing the jurisdictional and comity issues that had arisen in SEP disputes throughout 2025. He cautioned that dealing with more than one court being seised will have to be "worked out internationally over time on a case-by-case basis", but the "helpful possibility" of an interim payment "ought not to be turned into a tool to force that issue".[82] He ended his comments by emphasising a wish to, "avoid creating an impression of a lack of comity".[83]

This decision provides clear guidance on when certain types of interim licence declarations should be granted in SEP disputes, limiting their use to specific scenarios. Where the parties are, in principle, willing licensors and licensees and the dispute is over forum for the final FRAND determination, the court is unlikely to deploy interim declarations to force an outcome on forum. In contrast, the court may be more interventionist where a party acts in bad faith (for example, where it is seeking to extract supra-FRAND rates) or where there are legitimate objections to a SEP owner's preferred forum. This will be welcomed by SEP owners.

In the absence of a global dispute resolution mechanism, the Court of Appeal acknowledged that how to deal with multiple courts being seised will have to be worked out over time.[84] It remains to be seen how the English courts will manage the interplay with a decision from the Chongqing Court. The judgment also leaves the question of whether the English courts would be willing to order specific performance when granting interim licence declarations where there is bad faith behaviour. Issues of jurisdiction and comity will undoubtedly continue to dominate SEP disputes for the foreseeable future.

2.4 *Amazon.Com, Inc v. Interdigital Vc Holdings, Inc & Ors*

In August 2025, Amazon initiated RAND rate-setting proceedings in the English courts, concerning digital streaming technology and ITU-T standards.[85,86,87] The proceedings were formulated to include a declaration that Amazon was entitled to be offered a licence to the challenged patents on RAND terms, and that InterDigital

[80] *Supra* 61, [86].

[81] *Supra* 61, [78].

[82] *Supra* 61, [87].

[83] *Supra* 61, [88].

[84] *Supra* 61, [87].

[85] [2025] EWHC 2708 (Pat); [2025] 10 WLUK 298.

[86] [2025] EWHC 3170 (Pat); [2025] 12 WLUK 126.

[87] [2025] EWHC 3334 (Pat); [2025] 12 WLUK 560.

could be ordered to comply by way of an order for specific performance. Amazon is also seeking a declaration of licence terms, including final RAND terms and interim RAND terms (adjustable pending the court's final determination).

Subsequently, in September, InterDigital made an *ex parte* application for a preliminary order against Amazon in the Mannheim Local Division (LD) of the Unified Patent Court (UPC), seeking anti-suit relief to restrain Amazon from pursuing measures that would prevent InterDigital from enforcing its patent rights before the UPC (for example, by seeking an interim licence declaration in the English courts). The Mannheim LD made an order for an anti-interim licence injunction (AILI) (a specific form of anti-suit injunction (ASI)).[88] A similar *ex parte* application was made in the Munich Regional Court in parallel German proceedings, and it granted a similar order (both were the first instances of AILIs being granted).[89]

Later in October, in response, the English Patents Court heard an *ex parte* application from Amazon for an anti-anti-suit injunction (AASI) against InterDigital. Amazon had two concerns. Firstly, that InterDigital was not being clear as to whether the UPC or German orders impacted on any aspect of the final relief sought in the English proceedings (such as the request for an order for specific performance).[90]

Secondly, that in any event InterDigital could formulate a further application to restrain Amazon from pursuing certain final relief (on the basis that the final relief would interfere with the UPC or German proceedings or both, especially if the trial was expedited).[91]

Meade J emphasised that his judgment was not to be considered "hostile to the UPC or the Munich court, or retaliatory".[92] Instead, the application was directed at InterDigital and its possible conduct concerning the final relief sought in the English proceedings, and protecting that from interference.[93]

Amazon advanced its application on two grounds: (i) to protect the English court's jurisdiction; and (ii) separately or cumulatively, on the basis that it is to restrain conduct by InterDigital that would be vexatious or oppressive.[94] Meade J explained that the "heart" of the English proceedings is to determine the scope, price and terms of a final RAND licence.[95] It was reasonably arguable that an AILI would block that and would undermine the jurisdiction of the English court in relation to that claim. He continued that there are "no proceedings anywhere else where those matters could be determined and where no other court has been suggested as available, or more appropriate than the UK".[96]

[88] UPC_CFI_936/2025.

[89] *Supra* 85, [3].

[90] *Supra* 85, [13].

[91] *Supra* 85, [14].

[92] *Supra* 85, [21].

[93] *Ibid.*

[94] *Supra* 85, [26].

[95] *Supra* 85, [28].

[96] *Ibid.*

Meade J was "particularly struck" by InterDigital's tactical and changing position about whether final relief is or is not within the proper scope of the English proceedings or may be restrained by the AILIs.[97] He was satisfied that both grounds, separately or cumulatively, provided an appropriate basis for the AASI.[98] Further, it was appropriate to make the order on an *ex parte* basis because there was a real likelihood that InterDigital would seek urgent *ex parte* relief in another court if given notice.[99] However, as is usual with *ex parte* relief, a return hearing on notice was scheduled to ensure that InterDigital was heard on whether the AASI should continue.

Following the *inter partes* return hearing, Meade J continued the interim AASI in a modified form.[100] InterDigital had applied to set aside, or alternatively, vary the AASI, arguing that it had no current intention to seek an ASI against final RAND relief and that the AASI was an "offence against comity".[101]

Meade J held that several factors supported a strong likelihood that, in the absence of an AASI, InterDigital may seek to block the English court from granting final RAND relief by seeking further anti-suit relief abroad. Contributing factors included: (i) InterDigital had already obtained *ex parte* ASIs in Germany and the UPC directed at the English proceedings; (ii) InterDigital's position on whether those ASIs restrained final RAND relief was not clear; (iii) InterDigital had not served any evidence about its intentions; and (iv) InterDigital's litigation stance and evidence suggested that it would try to argue that pursuing final relief would be caught by the foreign orders, especially if the proceedings in England were expedited.[102]

Meade J clarified that the AASI would not prevent InterDigital from bringing or continuing substantive patent infringement proceedings (and any usual remedies) in the UPC, Germany or elsewhere. InterDigital would also remain free to commence its own overlapping rate-setting proceedings in other fora and to challenge the relevance of any English court determined licence abroad.[103]

As to the issue of comity, Meade J emphasised that the AASI was aimed at protecting the English court's jurisdiction to determine the contractual RAND disputes that had been properly brought before it, while also avoiding any interference with foreign patent enforcement or rate-setting proceedings.[104] He added that the global scope of a RAND licence determined by the English courts does not make the order itself have extra-territorial effect. Foreign courts are free to decide what, if any, effect such a licence has in their jurisdictions.[105]

[97] *Supra* 85, [29].

[98] *Supra* 85, [31].

[99] *Supra* 85, [34]–[35].

[100] *Supra* 86.

[101] *Supra* 86, [24].

[102] *Supra* 86, [47] *et seq*.

[103] *Supra* 86, [86], [90].

[104] *Supra* 86, [84] *et seq*.

[105] *Supra* 86, [87].

