Press Summary

27 July 2026

Tesla, Inc and another (Appellants) *v* InterDigital Patent Holdings, Inc and others (Respondents);
Tesla, Inc and others (Respondents) *v* InterDigital Patent Holdings, Inc and another (Appellants) No 2

[2026] UKSC 27

On appeal from: [2025] EWCA Civ 193

Justices: Lord Sales (Deputy President), Lord Briggs, Lord Hamblen, Lord Burrows and Lord Kitchin

Background to the Appeal

This appeal raises important issues concerning technical standards. A technical standard allows products made by differing manufacturers to communicate and be used together, promoting the interoperability and safety of new products and systems, as well as encouraging wider investment, innovation and development. The relevant standards involved in this appeal are those set by the European Telecommunications Standards Institute ("ETSI") and in particular the 5G standard for use in connection with 5G-enabled cars.

Where particular inventions are declared by their owners to be essential to a standard, such that the standard cannot be implemented without infringing the owners' patent rights in respect of them, they are called 'standard essential patents' ("SEPs"). In order to prevent the owners of such SEPs ("SEP owners") from "holding up" the implementation of a standard (for example, by refusing to license their inventions or by charging excessive fees for their use), ETSI makes it a condition of being included in a standard set by them that the SEP owners undertake to grant a licence to implementers covering the use of their SEPs and other 'Essential IPRs' on fair, reasonable and non-discriminatory ("FRAND") terms. This obligation (the "FRAND obligation") also ensures that SEP owners are adequately and fairly rewarded for the use of their technology by implementers and discourages implementers from "holding out" by unreasonably refusing to take a licence or delaying engagement in the licensing process.

The overarching issue raised by this appeal concerns whether an implementer, who has the benefit of a FRAND obligation from a SEP owner, can proactively bring proceedings in England and Wales requesting the court to declare whether a SEP owner's licensing offer is

FRAND if that offer is made with that of other SEP owners through an agent operating a patent pool or a patent platform.

The implementers in this appeal, Tesla, Inc and Tesla Motors Ltd (together "Tesla"), wish to launch 5G-enabled vehicles in the UK, Tesla's fourth largest market. In order to achieve this, Tesla require a licence to the UK SEPs declared for 5G-enabled cars. InterDigital Patent Holdings, Inc ("IDPH") and InterDigital Holdings, Inc ("IDH", and collectively, "InterDigital") are Delaware corporations of the wider InterDigital group. The InterDigital group owns a worldwide portfolio of SEPs for the ETSI 2G, 3G, 4G, and 5G standards, including certain UK patents relevant to the 5G standard which Tesla wish to implement.

Avanci Vehicle, LLC ("Avanci") is a Delaware company which operates a number of licensing platforms which license the patents of those who have signed up to the platform. By paying a singular fee to Avanci, an implementer would secure a licence to use all of the SEPs on the platform instead of having to negotiate a licence with each SEP owner separately. The Avanci platform concerned in this appeal is for the licensing of 2G, 3G, 4G, and 5G SEPs for use in connection with 5G-enabled vehicles (the "Avanci 5G Platform"). At the time of the first hearing in July 2024, there were approximately 65 SEP owners on the platform, including InterDigital, with around 170,000 SEPs relevant to the 5G standard concerned. Avanci does not own any of the SEPs on the Avanci 5G Platform, has (unlike the SEP owners themselves) not given an undertaking to ETSI to grant a licence on FRAND terms to implementers in respect of them, and only has the authority of the SEP owners to license all of their SEPs collectively, in a pre-determined way subject to certain pre-approved amendments. Accordingly, Avanci cannot license a subset of the SEPs on the Avanci 5G Platform, such as a licence to all the SEPs from a particular SEP owner (such as InterDigital) or to all those SEPs which are limited in effect to a specified territory (like the UK).

