



Neutral Citation Number: [2026] EWCA Civ 564

Case No: CA-2026-000349

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE, BUSINESS AND PROPERTY
COURTS OF ENGLAND AND WALES, INTELLECTUAL PROPERTY LIST (ChD),
PATENTS COURT

Mr Justice Mellor

[2025] EHC 3331 (Pat)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 May 2026

Before :

LORD JUSTICE PETER JACKSON

LORD JUSTICE ARNOLD

and

LORD JUSTICE ZACAROLI

Between :

(1) ACER INCORPORATED

(2) ACER U.K. LIMITED

- and -

NOKIA TECHNOLOGIES OY

**Claimants/
Respondents**

**Defendant/
Appellant**

And between :

(1) ASUSTEK COMPUTER INC

(2) ASUS GLOBAL PTE LTD

- and -

NOKIA TECHNOLOGIES OY

**Claimants/
Respondents**

**Defendant/
Appellant**

Mark Chacksfield KC and Edmund Eustace (instructed by Bird & Bird LLP) for the
Appellant

Andrew Lykiardopoulos KC, Isabel Jamal and Joshua Marshall (instructed by Morgan,
Lewis & Bockius UK LLP) for the Respondents

Hearing dates : 22-23 April 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 12 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Arnold:

Introduction

1. This is another appeal concerning patents declared essential to a standard (standard-essential patents or “SEPs”) which must be licensed on (fair) reasonable and non-discriminatory (“(F)RAND”) terms. Because the relevant standards in this case were promulgated by the International Telecommunication Union Telecommunication Standardization Sector (“the ITU-T”), this case concerns RAND rather than FRAND terms, but no-one suggests that that makes any difference.
2. In broad terms, the appeal concerns issues as to (i) jurisdiction, (ii) whether a case management stay should be granted and (iii) whether the court should make a declaration that a willing licensor in the position of the SEP owner would grant implementers interim licences pending the determination of what terms for the final licence are RAND (“an interim licence declaration”). More specifically, the appeal raises a novel and important question of principle as to the impact on issues (ii) and (iii) of an offer by the SEP owner of an interim licence whose terms are subject to adjustment by the decision of an arbitral tribunal as to what final licence terms are RAND.
3. I set out the general background to disputes of this nature, the basic legal principles applicable to the determination of FRAND terms and the basic legal principles applicable to the grant of declarations in *Lenovo Group Ltd v Telefonaktiebolaget LM Ericsson (Publ)* [2025] EWCA Civ 182, [2025] RPC 11 at [3]-[29]. I summarised the principles applicable to interim licence declarations in *Samsung Electronics Co Ltd v ZTE Corp* [2025] EWCA Civ 1383, [2026] Bus LR 465 at [3]-[9]. In the interests of brevity, I shall assume that the reader of this judgment is familiar with these principles.

Factual and procedural background

4. In this case the Defendant (“Nokia”) owns or has the right to licence a portfolio of SEPs (“the Nokia Codec SEP Portfolio”) whose claims have been declared essential to the ITU-T H.264/AVC and H.265/HEVC video decoding standards (“recommendations” in ITU-T terminology) (“the Standards”). The Standards regulate the technology used to decode video streams which have been encoded to enable efficient transmission.
5. The Claimants fall into two groups, Acer and ASUS (a third group, Hisense, having agreed a settlement since the judgment below). The Claimants are implementers of the Standards who make and sell personal computer devices which can encode and decode video streams. They accept that they need a licence to the Nokia Codec SEP Portfolio.
6. There have been negotiations for some years between Nokia and the Claimants over terms for licences of the Nokia Codec SEP Portfolio which have not yet borne fruit. As usual, both sides proclaim their willingness to enter into licences of the Nokia Codec SEP Portfolio on RAND terms, but they cannot agree on what terms are RAND. It is common ground that the licences should be global in extent. As usual, what principally divides the parties is how much the Claimants should pay Nokia for their licences.
7. Starting on 28 March 2025, Nokia commenced patent infringement proceedings seeking injunctive or exclusionary relief against the Claimants in a number of

jurisdictions: initially Germany and the Unified Patent Court (“UPC”), followed by the USA, Brazil and India. Such proceedings are designed to put pressure on the Claimants to agree to the terms demanded by Nokia by excluding the Claimants from the respective markets. Nokia did not seek a court determination of what terms are RAND in any of these proceedings.