Meade J addressed the escalation of these jurisdictional and comity issues. He emphasised that ASIs and AASIs are exceptional remedies and are only justified to protect the court's jurisdiction or to restrain vexatious conduct.[106] He clearly advocated for judicial de-escalation, which he hoped would be "a cooperative effort internationally".[107]

Later in December 2025, the *Amazon v. InterDigital* saga continued, with a decision from Meade J on InterDigital's jurisdiction challenge.[108] The judge held that England is the appropriate forum to determine Amazon's claims and that service of the claim was valid and permission to serve out of the jurisdiction was properly granted.[109] Following binding case law,[110] Meade J held that Amazon's claims were properly characterised as relating to UK patents and the contractual RAND obligations affecting those UK rights, even though the resulting RAND licence may be global in scope.[111]

The judge rejected InterDigital's arguments that England was not an appropriate forum (and its related application for a *forum non conveniens* stay of any claims for which permission to serve out of the jurisdiction was not required).[112] Meade J did consider facts that made Switzerland and Delaware "available" fora, but he concluded that they were not "clearly or distinctly more appropriate" than the English court.[113] Factors that weighed in favour of England[114] included: (i) Amazon's pleaded UK competition claims;[115] (ii) the English court's ability to deliver a timely, authoritative and public determination;[116] and (iii) the need to apply UK competition law directly.[117]

Although the judge accepted that in RAND valuation disputes of this kind there may be "no natural home", even on that basis, InterDigital had not shown an alternative forum that was clearly more appropriate than England.[118] Meade J also rejected InterDigital's attempt to characterise the dispute as best suited to international arbitration. He explained that a "fundamental feature of arbitration is that it is a consensual process" and it would be "wrong" to compel a party to arbitrate.[119] Moreover, the principle of open justice weighed heavily against arbitration.[120]

[106] *Supra* 86, [101].

[107] *Supra* 86, [103].

[108] *Supra* 87.

[109] *Supra* 87, [180].

[110] *Supra* 87, [54] *et seq*.

[111] *Supra* 87, [13].

[112] *Supra* 87, [133], [174].

[113] *Supra* 87, [135] *et seq*, [144].

[114] *Supra* 87, [143] *et seq*.

[115] *Supra* 87, [154].

[116] *Supra* 87, [125].

[117] *Supra* 87, [149]–[153].

[118] *Supra* 87, [144].

[119] *Supra* 87, [120].

[120] *Supra* 87, [169]–[172].

Meade J also found that InterDigital's undertaking not to enforce its UK patents did not remove the English court's jurisdiction.[121] The undertaking was not held to be equivalent to the licence Amazon is seeking, was of limited duration and did not provide the same level of certainty or commercial coverage.[122]

Lastly, on the point of whether any court (or arbitral panel) will set global RAND rates, Meade J held that no forum could guarantee that outcome, especially if the RAND commitment under Swiss law was found only to be an obligation to negotiate in good faith.[123] However, this conclusion did not differentiate England from the proposed alternative fora, nor did it undermine the appropriateness of England as a forum in light of the other factors.[124]

The court's decision to maintain the AASI (in amended form) and reject InterDigital's jurisdiction challenge underscores the English court's approach to protecting its jurisdiction in (F)RAND disputes. These judgments also highlight the inevitable frictions between judicial sovereignty, international contractual arrangements and comity. Undertakings not to enforce UK patents will not displace the English court's jurisdiction (at least in the case of ITU-T standards), unless they provide the same level of certainty and scope of a licence. If not, the English court's jurisdiction will remain intact and there could still be utility in granting declaratory relief.

Meade J was careful in these decisions to try to strike a balance between protecting the English court's ability to determine contractual rights and respecting foreign court proceedings. Moving forward, it is clear that international courts will need to continue to develop mechanisms for de-escalation of comity tensions. Without an internationally agreed dispute resolution mechanism for (F)RAND disputes, comity tensions will persist.

2.5 *Warner Bros. Discovery Inc & Anor v. Nokia Corporation & Anor*

Moving away from the *Amazon v. InterDigital* saga, in November, the Patents Court granted Warner Bros Discovery (WBD) an *ex parte* AASI against Nokia[125] in relation to an ongoing RAND dispute.[126] However, this was later replaced by reciprocal contractual undertakings between the parties at the return hearing. Echoing the above judgments, Mellor J signalled a need to de-escalate the ongoing jurisdictional conflict between English, German and UPC courts.[127]

At the hearing, Mellor J dealt with three applications: (i) a confidentiality order (granted *pro tem*); (ii) permission to serve out of the jurisdiction; and (iii) AASI relief. The AASI was sought to prevent Nokia from seeking an ASI, including an

[121] *Supra* 87, [93].

[122] *Supra* 87, [92].

[123] *Supra* 87, [111]–[113].

[124] *Ibid.*

[125] [2025] EWHC 2888 (Pat); [2025] 11 WLUK 54.

[126] *Supra* 125, [121].

[127] *Supra* 125, [120].

AILI, in any foreign court that would restrain WBD from pursuing its claims for the English court to determine RAND licence terms.[128]

On 1 November 2025, Nokia commenced proceedings against WBD in four jurisdictions (Brazil, Germany, the UPC and the USA). WBD contended that there was a real risk that Nokia would seek ASI relief (including an AILI) in Germany and the UPC, citing the German and UPC decisions in *Amazon v. InterDigital*[129] as a notable escalation in SEP-holder tactics intended to pre-empt and suppress implementer-led RAND actions in the English courts.[130]

WBD identified three factors pointing towards an AILI being an attractive tactic for Nokia: (i) Nokia's pursuit of foreign injunctions against other implementers; (ii) examples of SEP/(F)RAND litigants seeking *ex parte* AASI relief in Germany and before the UPC; and (iii) the tendency of parties in SEP/(F)RAND litigation to adopt and adapt the strategies of others.[131]

Mellor J was "somewhat sceptical" of the force of these factors but was unable to find that the risk was "negligible or so small as not to justify relief".[132] If there was any real chance of Nokia seeking an AILI, WBD's application represented the court's only chance to protect its jurisdiction.[133]

WBD sought, and Mellor J granted, what he termed a "full-throated" AASI order.[134] The prohibitory parts of the order extended to Nokia acting through any affiliate, including mandatory orders requiring Nokia to procure that no affiliate did any of the prohibited acts. In addition, the order required Nokia to procure a stay or adjournment of any existing ASI applications and required immediate notice of any relevant orders already obtained with a prohibition on enforcement.[135] All elements of the order were global in scope.[136] Mellor J concluded that the full extent of the relief was justified to take account of the "many uncertainties and imponderables in the current situation and to ensure the relief achieved its objective of protecting the integrity of the proceedings".[137]

By the return hearing, the parties had made progress on putting in place reciprocal undertakings to give notice of any further ASI applications to each other. The final details were agreed during the hearing, with the only dispute remaining being whether the undertakings should be contractual or to the court. The court concluded that they should be contractual, noting that Nokia had given no reason to suppose it would break a contractual promise and it was not necessary to put in place the possibility of contempt proceedings to force it to keep its promises. The

[128] *Supra* 125, [1].

[129] *Supra* 85.

[130] *Supra* 125, [41].

[131] *Supra* 125, [96].

[132] *Supra* 125, [121].

[133] *Supra* 125, [95].

[134] *Supra* 125, [123].

[135] *Supra* 125, [45].

[136] *Supra* 125, [46].

[137] *Supra* 125, [123].

undertakings would be enforceable in the existing proceedings and subject to the exclusive jurisdiction of the English courts.[138]

In line with *Amazon v. InterDigital*,[139] this decision again illustrates that the English courts are prepared to protect their jurisdiction when faced with the risk of foreign ASIs. As illustrated here, this area of law has become procedurally active and fast moving and we can expect more case law over the coming year. For implementers facing SEP disputes, early protective measures may be essential to preserve access to the English courts for (F)RAND determinations. For SEP holders, the decision indicates that steps taken in other forums may prompt short term protective applications in England.

Mellor J acknowledged that the timing of WBD's application created a particular difficulty, as an appeal from his judgment regarding applications in *Acer v. Nokia*[140] (see below) was still pending at the time. He expressed hope that his judgments, if upheld on appeal, would modify the practice in relation to interim licences and reduce the degree of conflict with the German national and UPC courts. Whether these decisions (and others from across 2025) will result in de-escalation remains to be seen.