Whilst Avanci maintains that the licensing fee set for the Avanci 5G Platform is FRAND, Tesla consider that it is too high and exceeds what is FRAND. In December 2023, Tesla commenced proceedings against InterDigital and Avanci concerning the Avanci 5G Platform seeking multiple declarations from the court (the "Licensing Claims") that, amongst other things, Tesla are entitled to a FRAND licence to *all* SEPs on the platform (which includes the UK SEPs owned by InterDigital) and that the current platform fee is not FRAND and should be a lower amount set by the court. As InterDigital and Avanci are both located outside the jurisdiction of England and Wales, the Licensing Claims raised related issues concerning: (a) whether Tesla should be given permission to serve their claim out of the jurisdiction of England and Wales, as required under Part 6 of the Civil Procedure Rules ("CPR") which regulate civil cases; and (b) more generally, whether there is an alternative and more appropriate forum for the Licensing Claims to be determined.

The High Court struck out the Licensing Claims in favour of InterDigital and Avanci. In coming to this decision, the judge, Fancourt J, held that there was no serious issue to be tried as against InterDigital or Avanci.

A majority of the Court of Appeal dismissed Tesla's appeal. The majority held that there was no serious issue to be tried on the Licensing Claims against InterDigital or Avanci and that the declarations sought by Tesla would not be useful or legitimate. In his dissent, Arnold LJ would have allowed Tesla's appeal. Arnold LJ considered that there was a serious issue to be tried as against both InterDigital and Avanci. He also concluded, like the judge, that IDPH had been properly served under CPR r 63.14 in respect of the Licensing Claims, that IDH would be a "necessary or proper party" to that claim under Gateway 3, and that Gateway 11 could be passed through in respect of both IDH and Avanci. Finally, in respect of forum, Arnold LJ disagreed with the judge and considered that, when the expert evidence was correctly analysed, the Delaware Court of Chancery was not an available forum to determine the Licensing Claims.

Tesla now appeals to the Supreme Court and InterDigital cross-appeals concerning certain elements of the trial judge's conclusions (which the majority judgment of the Court of Appeal did not address).

Judgment

The Supreme Court unanimously allows Tesla's appeal. Lord Hamblen and Lord Kitchin deliver the judgment, with which Lord Sales, Lord Briggs and Lord Burrows agree.

Reasons for the Judgment

Issue 1: Whether there is a serious issue to be tried on the Licensing Claims against InterDigital or Avanci?

The relevant test for determining the first issue is whether the Licensing Claims have a real (as opposed to a fanciful) prospect of success **[64]-[65]**. As held by the Supreme Court in *Unwired Planet International Ltd v Huawei Technologies (UK) Ltd* [2020] UKSC 37, when interpreting the FRAND obligation and determining what would amount to a FRAND licence, the current commercial practices of SEP owners and implementers is highly relevant. In particular, the Court notes the following practices: (i) the growing use of licensing platforms across multiple technical fields and standards; (ii) Avanci's own representations that the Avanci 5G Platform is FRAND; (iii) the practice of certain SEP owners relying on the previous version of Avanci's platform as satisfying their FRAND obligation; and (iv) the recognised practical impossibility of negotiating bilateral licences with each SEP owner included in the relevant standard **[71]-[78]**.

<u>Sub-issue 1: Is there a serious issue to be tried as to whether the FRAND obligation applies to an offer to license jointly through a licensing platform with other SEP owners?</u>

The Court holds that there is a serious issue to be tried on this sub-issue **[83]**. Each SEP owner is subject to the FRAND obligation and there is nothing in its wording to suggest that it ceases if two or more SEP owners choose to offer a licence of their SEPs through or using a licensing agent such as Avanci **[83]-[84]**. Such an interpretation of the FRAND obligation ensures its practical utility is not severely compromised and reflects its importance from the point of view of competition policy **[85]-[86]**. Whilst a SEP owner is not obliged to join or license through a pool or platform, joining a platform like the Avanci 5G Platform does not release the SEP owner from the FRAND obligation and it would be open to any SEP owner on the platform to seek to rely on the availability of platform licences to satisfy its FRAND obligation **[88]-[92]**.