8. On 11 June 2025 (Acer) and 17 July 2025 (ASUS) the Claimants commenced claims in the Patents Court seeking (i) various forms of relief concerning three of Nokia’s European Patents (UK) (“the Challenged Patents”) (“the Patent Claims”), (ii) various forms of relief seeking in essence the determination of what terms for licences of the Nokia Codec SEP Portfolio would be RAND (“the Final RAND Licence Claims”) and (iii) interim licence declarations ((ii) and (iii) together, “the RAND Claims”). Both Claimants gave unconditional undertakings to enter into any licence that was determined to be RAND (subject to adjustment on appeal), whether interim or final.
9. On 18 June 2025 (Acer) and 21 July 2025 (ASUS) the Claimants were granted permission to serve the claim forms on Nokia outside the jurisdiction as was required at least with respect to the RAND Claims since Nokia is a Finnish company.
10. On 25 July 2025 (as against Acer) and 8 August 2025 (as against ASUS) Nokia applied to challenge the jurisdiction of the courts of England and Wales with respect to the RAND Claims. Although Nokia initially challenged jurisdiction with respect to the Patent Claims as well, that challenge was not in the end pursued.
11. At the same times Nokia made what have been referred to as a “Commercial Arbitration Offer” and an “Adjustable Licence Offer” to each of the Claimants. The Commercial Arbitration Offer is not relied on by Nokia on the appeal, and can therefore be ignored. In essence, the Adjustable Licence Offer was an offer of a licence to the Nokia Codec SEP Portfolio whose terms are subject to adjustment by the decision of an arbitral tribunal as to what licence terms are RAND (“the Adjustable Licence”), in other words, a form of interim licence. In the alternative to disputing jurisdiction, Nokia sought declarations that the Adjustable Licence was RAND and that Nokia had discharged their RAND obligations, and an order the RAND Claims be stayed.
12. Although Nokia originally sought a stay on *forum non conveniens* grounds, alternatively on case management grounds, it is common ground on the appeal that, if the English courts had jurisdiction in respect of the Claimants’ claims as at the dates when the Claimants were respectively granted permission to serve the claim forms out of the jurisdiction, the claims should not be stayed on *forum non conveniens* grounds as a result of Nokia’s subsequent offers. Accordingly, Nokia pursues its application for a stay solely on case management grounds.
13. Nokia sensibly agreed, without prejudice to its jurisdictional challenges, that the Claimants’ claims for interim licence declarations should be determined at the same time as the jurisdictional challenges. (I note in passing that the judge referred to there having been a “trial” of the claims for interim licence declarations, a procedural characterisation which was not contested at the hearing of the appeal.)
14. On 21 August 2025 the trial of the Final RAND Licence Claims was listed for 29 June 2026 without prejudice to Nokia’s jurisdictional challenges.

15. By the time of the hearing before the judge, the parties had agreed most of the terms for interim licences of the Nokia Codec SEP Portfolio. Save for a dispute over the scope of the licence which is no longer live for the reason explained in paragraph 20 below, the main issue was whether the terms of the final licences, and hence the adjustments to the interim licences, should be determined by the English courts (as the Claimants contend) or by an arbitral tribunal (as Nokia contends). Although the parties had not agreed the amounts that should be paid by the Claimants, they were not far apart, and the judge determined both a non-refundable sum and a potentially refundable sum that should be paid by each Claimant. There is no challenge to the judge's determinations. Accordingly, references in the remainder of this judgment to the Adjustable Licences are to licences on the terms agreed before, or determined by, the judge, but subject to adjustment by the arbitral tribunal.
16. As explained in more detail below, Nokia proposed arbitration in accordance with the rules of the International Chamber of Commerce ("the ICC"). The Claimants have made no counterproposal for any different form of arbitration.
17. The judge heard these matters at a four-day hearing in late October 2025. On 18 December 2025 he handed down a prompt and extremely thorough judgment ([2025] EWHC 3331 (Pat)) running to 463 paragraphs in which he (i) rejected Nokia's jurisdictional challenges, (ii) refused a case management stay and (iii) made some (but not all) of the interim licence declarations sought by the Claimants. The length of the judgment was occasioned by the considerable number of issues raised by the parties, including a number of issues as to Swiss law, which governs the ITU-T Declaration discussed below, and the interpretation of that Declaration applying Swiss law. On 30 January 2026 the judge made the consequential order which is under appeal.
18. I granted Nokia permission to appeal on the grounds considered below, but refused permission to appeal against the judge's findings as to Swiss law and his interpretation of the ITU-T Declaration. The hearing of the appeal was expedited due to the proximity of the trial. As is often the case where a plethora of issues have been raised at first instance, but only a limited number on appeal, the concentration of the issues has assisted the parties to refine their arguments. More specifically, Nokia's inability to pursue some of its arguments, and abandonment of others, enabled it to clarify those that remained.
19. Nokia accepts that there is binding Court of Appeal authority that the English courts can properly make interim licence declarations, but reserves the right to argue to the contrary in the Supreme Court.