2.6 *Acer Incorporated & Ors v. Nokia Technologies OY*

To round off this section of decisions, in December 2025, Mellor J handed down a significant judgment in the dispute between Nokia and implementers Acer, Hisense and Asus (the Claimants).[141] The court rejected Nokia's challenge to its jurisdiction to set global RAND licence terms[142] and construed the ITU-T RAND undertaking as an enforceable obligation to grant a licence, not merely to negotiate.[143] The court also granted interim licence declarations (referred to as Declaration 12 and Declaration 13), but it declined to make what was referred at as Declaration 15, which sought to declare Nokia to be in breach of its RAND commitment and an unwilling licensee if it did not offer the interim licence within seven days of the court's order.[144]

In this case, the Claimants sought a global RAND determination for Nokia's portfolio of SEPs.[145] After years of unsuccessful negotiations, Nokia brought various proceedings globally seeking injunctions against the Claimants.[146] None of those proceedings commenced by Nokia included a request that the court should determine RAND terms.[147] The Claimants responded by seeking interim licence

[138] Decision not publicly available.

[139] *Supra* 85.

[140] [2025] EWHC 3331 (Pat); [2025] 12 WLUK 443.

[141] *Ibid.*

[142] *Supra* 140, [363].

[143] *Supra* 140, [111] *et seq*, in particular [125ii)].

[144] *Supra* 140, [364], [445]–[447].

[145] *Supra* 140, [9iv)].

[146] *Supra* 140, [9ii)].

[147] *Supra* 140, [9iii)].

declarations and gave unconditional undertakings to accept a global RAND licence set by the English court.[148]

Nokia argued that: (i) no national court can determine (F)RAND terms without consent; (ii) the proper forum was international arbitration; (iii) the ITU-T commitment was only an obligation to negotiate in good faith not to actually make a RAND offer or agree to RAND terms; and (iv) its arbitration offers were themselves RAND.[149]

Mellor J rejected Nokia's argument that its obligation was merely to negotiate in good faith.[150] He held that the declarations create an enforceable obligation to grant licences on RAND terms.[151] Under Swiss law, the ITU-T commitment was an enforceable contract obliging Nokia to grant licences on RAND terms for the benefit of third-party beneficiaries.[152] In contrast, Nokia's arbitration offers were held to be merely offers to enter into arbitration, not RAND offers themselves.[153]

Mellor J held that a claim for an enforceable right to a RAND licence in respect of UK SEPs falls within gateway (11) ("subject matter of the claim relates wholly or principally to property within the jurisdiction"), following *Vestel*,[154] *Alcatel*,[155] and *Tesla*.[156,157] The court acknowledged that even though the licence is said to be global in scope (and cover non-UK patents), the claim remains a claim that relates wholly or principally to property within the jurisdiction (UK patents).[158]

The court rejected Nokia's argument that international arbitration was a more appropriate forum. Mellor J reasoned that even if arbitration could be characterised as a "forum" and even if it were "available", it was not "clearly or distinctly more appropriate than England", noting that arbitration is consensual process that had no connection to the parties to the proceedings.[159]

Mellor J also confronted the issue of comity tensions head on.[160] In light of the AILIs granted by the UPC and Munich Regional Court in *Amazon v. InterDigital*,[161] the judge stressed that English interim licence declarations do not prohibit enforcement of foreign SEPs and are not ASIs.[162] He called for de-escalation,

[148] *Supra* 140, [9iv)].

[149] *Supra* 140, [10].

[150] *Supra* 140, [125], [250]–[253].

[151] *Supra* 140, [125].

[152] *Supra* 140, [250].

[153] *Supra* 140, [24].

[154] *Vestel Elektronik Sanayi Ve Ticaret AS v. Access Advance LLC (formerly HEVC Advance LLC)* [2021] EWCA Civ 440; [2021] 4 WLR 60.

[155] *Supra* 14.

[156] *Tesla Inc & Anor v. IDAC Holdings Inc & Ors* [2025] EWCA Civ 193; [2025] 3 WLUK 55 (*see* below).

[157] *Supra* 140, [303] *et seq*, particularly [311].

[158] *Supra* 140, [311]–[312].

[159] *Supra* 140, [329]–[330].

[160] *Supra* 140, [433] *et seq*.

[161] *Supra* 85.

[162] *Supra* 140, [395].

noting that the English courts can de-escalate by being "careful only to grant interim declarations that have a proper useful purpose in the UK".[163] Mellor J was also clear that legal representatives have a duty to make a "fair and accurate presentation" of the effect of English court orders.[164] However, he noted that there "remains an acute risk of conflict" with the current approach of the Munich court and UPC, which will remain unless or until those courts "recognise a contractual licence defence to a SEP infringement claim" (although the judge noted that it is "entirely up to" those courts to decide what to do).[165]

Despite the Court of Appeal's judgment in *Samsung v. ZTE*[166] rowing back on the circumstances in which interim licence declarations will be granted, this decision illustrates that the English courts are still prepared to deploy them in the right case. In this case, following the interim licence declaration, Nokia entered into a multi-year licence agreement with Hisense, evidencing their utility. Whether Acer or Asus follow suit remains to be seen. The judgment also represents another English judicial attempt to de-escalate tensions in SEP licensing disputes. Time will tell whether this happens during the course of 2026.

3 *Tesla Inc & Anor v. IDAC Holdings Inc & Ors*

Another issue that came before the Court of Appeal in March was the relevance of patent platforms. [167] In this case, the court considered whether a patent owner's contractual FRAND commitments to ETSI should be applied to a patent platform licence. With a majority decision from Phillips and Whipple LJJ, the Court of Appeal dismissed Tesla's appeal, finding that there was no serious issue to be tried in relation to Tesla's claim that it was entitled to a licence to Avanci's 5G vehicle platform on FRAND terms.

The case had arisen from a jurisdictional dispute between the parties. Tesla is seeking to launch 5G-enabled vehicles in the UK, and accepts that it will need a licence to SEPs that are optionally licensable through the Avanci 5G vehicle platform in order to do so.[168] As such, Tesla brought a claim against InterDigital and Avanci seeking declarations relating to: (i) the invalidity of three of InterDigital's UK patents, and (ii) the FRAND commitments of InterDigital and other patent owners that own 5G Platform SEPs.[169]

To understand Fancourt J's first instance decision,[170] which was upheld by the majority on appeal, it is necessary to briefly explain the role of Avanci and its 5G vehicle platform. Avanci is authorised by certain patent owners to offer a global

[163] *Supra* 140, [437].

[164] *Supra* 140, [396].

[165] *Supra* 140, [438].

[166] *Supra* 61.

[167] *Supra* 156.

[168] *Supra* 156, [2].

[169] *Supra* 156, [3].

[170] [2024] EWHC 1815 (Ch); [2024] 7 WLUK 266.

licence covering their SEPs as an optional commercial alternative to bilateral licences.[171] Avanci does not own any patents itself, and it has not given any FRAND commitments to any standard setting organisations. Instead, it acts as an agent for the relevant patent owners, and its role is limited to offering a standard patent licence agreement (SPLA), subject to certain pre-agreed modifications.[172] Other than these modifications, Avanci cannot vary the terms of the SPLA.[173]

Tesla argued that it is the beneficiary of the FRAND commitment of InterDigital and the other relevant patent owners, as well as that InterDigital could act as a CPR Part 19 representative of those patent owners. As such, Tesla contended that it was entitled to a licence from Avanci on terms set by the court covering the relevant patent owners' SEPs covered by a 5G vehicle platform licence. Tesla also claimed that it would be impractical and onerous to negotiate with each patent owner bilaterally.[174] As such, it invited the court to determine a binding FRAND rate that covered the entirety of the Avanci 5G vehicle platform.[175]

Given that some of the InterDigital defendants and Avanci are based outside the UK, Tesla applied for permission to serve the claim outside of the jurisdiction. However, InterDigital and Avanci successfully challenged the jurisdiction of the English courts.[176] In his first instance judgment, Fancourt J held that Tesla was not entitled to serve the claim out of the jurisdiction, except insofar as it related to the claim that InterDigital's three patents were invalid.[177] He held that there was no serious issue to be tried in relation to the request that the court grant declarations relating to Tesla's licensing claims against Avanci and/or InterDigital,[178] that gateway (11) (subject matter of the claim relates wholly or principally to property within the jurisdiction) did not apply to the licensing claim against Avanci, and that Tesla had failed to show that England and Wales was the appropriate forum for such licensing claims.[179]

Tesla appealed Fancourt J's judgment on a number of grounds. In particular, Tesla contended that the judge was wrong in finding that there was no serious issue to be tried as between Tesla and Avanci or InterDigital alone.[180]

Writing on behalf of the majority, Phillips LJ rejected Tesla's appeal. He began by noting that the jurisdiction of the English courts to determine a FRAND licence is based on a contractual undertaking. In this case, the case concerned a contractual undertaking given in accordance with the ETSI IPR Policy.[181,182] Each of the

[171] *Supra* 156, [17].