<u>Sub-issue 2: Is there a serious issue to be tried as to the whether, in respect of InterDigital's UK SEPs, a FRAND licence would be a licence to the Avanci 5G Platform at a FRAND rate?</u>

Assuming it is held at trial that a SEP owner remains bound by the FRAND obligation in respect of any SEPs it has chosen to license through the Avanci 5G Platform, the Court holds that Tesla also have a real prospect of successfully establishing that the *only* FRAND licence of InterDigital's UK SEPs on the Avanci 5G Platform is a global platform licence which extends to the whole Avanci 5G Platform at a FRAND rate **[96]**. In support of this, the Court notes that it is Tesla's case that many SEP owners (albeit not InterDigital) rely on the Avanci 5G Platform licence as satisfying their FRAND obligations. Further, if it is not practicable for implementors to negotiate a bilateral licence with all SEP owners on the platform, this is a powerful factor which would support the conclusion that only a licence to the whole Avanci 5G Platform can be FRAND **[96]-[98]**. Whilst noting that the FRAND obligation does not require a SEP owner to offer a licence of others' patents and that SEP owners are free to leave the platform, the Court holds that where a SEP owner is a licensor included in the Avanci 5G Platform, there is a serious issue to be tried as to whether the FRAND licence of the SEPs of that owner is a platform licence on FRAND terms, rather than a bilateral licence of the SEPs of that owner, and, separately, a series of bilateral licences of the SEPs of all the other platform licensors necessary to implement the standard **[99]-[103]**.

Sub-issue 3: Does Tesla have a real prospect of being granted the declarations it seeks against InterDigital and Avanci?

Section 19 of the Senior Courts Act 1981 and CPR r 40.20 provide that the court may make binding declarations. After considering the case law on the scope of the power to make declarations and the principles that apply when considering its exercise **[110]-[124]**, the Court holds that a court should not be reluctant to make a declaration where the declaration would serve a useful purpose and help to ensure that the aims of justice are achieved. However, an important consideration will be whether the declaration would unfairly prejudice the interests of those parties not before the court **[125]**. The Court emphasises that the power of the court to make declarations is of great utility in proceedings concerning the FRAND obligation: it has been used by SEP owners to enforce their patent rights against implementers and by implementers seeking clarity as to what they must pay to secure a licence and prevent an injunction being ordered by the court **[126]**.

The Court holds that Tesla have a real prospect of securing the declarations they seek, as against both InterDigital **[131]** and Avanci **[132]**. With respect to the latter, the claim concerns a legal right (the FRAND obligation) and there is no requirement for this to bind Avanci or for Tesla to have a cause of action against Avanci **[133]-[134]**. Tesla have a legitimate purpose in seeking these declarations. They would serve a useful purpose in allowing an effective challenge of the fee set by Avanci for the Avanci 5G Platform licence **[135]-[139]**. Further, there are no procedural fairness issues which would prevent a court from making the requested declarations. At this stage, it is not necessary for all SEP owners on the platform to be represented, however, they could join any future proceedings if they wished. Further, Avanci arrived at the applicable fee independently of the SEP owners and is the essential party for any assessment as to whether the Avanci 5G Platform licence is FRAND **[140]-[145]**.

Issue 2: Do the courts of England and Wales have jurisdiction to determine the Licensing Claims?

Sub-issue 1: What is the correct characterisation of the Licensing Claims?

Endorsing the reasoning of Birss LJ in *Vestel Elektronik Sanayi Ve Ticaret AS v Access Advance LLC* [2021] EWCA Civ 440 ("*Vestel*"), which has been followed in a number of subsequent cases, the Court considers that the Licensing Claims, properly characterised, principally concern InterDigital's UK SEPs on the Avanci 5G Platform. These claims concern what terms would constitute a FRAND licence in respect of those UK SEPs and their characterisation is not altered by the fact that Tesla argues that only a global licence, also covering foreign SEPs, would be FRAND nor that the percentage of UK SEPs making up any global licence would be small **[154]-[177]**.