The Challenged Patents and the scope of the RAND obligation

20. It is not necessary to discuss the Challenged Patents. I should, however, note that they contain both decoding claims and encoding claims. Nokia contends that, since the Standards are decoding standards, the RAND obligation only applies to the decoding claims. The Claimants contend that the RAND obligation extends to the encoding claims, because encoding must produce a Standard-compliant bitstream i.e. one that can be decoded in accordance with the relevant Standard. On the appeal Nokia accepts that the interim licence should embrace both encoding and decoding claims. It will be for the Patents Court or the arbitral tribunal, as the case may be, to determine whether the final licence should embrace both.

The ITU-T Declaration

21. On 7 June 2001 Nokia's parent company Nokia Corporation submitted a general declaration to the ITU-T in which it ticked a box stating that "[t]he Patent Holder is prepared to grant - on the basis of reciprocity for the relevant ITU-T Recommendation(s) - a license to an unrestricted number of applicants on a worldwide, non-discriminatory basis and on reasonable terms and conditions" (an "ITU-T Declaration"). On various dates thereafter Nokia Corporation submitted ITU-T Declarations specifying each of the Challenged Patents. The Challenged Patents were subsequently assigned to Nokia. It is undisputed that Nokia received the Challenged Patents subject to the RAND obligation.
22. Based on his findings as to Swiss law, the judge held that the making of the ITU-T Declarations in respect of the Challenged Patents gave rise to a contract between Nokia and the ITU-T for the benefit of implementers such as the Claimants under which Nokia is obliged to make RAND offers to licence the Challenged Patents which are capable of acceptance by the Claimants. For the reasons explained in paragraph 17 above, this conclusion is not in issue on the appeal. As is common ground, it follows that the jurisprudence which has been established with respect to SEPs declared essential to the European Telecommunications Standards Institute's ("ETSI's") mobile telephony standards, where the SEP owner's FRAND obligation arises under French law, is applicable to the present case.
23. On the judge's findings, there is one potentially significant difference between the SEP owner's obligations under the ITU-T regime and those under the ETSI regime, which is that the remedy of specific performance is potentially available to implementers if the SEP owner declines to grant a licence on the terms found by the court to be RAND. Whether this is a remedy which should actually be granted in that eventuality remains to be decided. Neither side contended this was decisive of any of the issues on the appeal, but it is relevant to some of them.

The RAND obligation

24. Although the nature of a SEP owner's FRAND obligation under clause 6.1 of the ETSI Intellectual Property Rights Policy is well established, and it is not now disputed that a SEP owner's RAND obligation under the ITU-T Declaration is essentially the same, it may help to put the issues on the appeal in context if I briefly summarise the position. By making the ITU-T Declaration, the SEP owner irrevocably undertakes to the ITU-T to grant any implementer a licence under the SEP on RAND terms. This is a contract for the benefit of third parties which can be enforced by implementers against the SEP owner. It is a contractual derogation from a SEP owner's right under the general law to obtain an injunction to prevent infringement of its patent. Thus an implementer is entitled to a licence from the first day it implements the standard provided that it is willing to take a licence on RAND terms. For present purposes the point which matters is that the SEP owner complies with its obligation by offering the implementer a licence on terms which are objectively RAND.