[172] *Supra* 156, [19].

[173] *Supra* 156, [20].

[174] *Supra* 156, [36].

[175] *Supra* 156, [37].

[176] *Supra* 170, [159].

[177] *Ibid.*

[178] *Supra* 170, [74] *et seq.*

[179] *Supra* 170, [130] *et seq* and *supra* 156, [43].

[180] *Supra* 156, [44].

[181] *Supra* 60.

[182] *Supra* 156, [222].

owners of 5G platform SEPs had entered into a contract with ETSI that included a commitment to negotiate a licence to their own SEPs with third party beneficiaries on FRAND terms.[183] The fact that certain patent owners had chosen optionally to make their SEPs available for license via the Avanci 5G vehicle platform as well does not alter that contractual obligation, and it does not place any additional obligations on the patent owner. In particular, it does not follow that patent owners have agreed or undertaken to license their SEPs on discounted collective terms.[184]

As such, the English court does not have the jurisdiction to determine the "FRAND terms" of a collective licence of the SEPs available via the Avanci 5G vehicle platform, even if all of the patent owners were joined or represented in the proceedings.[185] In particular, the court has no jurisdiction over Avanci itself, which has not given any contractual undertakings and which has no authority to negotiate, let alone agree, "FRAND terms" on behalf of the patent owners.[186]

Phillips LJ cited *Vestel*,[187] in which the court had previously held that there was no such thing as a free-standing FRAND claim absent a legal standard. Applying that decision, he held that Tesla's case amounted to such an impermissible claim.[188] Accordingly, there was no serious issue to be tried in relation to the licensing claims brought by Tesla against InterDigital or Avanci.[189]

In his dissenting judgment, Arnold LJ held that this case should be distinguished from *Vestel*.[190] He believed that Tesla had a real chance of succeeding in its claim that, as a matter of commercial reality, the only licence of the UK 5G platform SEPs would be a global platform licence of the kind offered by Avanci as agent.[191] As such, he thought that permission should have been granted to serve proceedings on Avanci outside the jurisdiction pursuant to gateway (11) (subject matter of the claim relates wholly or principally to property within the jurisdiction).[192] In addition, Arnold LJ stated that he thought that there was a real chance of Tesla succeeding in its claims against InterDigital alone,[193] holding that Tesla should be given permission to serve the claim form on InterDigital outside of the jurisdiction pursuant to gateway (3) (necessary or proper parties) or gateway (11).[194]

This decision represented an important victory for Avanci and clarified the law on patent platforms. Permission to appeal to the Supreme Court was granted in part in June, with the hearing listed in April 2026.[195]

[183] *Supra* 156, [227].

[184] *Supra* 156, [230].

[185] *Supra* 156, [231].

[186] *Ibid.*

[187] *Supra* 154, cited by Philips LJ *supra* 156, [236].

[188] *Supra* 156, [236].

[189] *Supra* 156, [238].

[190] *Supra* 156, [88].

[191] *Supra* 156, [95].

[192] *Supra* 156, [156].

[193] *Supra* 156, [180].

[194] *Supra* 156, [220].

[195] Supreme Court, https://supremecourt.uk/cases/uksc-2025-0058. Accessed 3 February 2026.

4 *Optis Cellular Technology LLC & Ors v. Apple Retail UK Ltd & Ors*

In May, the Court of Appeal handed down one of the most widely-publicised FRAND judgments of the year.[196] In reevaluating the High Court's assessment of the appropriate FRAND rate, the court increased the award due from Apple to Optis from USD 56 million to a figure of more than USD 500 million (expected to exceed USD 700 million with interest).

This judgment was the latest in a series of proceedings between the parties which were initiated in 2019.[197] At first instance, the court heard four technical trials (trials A to D), along with two further trials (E and F).[198] Trial E, which sought to settle the terms of the FRAND licence between the parties, was the subject of the present appeal.[199]

At first instance,[200] both Optis and Apple identified different selections of comparable licences, which they "unpacked" to identify the appropriate royalty rate in accordance with the approach taken in other cases such as *Interdigital* (Optis arguing for *ad valorem* rates and Apple arguing for dollar per unit (DPU) rates).[201,202] The parties also each proposed a series of alternative methods that could be used to calculate the FRAND rate.[203]

Marcus Smith J rejected both parties' approaches and rejected the evidence of both parties' accountancy experts, finding that their evidence held no benefit in determining the FRAND question.[204] He held that the comparables approach did not reliably provide a FRAND rate because the comparable licences required "unpacking".[205] In addition, he thought that since SEPs were monopoly rights there were no "true" comparators that would arise in a "free" market.[206]

The judge sought to "price the value of the entire Stack to Apple, and then to apportion that price pro rata amongst the co-owners of the Stack in proportion with their holding".[207] In valuing the stack, the judge used an averaging method based on one Optis licence and various licences that Apple had entered into with other SEP owners, adjusting certain licences which he deemed to be outliers.[208] He produced

[196] [2025] EWCA Civ 552; [2025] 5 WLUK 8.

[197] *Supra* 196, [6].

[198] *Supra* 196, [7].

[199] *Ibid.*

[200] *Optis Cellular Technology LLC & Ors v. Apple Retail UK Limited & Ors* [2023] EWHC 1095 (Ch); [2023] 5 WLUK 465. *See* the 2023 case summary for further details. IIC 55:394–421 (2024), https://doi.org/10.1007/s40319-024-01434-y.

[201] *InterDigital Technology Corporation & Ors v. Lenovo Group Ltd & Ors* [2023] EWHC 539 (Pat). *See* the 2023 case summary for further details. IIC 55:394–421 (2024), https://doi.org/10.1007/s40319-024-01434-y.

[202] *Supra* 200, [55].

[203] *Supra* 200, [394] *et seq*.

[204] *Supra* 200, [311] *et seq*.

[205] *Supra* 200, [425].

[206] *Ibid*.

[207] *Supra* 200, [456].

[208] *Supra* 200, [462], [483].

an annual lump sum figure for stack, made his own apportionments for past and future sales, and to calculate the amount due to Optis, he scaled this figure to reflect Optis' share of the stack, which was 0.38%.[209]

Optis appealed Marcus Smith J's findings on 25 grounds, albeit these were narrowed before the appeal hearing. Apple filed a Respondent's Notice that raised six grounds of cross-appeal.[210] The essence of Optis' appeal was that the judge had made fundamental errors in rejecting the evidence before him and adopting his own "fatally flawed" approach.[211] Optis contended that the correct course of action would be to use "a conventional comparables approach", using the comparable licences to derive a dollar per unit (DPU) figure.[212] In contrast, Apple supported the judge's broad approach, arguing that it was in fact overly generous to Optis and that the one Optis licence should have been removed from averaging method.[213]

Birss LJ and Arnold LJ split writing the judgment, both agreeing with each other's judgments and Newey LJ agreeing with both judgments. Birss LJ largely dealt with the issue of how much money was owed by Apple to Optis and Arnold LJ dealt with non-financial terms of the licence, including how to deal with the parallel US proceedings.