Sub-issue 2: Were the Licensing Claims properly served on IDPH pursuant to CPR r 63.14(2)?

CPR r 63.14(2) allows for service of a claim form "relating to a registered right" at the associated address recorded at the United Kingdom Patent Office. IDPH is the owner of the UK SEPs on the Avanci 5G Platform. The question is whether the Licensing Claims relate to those registered patent rights **[180]**. The Court considers that these claims are "relating to" the UK SEPs on the Avanci 5G Platform for the purposes of CPR r 63.14(2) such that they were properly served on IDPH within the jurisdiction **[188]-[189]**. The phrase "relating to" should not be interpreted narrowly to mean "substantially or really about". Previous judicial statements which were relied upon by InterDigital as apparently supporting such an interpretation do not assist them as they were made in an entirely differing context **[187]**.

Sub-issue 3: Do the Licensing Claims against IDH pass through either Gateway 3 or 11 of CPR PD 6B?

In respect of Gateway 3 (which concerns serving a "necessary or proper" party to a claim which has otherwise been, or will be, appropriately served), if IDPH was properly served within the jurisdiction under CPR r 63.14(2), then another person may be served as a "necessary or proper party to that claim" under Gateway 3. Avanci would be such a party **[191]**. So too would IDH as it was IDH that gave the relevant undertakings to ETSI on behalf of IDPH (the owner of the (UK) SEPs) that it would comply with the FRAND obligation **[193]**. Accordingly, the Licensing Claims against IDH pass through Gateway 3 and could be served on IDH out of jurisdiction in reliance on it.

In respect of Gateway 11 (which concerns the service of a claim form where the subject matter of the claim "relates wholly or principally to property" in the UK), the Court considers that the Licensing Claims relate "wholly or principally to property" within the UK, being UK patents **[200]**. This conclusion aligns with a consistent line of authority since the *Vestel* decision which has considered Gateway 11 available in implementer-commenced claims requesting a declaration as to the terms of a *global* (not just UK) FRAND licence and reflects the correct characterisation of the claim **[195]-[200]**. The Court rejects InterDigital's arguments that this interpretation would lead to forum shopping and an inappropriate expansion of Gateway 11. Forum shopping is an inherent consequence of the ETSI regime whereby national courts are to resolve disputes as to global FRAND terms **[201]**. Any expansion of Gateway 11 is unlikely given that this context, concerning international standards, national patents, and the ETSI regime, is sufficiently distinct from other commercial contexts. For example, the FRAND obligation is an intrinsic and inseparable element of the UK patent / SEP (ie the UK property) which it affects **[202]-[203]**.

Sub-issue 4: Whether there is a more appropriate forum than England and Wales to determine the Licensing Claims?

For the purposes of assessing forum, the correct characterisation of the Licensing Claims are that they are claims about the licensing of InterDigital's UK SEPs on the Avanci 5G Platform and what the FRAND terms for a licence of those UK SEPs would be **[205]**. By focusing on whether the Delaware Court of Chancery was an available forum for a 'global licensing claim' generally, rather than the above characterisation, the trial judge had mischaracterised the claims which materially impacted their approach to the expert evidence **[207]**. Accordingly, Arnold LJ was correct to re-evaluate the expert evidence **[208]**. The Court agrees with Arnold LJ's view of the expert evidence that, on the balance of probabilities, the Delaware Court of Chancery would not determine a FRAND rate based on a non-US patent, like the UK SEPs which the Licensing Claims concern **[209]-[215]**. Therefore, it is not an available forum to hear the Licensing Claims **[216]**.

Finally, the Court rejects InterDigital's argument that, notwithstanding the above conclusion, permission to serve the Licensing Claims out of jurisdiction should be refused as there are no good or compelling reasons for the Court to invoke this discretion and such an argument was not, and should have been, raised before the lower courts **[218]-[219]**.

References in square brackets are to paragraphs in the judgment.

NOTE:
This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: Decided cases - The Supreme Court