The Patent Claims

25. The Patent Claims are claims for declarations that the Challenged Patents are (i) invalid, (ii) not essential to the Standards and (iii) would not be infringed by various acts

proposed by the Claimants. The Claimants also seek an order that the Challenged Patents be revoked.

The RAND Claims

26. The RAND Claims are claims for declarations in the following terms (I quote the ASUS version, but the Acer version is in the same terms *mutatis mutandis*, and the references to “Defendants” are explained by the fact that Nokia Corporation was then, but is no longer, a party):

- “(7) A declaration that ASUS is a beneficiary of the Defendants’ RAND Commitment to ITU-T.
- (8) A declaration that ASUS is entitled to be offered, and on acceptance of such an offer, granted a licence covering the Nokia Codec SEP Portfolio, including the Challenged Patents, on RAND terms.
- (9) A declaration that by reason of ASUS’s undertaking at paragraph 61 to enter into a licence agreement in the form that is determined by this Court to be RAND, the Defendants are not entitled to an injunction restraining ASUS from any acts which would otherwise constitute infringement of any patents in the Nokia Codec SEP Portfolio and/or the Challenged Patents in the UK.
- (10) A determination of what the terms would be for a Final Licence between ASUS and Nokia covering the Challenged Patents and the other patents in the Nokia Codec SEP Portfolio.
- (11) An order that the Defendants offer ASUS the Final Licence.
- (12) A declaration that in accordance with the contractual obligations on the part of the Defendants by virtue of undertakings, declarations and/or declarations of essentiality made by it to ITU-T a willing licensor and a willing licensee in the circumstances of the parties would
 - i. agree to enter and actually enter into a licence including such terms as determined by this Court making a final determination (including all avenues of appeal) on RAND terms between the parties, and
 - ii. agree to enter and actually enter into an Interim Licence pending such final determination on such terms as determined by this Court.
- (13) A determination of what the terms would be for an Interim Licence between ASUS and Nokia covering the Challenged Patents and the other patents in the Nokia Codec SEP Portfolio for the duration of these proceedings until the determination of the Final Licence as set out at Prayer (11).

- (14) An order that the Defendants offer ASUS the Interim Licence.
- (15) In the alternative to Prayer (14), a declaration that if, within seven days of the Court's Order declaring the terms of an Interim Licence, the Defendants refuse to offer ASUS an Interim Licence on the terms determined by the Court, the Defendants are in breach of their RAND Commitment and are unwilling licensors.”

The Adjustable Licence Offers

- 27. Nokia’s Adjustable Licence Offers are offers to the Claimants to grant interim licences which are, subject to the point mentioned in the next paragraph, essentially identical to the interim licences sought by the Claimants save that the terms are subject to adjustment by an arbitral tribunal when determining what terms for a final licence are RAND rather than by the English courts.
- 28. During the course of oral argument counsel for the Claimants raised a new point concerning a term of the Adjustable Licence which requires either party to stay, withdraw or abandon (or procure the stay, withdrawal or abandonment of) any litigation concerning *any* patents it (or its group) owns, controls or manages if the other party contends that such patents should be included within the scope of a (F)RAND (cross-)licence. The Claimants are concerned that this may prevent them, and associated parties, from enforcing SEPs concerning mobile telephony standards pending a decision by the arbitrators as to the scope of the (cross-)licence. As counsel for Nokia submitted in reply, this argument is not open to the Claimants as a basis for upholding the judge’s order: it was not raised before the judge in this context, nor decided by the judge, there is no respondents’ notice raising it, and it was not even mentioned in the Claimants’ skeleton argument for the appeal served as recently as 1 April 2026. Whether this term should be included if Nokia is otherwise successful on its application for a case management stay is a different question. Since Nokia’s case does not depend on the inclusion of this term, I shall disregard it for present purposes.
- 29. As noted above, Nokia proposes arbitration in accordance with the ICC Rules. Nokia is content for the Claimants to specify the seat and place of the arbitration, provided that it is a recognised arbitration jurisdiction that is not the home jurisdiction of either side. Nokia proposes that there be three arbitrators, one selected by each side and the third appointed by agreement of the parties or by the ICC, provided that no arbitrator may be a citizen or resident of the home jurisdiction of either side. Nokia stated before the judge that it would agree to early and mutual disclosure of comparable licences in the arbitration, including those ordered to be produced in these proceedings. Shortly before the hearing of the appeal, Nokia also proposed an agreement that the arbitrators should be required to produce a public non-confidential summary of the main points of principle decided in their award, and the overall approach taken to valuation.