Birss LJ began by examining Marcus Smith J's decision to reject the evidence of both parties' accountancy experts.[214] Allowing Optis' appeal, Birss LJ held that it was inappropriate for the judge to have concluded that the experts had strayed outside their expertise and had provided no independent judgement, given that these points had not been put to the experts in cross-examination or by the judge.[215] He also held that the judge had misunderstood comparability and the process of unpacking licences.[216]

Having dealt with this issue, Birss LJ moved on to assess the judge's approach. He accepted Optis' criticisms of the Marcus Smith J's method, holding that the correct approach would have been to adopt a comparables-based approach.[217] In particular, Birss LJ held that the step of taking a simple average of the licences "had no precedent or basis in the evidence before him nor can it be justified in principle".[218]

In addition, he accepted Optis' arguments that the judge was wrong to place weight on the values derived from the Apple licences as a whole. Given that they had been affected by 'hold-out' by Apple, these licences did not properly reflect the rate that would have been agreed by a willing licensor and a willing licensee.[219]

[209] *Supra* 200, [487]. *See* also *Optis v. Apple* [2024] EWHC 197 (Ch); [2024] 2 WLUK 200.

[210] *Supra* 196, [77].

[211] *Supra* 196, [78].

[212] *Ibid.*

[213] *Supra* 196, [82].

[214] *Supra* 196, [85].

[215] *Supra* 196, [89].

[216] *Supra* 196, [86] *et seq.*

[217] *Supra* 196, [115].

[218] *Supra* 196, [106].

[219] *Supra* 196, [123].

In light of the errors identified in Marcus Smith J's approach, Birss LJ considered whether a retrial would be appropriate in order to determine the correct FRAND rate. However, he concluded that a retrial should be a measure of last resort, and held that the Court of Appeal was in a position to determine the appropriate FRAND rate itself.[220]

Birss LJ then went on to make findings on the appropriate FRAND rate. He concluded that the appropriate rate was a DPU figure of USD 0.15, based on comparable licences such as those entered into with Google, Ericsson, InterDigital, Nokia and Sisvel.[221] Using this USD 0.15 DPU figure and applied to Apple's sales volumes, Birss LJ concluded that a sum of USD 502 million (excluding interest) should be payable from Apple to Optis for the period of 2013 to 2027.[222]

In his judgment, Arnold LJ addressed the appeal concerning certain non-financial terms of the licence. Firstly, he overturned the judge's ruling that interest should cease to be payable after 1 January 2023.[223] Secondly, he held that a certain paragraph of Marcus Smith J's order, paragraph 6(2), was not justified.[224] Thirdly, he found that a judgment for USD 300 million obtained by Optis in parallel proceedings against Apple in the US ought to act as a floor for the royalties payable by Apple to Optis under the UK court determined FRAND licence.[225] Apple bore responsibility for the US proceedings needing to be progressed, and this outcome was supported by considerations of comity.[226]

This decision represented a high-profile success for a SEP-holder in the English courts. However, it may not be the final word on the matter given that permission to appeal to the Supreme Court was granted in October, with the hearing listed to start in late June 2026.[227]

5 *Accord Healthcare Ltd & Ors v. Regents of the University of California & Anor*

Moving away from SEP licensing disputes, the courts were kept busy by a number of life sciences cases in 2025. In July, the Court of Appeal handed down its decision in a dispute concerning patents and SPC protecting Xtandi®, Astellas' blockbuster prostate cancer treatment.[228] The court unanimously upheld the High Court's findings that the patent and SPC were valid and infringed by Accord.

The patent in question, which was owned by the University of California and exclusively licensed to Astellas, claims the molecule known as enzalutamide or RD162' as a treatment for prostate cancer. Accord had sought to invalidate the

[220] *Supra* 196, [124]–[128].

[221] *Supra* 196, [145].

[222] *Supra* 196, [148], [150].

[223] *Supra* 196, [167].

[224] *Supra* 196, [261].

[225] *Supra* 196, [257].

[226] *Supra* 196, [258].

[227] Supreme Court, https://www.supremecourt.uk/cases/uksc-2025-0145. Accessed 3 February 2026.

[228] [2025] EWCA Civ 936; [2025] 7 WLUK 443.

patent and revoke the SPC on the grounds of obviousness and insufficiency; however, on appeal, it confined its arguments to the obviousness ground.[229]

Accord relied on two pieces of prior art to support its obviousness arguments: a series of slides and a poster, which were both presented by the inventors at a conference in Autumn 2005. Each piece of prior art disclosed a molecule identified as RD162, which the parties agreed was the closest prior art molecule to enzalutamide.[230] The only difference between RD162 and enzalutamide was the replacement of a cyclobutyl group by a dimethyl group at a position in the molecule referred to by the judge as position "X".[231]

In the High Court,[232] Accord argued that it was obvious that replacing the cyclobutyl with a dimethyl group would make a compound with greater therapeutic potential. In addition, it maintained that it was obvious to test such a compound in an *in vitro* assay, which would demonstrate this potential.[233]

While acknowledging that the case was finely balanced, Mellor J had rejected Accord's arguments, finding that the patent was novel. In particular, he found that Astellas' expert evidence had been "tainted by hindsight" and that evidence had been put to him in a leading manner.[234] The judge found that the skilled team would have been drawn away from close analogues of RD162 when searching for a novel compound, and that the focus on close analogues was primarily driven by the expert's pre-existing knowledge of enzalutamide.[235]

On appeal, Accord argued that the judge made two principle errors. Firstly, he erroneously sought a "context" or "scenario" to explain why the skilled team would seek alternatives to the prior art. Accord argued that the skilled team is deemed to be interested in achieving essentially the same result as the prior art, and no additional context is necessary.[236] Secondly, it argued that the judgment contained internal inconsistencies on the topic of whether the Accord's expert evidence was tainted by hindsight.[237]

The Court of Appeal upheld Mellor J's decision. In relation to the first ground of appeal, the Court of Appeal found that Accord's expert had failed to explain the objectives of the skilled team, and it was legitimate for the judge to take this into account.[238] The expert had failed to explain why the skilled team would make the change from RD162, and he did not provide any explanation for the discussions that would have taken place within the team about such a change.[239]

[229] *Supra* 232, [2].

[230] *Supra* 232, [4].

[231] *Supra* 232, [5].

[232] *Accord Healthcare Ltd & Ors v. Regents of the University of California & Anor* [2024] EWHC 2524 (Pat); [2024] 10 WLUK 127.

[233] *Supra* 236, [231].

[234] *Supra* 236, [338].

[235] *Ibid.*

[236] *Supra* 232, [79].

[237] *Supra* 232, [81].

[238] *Supra* 232, [86].

[239] *Supra* 232, [87].

In relation to the second ground of appeal, the Court of Appeal found no inconsistency in the judge's reasoning.[240] The judge was entitled to conclude that Accord's expert evidence was tainted by hindsight, and found no error of principle in doing so.[241] The court cautioned that explicitly instructing an expert to follow the *Pozzoli*[242] approach can create a risk of hindsight.[243]

The Court of Appeal was clear to note recent guidance from the Supreme Court in *Iconix v. Dream Pairs*[244] on the standard of appeal for multifactorial decisions. The overturning of multifactorial decisions by appellate courts is limited to certain circumstances – for example, if the judge was plainly wrong or there was a significant error of principle. As Zacharoli LJ noted, writing in support of Arnold LJ's leading judgment: "a conclusion on obviousness is a highly fact-dependent evaluative decision where the judge who has been immersed in the detail of the case has a significant advantage over an appellate court".[245] Although the Supreme Court's decision was a reminder of existing principles, it is likely that appeal courts will be less interventionist in relation to multifactorial assessments (such as obviousness analyses) going forward.

