

CLIENT ALERT

U.K. Supreme Court Affirms Global FRAND Rate-Setting Procedure in U.K. National Courts

Aug.28.2020

On August 26, 2020, the U.K. Supreme Court wrote another chapter in the saga of global FRAND dispute resolution. The court's landmark *Unwired Planet v. Huawei decision* affirms a U.K. court's jurisdiction to set a global FRAND rate for a license to standard essential patents held by Unwired Planet and practiced by Huawei in countries around the world. The decision was long-awaited in litigation which has been closely watched by the entire telecommunications industry. Another dispute involving Huawei, ZTE, and Conversant raised the same issues and was consolidated for the Supreme Court appeal. A number of stakeholders intervened in the proceedings to set out their views on industry practices and on the interpretation of the European Telecommunications Standards Institute's intellectual property policy.

The litigation dates to March 2014, when Unwired Planet sued Huawei for infringement of the U.K. designation of six European patents. Over the course of proceedings, two of these patents were found valid, infringed, and essential to the relevant standard. Also during this time, in July 2017, Conversant sued Huawei and ZTE in the U.K. Conversant had previously acquired a large patent portfolio of about two thousand patents and patent applications but had been unable to reach a license agreement for access to its recently acquired portfolio. Before the U.K. Supreme Court, both Unwired Planet and Conversant asked the U.K. courts to determine and award a global license on FRAND terms.

In finding for Unwired Planet and Conversant, the U.K. Supreme Court interpreted ETSI's intellectual property policy to allow for a single global rate-setting in one jurisdiction. The court agreed with Unwired Planet and Conversant that a single global rate-setting would prevent implementing companies from delaying negotiations on a license by demanding country-by-country dispute resolution. The U.K. Supreme Court rejected the argument that a global adjudication in the U.K. would violate implementing companies' rights in foreign countries. The court also disagreed that the U.K. representing a small percentage of total global sales foreclosed a U.K. court's ability to set rates globally. Even with just a small share of total sales in the U.K., the U.K. Supreme Court held, a U.K. court may determine the relevant global FRAND license terms.

Going forward, the U.K. will certainly become a more likely venue for standard essential patent holders asserting claims against implementing companies. A single global adjudication is often an attractive option for reaching a license, either by settlement or court order. Moreover, the U.K. is a more convenient procedural venue for many European patent holders, especially compared to China, India, and other venues outside Europe. This more likely possibility represents a major risk for implementers, so much so that some implementing companies may decide to avoid the U.K. market altogether in order to avoid a global adjudication. In any event, this Unwired Planet decision will influence all ongoing and future negotiations regarding global FRAND licenses, especially for cellular phones and other devices implementing ETSI standardized technologies. The ruling assures the U.K. will be a central point of consideration for these negotiations, and guide the geographic reach of these technologies.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Brian Paul Gearing, Ph.D.

Partner – New York

Phone: +1 212.895.4325
Email: bgearing@crowell.com

Robert B. McNary

Counsel – Los Angeles
Phone: +1 213.443.5590
Email: rmcnary@crowell.com

Judith Bussé

Counsel – Brussels
Phone: +32.2.214.2896
Email: jbusse@crowell.com

Akhil Sheth

Associate – Orange County
Phone: +1 949.798.1363
Email: asheth@crowell.com