Jurisdiction

- 30. On an application for permission to serve a foreign defendant out of the jurisdiction, the claimant has to satisfy three requirements: (1) that there is a serious issue to be tried on the merits of the claim i.e. a real prospect of success (the summary judgment standard); (2) that there is a good arguable case that the claim falls within one of the

gateways for service out specified in paragraph 3.1 of CPR Practice Direction 6B; and (3) that England and Wales is clearly or distinctly the appropriate forum for the trial of the dispute, and that in all the circumstances the court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction: see *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7, [2012] 1 WLR 1804 at [71] (Lord Collins of Mapesbury). In order to have a good arguable case that the claim falls within a gateway, the claimant must have the better of the argument in the sense explained by Lord Sumption in *Brownlie v Four Seasons Holdings Inc* [2017] UKSC 80, [2018] 1 WLR 3683 at [7].

31. On the appeal Nokia does not challenge the judge's conclusions that requirements (1) and (3) are satisfied in respect of the RAND Claims judged as at the dates when permission to serve out was granted. It confines its challenge to requirement (2). The judge held that the RAND Claims passed through each of gateways 11, 16A and 4A.

Gateway 11 (appeal grounds 7 and 8)

32. Gateway 11 is that "[t]he subject matter of the claim relates wholly or principally to property within the jurisdiction". The applicability of gateway 11 to FRAND claims by implementers has twice been considered obiter by this Court: see *Vestel Elektronik Sanayi Ve Ticaret AS v Access Advance LLC* [2021] EWCA Civ 440, [2021] 4 WLR 60 at [61]-[80] and *Tesla Inc v InterDigital Patent Holdings Inc* [2025] EWCA Civ 192, [2025] RPC 12 at [103]-[109].
33. In considering this issue, it is important to begin by recognising that the Claimants' RAND Claims are contractual claims. In essence, the Claimants seek to enforce Nokia's obligation to licence the Challenged Patents on RAND terms. It is also important to recognise that, as noted above, it is common ground that a licence on RAND terms would be a global licence in respect of all corresponding patents worldwide (and, indeed, all other patents in the Nokia Codec SEP Portfolio). Nokia contends that it follows that the subject matter of the RAND Claims does not "relate wholly or principally to property within the jurisdiction", but to property situated very largely outside the jurisdiction.
34. In *Tesla v InterDigital* I concluded at [109]:

"... the Licensing Claims relate wholly to property within the jurisdiction because the claims concern UK SEPs. InterDigital argue that the jurisdiction question cannot be determined by what InterDigital characterise as the artificial framing of the declarations sought by Tesla, when in reality the claim on Tesla's own case is a contractual claim to a global licence of SEPs, the vast majority of which are non-UK SEPs. While I appreciate the superficial attraction of this argument, I do not accept it for reasons which should be familiar to students of the English courts' jurisprudence in this field. In short, it is necessary to distinguish between the property on the one hand and the FRAND obligation which affects it on the other hand. Patents are territorial rights, but (i) standards such as the ETSI Standards are global standards which are exploited globally, (ii) the FRAND obligation under clause 6.1 is a global one and (iii)

a licence on FRAND terms may well be a global one (meaning that a UK-only licence is not FRAND). Thus a licence to a single UK SEP on FRAND terms can be, and often is, a global licence to all corresponding SEPs (and indeed other families of SEPs in the same portfolio). In *Nokia v OPPO* this Court upheld the jurisdiction of the English courts in respect of the claim even though the UK represented less than 0.5% of the relevant market (which does not necessarily mean that only 0.5% of the SEPs were UK ones, but nevertheless gives a sense of the order of magnitude). That case concerned an infringement claim, and so the jurisdictional analysis was somewhat different, but nevertheless it illustrates the point. Thus the Licensing Claims relate wholly to UK SEPs even though it is Tesla's case that the FRAND obligations attaching to those UK SEPs carry with them an obligation to grant a licence of global, and not merely UK, extent. Indeed, neither Avanci nor InterDigital dispute that a licence on FRAND terms of the relevant SEPs would be a global one."