6 *Samsung Bioepis UK Ltd v. Alexion Pharmaceuticals Inc*

In May, the Patents Court handed down its judgment in an infringement claim brought by Alexion against Samsung Bioepis and Amgen.[246] Samsung Bioepis and Amgen were seeking to produce a biosimilar to the antibody drug eculizumab, which was originally developed by Alexion and is used to treat a number of rare but serious conditions including one called paroxysmal nocturnal haemoglobinuria (PNH).[247] While Samsung Bioepis' and Amgen's products were developed separately, they gave rise to the same infringement issues, so the court opted to hear the cases together.[248]

The case revolved around a point of claim construction. In short, Samsung Bioepis and Amgen relied on a narrow interpretation of the claims,[249] whereas

[240] *Supra* 232, [91].

[241] *Supra* 232, [99].

[242] *Pozzoli SPA v. BDMO SA* [2007] EWCA Civ 588, [2007] 6 WLUK 524.

[243] *Supra* 232, [98].

[244] *Iconix Luxembourg Holdings SARL v. Dream Pairs Europe Inc* [2025] UKSC 25; [2025] 4 All ER 711.

[245] *Supra* 232, [107].

[246] [2025] EWHC 1240 (Pat); [2025] 5 WLUK 331.

[247] *Supra* 250, [3]–[4].

[248] *Supra* 250, [4].

[249] *Supra* 250, [25].

Alexion sought to rely on a broader interpretation.[250] Alexion conceded that, were Samsung Bioepis and Amgen to succeed on this point, the court would be correct in finding that the patent was invalid and not infringed.[251]

Alexion's patent had a somewhat complicated file history, on which Samsung Bioepis and Amgen sought to rely upon at trial. Initially, eculizumab had been protected by a patent family known as the "Evans" family, with a priority date of 2 May 1994. This family of patents protected binding regions of therapeutic antibodies and therefore covered eculizumab without specifically disclosing it.[252] In 1999, Alexion submitted an entry in relation to eculizumab to the Chemical Abstracts Service (CAS);[253] however, this submission contained major errors in the sequence of eculizumab,[254] which was only corrected in 2009.[255] In the interim, clinical work continued in relation to eculizumab, including a trial called TRIUMPH for the use of eculizumab to treat PNH, described in several publications including a paper known as Hillmen 2006.[256]

The patent in issue was filed in 2007 and largely described the TRIUMPH trial, with the claims as filed being directed at the use eculizumab in accordance with the regimen used in TRIUMPH.[257] However, due to a failure to claim earlier priority, Hillmen 2006 became prior art and the original claims were not sustainable.[258] Consequently, Alexion sought protection for eculizumab as such, on the basis that it had never formed part of the state of the art due to the incorrect CAS filing.[259]

However, the light chain sequence contained in the patent, by which the claims were partly characterised (referred to as "SEQ ID NO: 4"), was not exactly eculizumab but contained an extra 22 amino acids.[260] While Alexion tried to amend the claims to remove what it asserted was an error, the European Patent Office rejected these attempts on added matter grounds.[261]

Samsung Bioepis and Amgen's products utilise the same sequence as eculizumab, and therefore do not contain the additional 22 amino acids.[262] As such, the biosimilar products would not have infringed the patent on a literal interpretation of the claims. Consequently, Alexion sought to argue that, when given a purposive interpretation by the skilled person, the claims should be read to claim an antibody that excluded the extra 22 amino acids. It argued that the skilled person would understand that these amino acids were not necessary for binding and would

[250] *Supra* 250, [24].
[251] *Supra* 250, [26].
[252] *Supra* 250, [6].
[253] *Supra* 250, [9].
[254] *Supra* 250, [10].
[255] *Supra* 250, [12].
[256] *Supra* 250, [13].
[257] *Supra* 250, [14]–[15].
[258] *Supra* 250, [15].
[259] *Supra* 250, [16].
[260] *Supra* 250, [17].
[261] *Supra* 250, [18].
[262] *Supra* 250, [19].

not regard them as part of the final antibody.[263] In addition, it argued that Samsung Bioepis and Amgen placed too much reliance on the normal meaning of "consisting" within the wording of the claim, leading them to ignore the purposive meaning of SEQ ID NO: 4.[264]

In contrast, Samsung Bioepis and Amgen relied on five arguments. Firstly, that drafting convention dictated that "consisting" should be read as meaning "having exactly".[265] Secondly, that SEQ ID NO: 4 clearly and unambiguously required exactly the sequence set out, including the extra 22 amino acids.[266] Thirdly, that the skilled reader would assume that the patentee was not trying to claim something old (on the basis they argued that eculizumab had already been publicly disclosed).[267] Fourthly, that while normal methods of construction would cleave off the extra 22 amino acids as a "leader sequence", this did not mean that it was impossible to create the antibody as claimed.[268] Lastly, that it was not permitted, as a matter of law, to give no meaning to a feature of a claim, which is what would be required if the court adopted Alexion's approach.[269]

Finding in favour of Samsung Bioepis and Amgen's case on construction, Meade J held that the use of scientific language in SEQ ID NO: 4 indicated that it should be read precisely. In addition, he agreed with Samsung Bioepis and Amgen that the use of the drafting convention "consisting of" specifies exactly what must be present and leaves limited room for purposive interpretation.[270] Meade J also held that the skilled person would understand the patent to be claiming something new and, given that the patent specification read as if eculizumab was old, this would deter the skilled person from assuming that the patent was trying to claim the antibody as such.[271]

Meade J went on to determine whether the interpretation of the claims would be assisted by reference to the patent's prosecution history. He relied on the Supreme Court's findings in *Actavis v. Lilly*,[272] which allowed reference to prosecution history only when the meaning of the claim was truly ambiguous and the file unambiguously resolved the point, or where it would be contrary to public interest to ignore it.[273] Meade J found that the claims were not sufficiently ambiguous to justify considering the prosecution history and, even if they had been, this would not have unambiguously resolved the point.[274] As such, he rejected the need to consider the prosecution history when assessing construction.

[263] *Supra* 250, [203].

[264] *Supra* 250, [204].

[265] *Supra* 250, [206].

[266] *Ibid*.

[267] *Ibid*.

[268] *Ibid*.

[269] *Ibid*.

[270] *Supra* 250, [208].

[271] *Supra* 250, [209]–[211].

[272] *Actavis UK Limited and others v. Eli Lilly and Company* [2017] UKSC 48; [2018] 1 All ER 171.

[273] *Supra* 250, [226].

[274] *Supra* 250, [228]–[229].

While Alexion had accepted that if Samsung Bioepis and Amgen were correct on claim construction the patent would be invalid,[275] Meade J nevertheless went on to consider other grounds of invalidity. He held that, while the patent was not invalid for lack of novelty,[276] it was obvious over a 2005 prior art article known as "Tacken".[277]

While it was not material to his decision-making, Meade J did make reference to the parallel proceedings taking place at the UPC. He noted that the UPC Court of Appeal had upheld a decision by the Hamburg LD to refuse Alexion's application for a preliminary injunction.[278] In doing so, the UPC Court of Appeal's decision had been consistent with Meade J's regarding claim construction.[279] Meade J also noted that Alexion's arguments in front of the UPC illustrated its ever-changing position in relation to this case.[280]

Meade J also refused to rule on a number of non-technical issues raised at trial, including arguments regarding abuse of process, judicial estoppel, and approbation and reprobation.[281] These issues each turned on a novel point of law, with little dispute of fact,[282] and had not been fully argued by the parties at trial. In light of this, the judge declined to rule on these points, noting that to do so would risk, "creat[ing] a new judge-made route to revocation of otherwise valid patents", which was not necessary in the present case.[283]

7 *Formycon AG & Anor v. Regeneron Pharmaceuticals Inc & Anor*

In October, the Patents Court handed down judgment in a case that formed part of a series of disputes surrounding Regeneron's product Eylea®.[284] The case related to two Regeneron patents protecting the formulation of aflibercept for the treatment of age related or "wet" macular degeneration.[285] Formycon and Samsung Bioepis applied to the court seeking a declaration of invalidity to clear the path for their launch of aflibercept biosimilars. In response, Regeneron counterclaimed alleging infringement of its patents.[286]

Regeneron accepted that the biosimilar products did not infringe its patents as a matter of normal interpretation.[287] The formulations differed from the claims in

[275] *Supra* 250, [26].

[276] *Supra* 250, [300].

[277] *Supra* 250, [362].

[278] *Supra* 250, [372]–[373].

[279] *Supra* 250, [375].

[280] *Supra* 250, [376].

[281] *Supra* 250, [378].

[282] *Supra* 250, [379]–[380].

[283] *Supra* 250, [381].

[284] [2025] EWHC 2527 (Pat); [2025] 10 WLUK 103.

[285] *Supra* 288, [3].

[286] *Supra* 288, [4].

[287] *Supra* 288, [24].

several keys ways. For instance, Formycon's product used a different buffer and Samsung Bioepis' used different concentrations of some components and omitted other elements.[288] As such, Regeneron was only able to argue infringement based on the doctrine of equivalence.

A primary ground of invalidity argued by Formycon and Samsung Bioepis was that the patents were not entitled to claim priority and should be held invalid for added matter.[289] Meade J concluded that while one of Regeneron's patents ('691) was entitled to claim priority, the other ('306) lacked priority and was invalid for added matter.[290]

Meade J then moved on to consider obviousness in relation to '691. Formycon and Samsung Bioepis relied on one piece of prior art: a US patent application filed by Regeneron that contains a prophetic example of aflibercept being used intravitreally to treat wet macular degeneration.[291] The prior art contained a dosage range that overlapped with that claimed by '691, but did not say anything material about formulation.[292] However, the judge rejected this obviousness attack, holding that neither the dosage nor the formulation claimed were obvious.[293]

Assessing infringement, Meade J applied the doctrine of equivalence set out by the Supreme Court in *Actavis*.[294] The test set out in that case requires the court to assess three questions. Firstly, does the alleged infringement achieve substantially the same result as the invention in substantially the same way? Secondly, would it have been obvious that the alleged infringement achieves the result in substantially the same way? Finally, would the reader of the patent conclude that the patentee intended strict compliance with the literal wording of the claim to be essential? If the answer to the first two questions is affirmative and the final question is negative, then the patent will be infringed under the doctrine of equivalence.

As a preliminary point, the judge considered the level of generality at which to assess infringement, noting that a patentee may disclose more than one invention at multiple levels of generality.[295] Meade J reached the conclusion that infringement should be assessed at the level of generality of the claims.[296] This approach is consistent with Art. 69 of the European Patent Convention and the Protocol on the interpretation of Art. 69,[297] and avoids the pitfalls of taking a general idea as "the invention" and using it to answer the *Actavis* questions in respect of a claim drafted at the level of a specific embodiment.[298]

[288] *Supra* 288, [23] *et seq.*

[289] *Supra* 288, [30].

[290] *Supra* 288, [561], [566].

[291] *Supra* 288, [18].

[292] *Supra* 288, [20]–[22].

[293] *Supra* 288, [634], [689], [692].

[294] *Supra* 276.

[295] *Supra* 288, [443].

[296] *Supra* 288, [444].

[297] European Patent Convention (17th edn.) (2020: https://link.epo.org/web/EPC_17th_edition_2020_en.pdf. Accessed: 3 February 2026.

[298] *Supra* 288, [447]–[448].

This characterisation of the level of generality aligned with the approach taken by Formycon and Samsung Bioepis. The judge affirmed their narrow approach to the inventive concept, which mirrored the content of the claims of '691.[299] In doing so, Meade J rejected Regeneron's approach, noting that it, "never really settled to any one position".[300]

Given this, the judge held that Regeneron failed on the first *Actavis* question. At the narrow level of generality described in the claims, Formycon and Samsung Bioepis' products achieved a stable formulation in a different way to the method claimed in '691.[301] As such, Regeneron's claims under the doctrine of equivalence failed and the Formycon and Samsung Bioepis' products were held not to infringe '691.

Meade J went on to consider the second and third *Actavis* questions *obiter*. In relation to the second question, he rejected Regeneron's arguments, finding that the skilled person would be unable to understand how stability was achieved without experimentation.[302] Such experiments are not permissible for the purposes of the second *Actavis* question.[303] The judge also held that he would have answered the third *Actavis* question in favour of Formycon and Samsung Bioepis, as the drafting of '691 indicated that the claim should be construed narrowly and required strict compliance.[304]

This case was notable in being the first English case to consider the detailed application of the second *Actavis* question. Following the decision, Regeneron was granted permission to appeal the infringement findings. As such, the Court of Appeal will have the opportunity to provide further guidance on the application of the doctrine of equivalence.

8 SPCs

SPC law received some judicial attention in 2025, with a decision on SPCs for second medical use products and another decision on the requirements for obtaining an SPC waiver.

8.1 *Merck Serono SA v. Comptroller-General of Patents, Designs, and Trade Marks*

In January, the Court of Appeal dismissed an appeal by Merck against the refusal to grant SPC protection for its multiple sclerosis treatment, cladribine. [305,306] This case

[299] *Supra* 288, [467], [475].

[300] *Supra* 288, [474].

[301] *Supra* 288, [488], [514].

[302] *Supra* 288, [489].

[303] *Supra* 288, [438].

[304] *Supra* 288, [494].

[305] [2025] EWCA Civ 45; [2025] 1 WLUK 339.

[306] *Supra* 309, [1].

provided clarity on the topic of SPCs for medicinal products for which a second medical use has been found where the products have already been the subject of a marketing authorisation, and how the English courts address the CJEU case law on the topic.

Merck filed the SPC application in 2018,[307] relying on a basic patent relating to the use of cladribine for treating multiple sclerosis, and a 2017 marketing authorisation for the medicinal product Mavenclad®.[308] In addition to this marketing authorisation, two earlier marketing authorisations existed relating to products containing cladribine as an active ingredient for the treatment of hairy cell leukaemia.[309]

The relevant statutory provision in this case was Art. 3(d) of Regulation 469/2009 (the SPC Regulation), which states that an SPC can only be granted for a medicinal product if the relevant marketing authorisation is the first authorisation to place the product on the market as a medicinal product.

The crux of Merck's appeal concerned a divergence in approach taken by the CJEU in interpreting Art. 3(d). Prior to the 2012, the CJEU had held that no SPC would be granted in relation to second medical use patents because the product had already been placed on the market. The intended use of the product was held to be irrelevant, and therefore these applications contravened Art. 3(d). However, this position was reversed in *Neurim*,[310] where the CJEU held that the use of the product should be taken into account.[311] This had the effect of permitting SPCs in relation to second medical use patents.

The Grand Chamber of the CJEU overruled this approach in its 2020 decision in *Santen*.[312] The court found that Art. 3(d), "must be interpreted as meaning that a marketing authorisation cannot be considered to be the first marketing authorisation, for the purpose of that provision, where it covers a new therapeutic application of an active ingredient, or of a combination of active ingredients, and that active ingredient or combination has already been the subject of a marketing authorisation for a different therapeutic application".[313] In the 2024 *Newron*[314] case, the Court of Appeal applied the approach in *Santen*,[315] confirming the English court's approach to the issue following Brexit.

[307] *Supra* 309, [4].

[308] *Supra* 309, [1].

[309] *Ibid.*

[310] *Neurim Pharmaceuticals (1991) Ltd v. Comptroller-General of Patents*, Case C-130/11.

[311] *Supra* 309, [3].

[312] *Santen SAS v. Directeur général de l'Institut national de la propriété industrielle*, Case C-637/18.

[313] *Supra* 316, [62].