35. The judge adopted this reasoning, and held that it applied to the RAND Claims.
36. Ground 8 is that this reasoning is wrong. In short, Nokia contends that the error in the reasoning is that it elevates form over substance. In form, such claims may be confined to UK patents, but as a matter of substance and reality they are global claims in respect of property most of which is outside the UK. Nokia says that implementer-led contractual claims such as this are therefore quite different to claims by SEP owners to enforce UK SEPs, where the (F)RAND obligation only arises by way of defence to the infringement claim: see *Unwired Planet International Ltd v Huawei Technologies (UK) Co Ltd* [2020] UKSC 37, [2020] Bus LR 2422 and *Nokia Technologies Oy v OnePlus Technology (Shenzhen) Co., Ltd* [2022] EWCA Civ 947, [2024] FSR 11.
37. Having considered the matter afresh, I adhere to the reasoning in *Tesla v InterDigital*. I would add that the purpose of the gateways is to ensure that only claims with a sufficiently close connection with England and Wales can be brought here. As Meade J observed in *Amazon.com Inc v InterDigital VC Holdings Inc* [2025] EWHC 3334 (Pat) at [69], albeit in a slightly different context:

"... It is no trivial matter for a party to have patents within the jurisdiction. Patentees choose to do so and it makes perfect sense that if they do, then they are subject to the jurisdiction of the courts here when it comes to determining the scope and effect of their monopolies. It is entirely sensible that claims about patents can be served in the jurisdiction as of right and in a broader context it is obviously rational for ownership of a patent in the UK to be regarded as a sufficient connection ..."
38. I do not think it makes any difference that the remedy of specific performance is potentially available in this case. The availability of a particular remedy does not affect the proper characterisation of the dispute: see *In re Harrods (Buenos Aires) Ltd* [1992] Ch 72. The RAND Claims are properly characterised as a dispute concerning the contractual obligations attaching to property in the UK.

39. Ground 7 is that, even if the law was correctly stated in *Tesla v InterDigital*, the Claimants' RAND Claims as pleaded in their respective Particulars of Claim extend beyond the Challenged Patents and include the foreign patents in the Nokia Codec SEP Portfolio. This point is exemplified by paragraph 27 of each Particulars of Claim, which pleads that the relevant Claimant "has a legal right to be granted a RAND licence in respect of the Challenged Patents and/or a legal right to be offered RAND terms in respect of the Nokia Codec SEP Portfolio (including the Challenged Patents)". Nokia points out that the second half of this plea concerns its global portfolio. Nokia accepts that the plea is disjunctive, but says that jurisdiction in respect of the first part of the plea does not justify jurisdiction in respect of the second part.
40. During the course of argument the Claimants offered, without conceding that it was necessary, to amend their Particulars of Claim to delete the second half of this plea, and similar language in a number of other paragraphs. For the avoidance of doubt, it remains the case that the relief claimed by the Claimants is the determination of RAND terms for a global licence of the Nokia Codec SEP Portfolio. Nokia accepted that, since the amendments proposed were merely deletions, they did not affect the jurisdictional analysis as at the relevant dates.
41. At least as confined by the proposed amendments, I consider that the judge was right to conclude that the RAND Claims pass through gateway 11.

Gateway 16A (appeal ground 9)

42. Gateway 16A is as follows:

"A claim is made for a declaration that the claimant is not liable where, if a claim were brought against the claimant seeking to establish that liability, that claim would fall within another paragraph of this Practice Direction (excluding paragraphs (1) to (5), (8), (12D), (15D), (17), (22) and (24) to (25))."