[314] *Newron Pharmaceuticals SpA v. Comptroller General of Patents, Trademarks and Designs* [2024] EWCA Civ 128; [2024] 2 WLUK 216. *See* last year's case summary for further details. IIC 56:533–565 (2025), https://doi.org/10.1007/s40319-025-01573-w.

[315] *Supra* 316.

In its appeal, Merck asked the Court of Appeal to diverge from the approach taken in *Santen*,[316] and instead rely on the *Neurim*[317] approach.[318] It argued that the approach taken in *Santen*[319] was excessively literal and did not benefit the UK Intellectual Property Office or the public at large. In contrast, it maintained that the teleological approach in *Neurim*[320] was supported by later judicial consideration, and that, without it, the SPC Regulation would not achieve its key objective.[321]

In coming to its decision, the Court of Appeal considered its powers under the European Union (Withdrawal) Act 2018, as amended by the Retained EU Law (Revocation and Reform) Act 2023. Under these provisions, the Court of Appeal may depart from a CJEU judgment on the same basis as it would depart from one of its own precedents. As such, it was within the court's power to depart from the CJEU's decision in *Santen.*[322]

However, the court concluded that it was unable to depart from *Santen* due to the precedential effect of *Newron*.[323] In *Newron*,[324] the court had been presented a clear decision of following *Neurim*[325] or following *Santen*,[326] and therefore the binding effect of *Santen*[327] formed part of its *ratio decidendi.*[328] As such, in this present case, the Court of Appeal was not entitled to reverse that decision, and Merck's appeal was denied.

Notwithstanding this, none of the judges were willing to state that they would depart from *Santen* were it in their power. Birss LJ and Lewison LJ both explicitly rejected Merck's criticisms of *Santen*,[329] and Arnold LJ highlighted that Merck had failed to cite any academic criticism of *Santen* or any judgments of EU national courts that supported its case.[330]

This decision will come as a disappointment for originators, confirming that second medical use products are not eligible for SPC protection in the UK.

316 *Ibid.*

317 *Supra* 314.

318 *Supra* 309, [5]–[6].

319 *Supra* 316.

320 *Supra* 314.

321 *Supra* 309, [6].

322 *Supra* 316.

323 *Supra* 318.

324 *Ibid.*

325 *Supra* 314.

326 *Supra* 316.

327 *Ibid.*

328 *Supra* 309, [13].

329 *Supra* 309, [57], [98].

330 *Supra* 309, [59].

8.2 *Regeneron Pharmaceuticals, Inc & Anor v. Alvotech HF & Anor*

Later in the year, the Patents Court delivered a judgment concerning the procedural requirements for obtaining an SPC waiver. [331] This litigation revolved around the SPC protecting Regeneron and Bayer's drug Eylea®,[332] which was also the subject of the *Formycon*[333] decision covered above.

The SPC Regulation, which is an EU instrument but was assimilated into English law following Brexit, provides for a waiver to protect certain forms of manufacture by third parties before the expiry of the SPC, which would otherwise be prohibited. In particular, the SPC Regulation allows for parties to make products for export outside of the UK and EU and to make and store products during the final six months of the SPC to be sold once it expires.[334] These are known as the "export waiver" and "storage waiver", respectively.[335]

To take advantage of these waivers, the producer of the generic or biosimilar product must provide certain information to the SPC owner three months in advance of manufacture.[336] The defendants claim to have provided this information in two notifications given in April and August 2025; however, Regeneron and Bayer dispute the validity of the notifications on the basis that they failed to provide the proper marketing authorisation numbers for the intended territory of export.[337] At the time of providing the notifications, the defendants had not secured marketing authorisation in Japan, which was the intended country of export. They were therefore unable to provide the marketing authorisation numbers when giving the notifications.[338]

Article 5(5) of the SPC Regulation sets out information that must be provided by the manufacturer to the SPC holder as part of the waiver process. This includes "for medicinal products to be exported to countries outside the United Kingdom, the Isle of Man and the Member States of the European Union, the reference number of the marketing authorisation, or the equivalent of such authorisation, in each country of export, as soon as it is publicly available".[339]

In finding for the defendants, Meade J found that the ordinary meaning of Art. 5(5) requires that the export country marketing authorisation number need only be provided once it becomes publicly available.[340] In doing so, he rejected Regeneron and Bayer's arguments that the wording of the provision implies that such marketing authorisation must already exist at the time of the waiver notification.[341]

[331] [2025] EWHC 3050 (Pat); [2025] 11 WLUK 349.

[332] *Supra* 335, [2].

[333] *Supra* 288.

[334] *Supra* 335, [4].

[335] *Ibid.*

[336] *Supra* 335, [5].

[337] *Supra* 335, [10].

[338] *Supra* 335, [27].

[339] Art. 5(5)(e), Amending Regulation (EU) 2019/933.

[340] *Supra* 335, [60].

[341] *Supra* 335, [62].

As highlighted in the judgment, there have been conflicting approaches to this question in EU national courts. For instance, German courts have held that marketing authorisation numbers are required when providing a notification for an export waiver.[342] In contrast, Belgian and Dutch courts have found that they are not required.[343] Given this divergence, along with the pending review of the SPC manufacturing waiver by the European Commission[344] and potential post-Brexit divergence, it is possible that the position will be subject to change in the coming years. However, for now, the decision provides valuable guidance for parties seeking an SPC waiver.

9 Conclusion

This article has provided an overview of the most significant patent decisions of the English courts in 2025. SEP licensing disputes continued to occupy the courts, and this is likely to continue throughout 2026. In 2026, the Supreme Court is will hear appeals from the Court of Appeal's decisions in *Optis v. Apple*[345] and *Tesla v. InterDigital & Avanci*.[346] In addition, the Patents Court will hear trials to determine (F)RAND rates in *Samsung v. ZTE* and *InterDigital v. Amazon*. These cases will take place against the backdrop of the UK government's consultation on SEPs, to which it is expected to respond in 2026,[347] as well as the ongoing dispute between the European Parliament and European Commission over proposed EU regulations to govern SEP licensing.[348]

Jurisdiction issues will continue to play an important role in proceedings in 2026. Following the CJEU's landmark decision in *BSH v. Electrolux*,[349] we have seen a change to the European patent litigation landscape with the UPC and German national courts making *inter partes* validity findings as part of infringement proceedings. The UPC has enthusiastically expanded its long-arm jurisdiction throughout 2025[350] and other EU national courts could well begin to follow suit. It is only a matter of time before the issue must be addressed by the English courts.

[342] *Supra* 335, [68] *et seq.*

[343] *Supra* 335, [82] *et seq.*, [93] *et seq.*

[344] European Commission, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14690-Evaluation-of-the-SPC-manufacturing-waiver_en. Accessed 3 February 2026.

[345] *Supra* 196.

[346] *Supra* 156.

[347] Consultation on Standard Essential Patents (SEPs) (2025), https://www.gov.uk/government/consultations/consultation-on-standard-essential-patents-seps#SEP25OSH. Accessed 3 February 2026. *See* also, UK IPO, IP Connect October / November 2025 (2025), https://www.linkedin.com/pulse/your-monthly-intellectual-property-newsletter-dm0re/. Accessed 3 February 2025.

[348] *Wölken v. Commission*, Case T-784/25.

[349] *BSH Hausgeräte GmbH v. Electrolux AB*, Case C-339/22.

[350] *See*, for instance, the Hague LD's decision in *HL Display AB v. Black Sheep Retail Products B.V.* UPC_CFI_386/2024.

Lastly, we anticipate receiving a decision from the Supreme Court in *Emotional Perception v. Comptroller General*.[351] This decision is eagerly anticipated in the artificial intelligence and machine learning (AI/ML) sector, and will clarify the English courts' approach to the patentability of artificial neural network technology. However, it is likely we will see more litigation involving AI/ML as the technology continues to develop.

[351] *Supra* 1.