43. The Claimants put their case on gateway 16A in two different ways, which may be characterised as a broad case and a narrow case. Although the judge held that the RAND Claims passed through gateway 16A, it is not clear whether he accepted the broad case or the narrow case. This may well be because the distinction between them did not clearly emerge in argument before him. Ground 9 is that the judge was wrong either way.
44. Taking the broad case first, it is common ground that claims for declarations of non-infringement ("DNIs") of UK patents pass through this gateway because a claim for infringement of a UK patent is a claim in tort falling within gateway 9. The issue between the parties is whether the Claimants have sufficiently pleaded claims for DNIs of the Challenged Patents which give rise to the RAND Claims. The Claimants contend that they have. If the judge accepted this contention, it must have been based on his conclusion earlier in the judgment at [296] that it was "more than a little unreal" for Nokia to contend that there was no threat to assert any of its UK SEPs against either of the Claimants.
45. Nokia accepts that the Claimants have pleaded claims for DNIs, pursuant to either section 71 of the Patents Act 1977 or the general declaratory jurisdiction, in respect of

various proposed acts. The proposed acts in question are based on a pass-through licence from Microsoft and technical workarounds. Thus these claims are part of the Patent Claims. As Nokia points out, however, no claim for a DNI is pleaded on the basis that Nokia has threatened to bring proceedings against the Claimants for infringement of any of the Challenged Patents (or any other UK SEPs in the Nokia Codec SEP Portfolio) and that the Claimants have a defence to such an infringement claim by virtue of Nokia's RAND obligation.

46. Counsel for the Claimants accepted that no such claim was expressly pleaded in the Particulars of Claim, but submitted that it was implicit, particularly having regard to the pleaded case concerning Nokia's campaign of litigation against the Claimants. I do not accept this submission. The pleaded case concerns the proceedings brought by Nokia in Germany, the UPC, the USA, Brazil and India. Patents are territorial. Enforcement by the patentee of a patent in one country is not without more a threat to enforce a parallel patent in another country. There is no pleaded case of any threat by Nokia to enforce any of the UK SEPs in the Nokia Codec SEP Portfolio against either of the Claimants. This is plainly not an oversight. The obvious reason it is not pleaded is that there is no evidence of any such threat.
47. Counsel for the Claimants also relied, as did the judge, upon the absence of any undertaking by Nokia not to bring infringement proceedings against the Claimants. Absent any threat by Nokia to bring infringement proceedings in the UK, that amounts to no more than a contention that the Claimants fear being sued, which is not a threat by Nokia to sue: see *Attorney General for Canada v Ritchie* [1919] AC 999 at 1005 (Lord Dunedin) and *K.S. Paul Ltd v Southern Instruments Ltd* [1964] RPC 118 at 122 (Harman LJ).
48. Turning to the narrow case, the Claimants rely on the fact that they have claimed in paragraph 58 of the Particulars of Claim and paragraph (9) of the prayer (see paragraph 26 above) a declaration that Nokia is not entitled to an injunction to restrain the Claimants from committing acts that would otherwise constitute infringement of any of the SEPs in the Nokia Codec SEP Portfolio, including the Challenged Patents, because the Claimants have a RAND defence. The Claimants argue that it is sufficient to satisfy gateway 16A to plead a claim for a declaration of non-liability to an injunction, even if there is no pleaded claim for a declaration of non-liability for damages or an account of profits.
49. In support of this argument the Claimants rely upon an obiter statement of Birss LJ in *Vestel* at [60]:

“.... if Vestel had had a claim to a right not to be the subject of an injunction for patent infringement, I would have held that this satisfied gateway 9 even if the vindication of that right did not absolve Vestel of all tort liability, such as for damages.”
50. I respectfully disagree with this for the following reasons. Gateway 9 is concerned with claims in tort. Unlike in *Vestel* (where Article 7(2) of European Parliament and Council Regulation 1215/2012/EU of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) was also relied on), the Claimants do not rely upon gateway 9. That does not matter, because the purpose of gateway 16A is to ensure that claims for declarations of non-liability in respect of

alleged torts can be brought within the jurisdiction whether or not they pass through gateway 9. What does matter is that, as discussed above, the Claimants have not pleaded a claim for a DNI in respect of UK SEPs based on a threat by Nokia to bring a claim for patent infringement in the UK for the obvious reason that they cannot. In my judgment they cannot circumvent this obstacle by pleading a claim to a declaration that Nokia would not be entitled to an injunction if it were to bring a claim for patent infringement. Since there is no threat to sue in the UK, there is no threat to obtain an injunction in the UK. It is not possible to obtain an injunction to restrain patent infringement without pleading at least a threat to infringe the patent in question. Even if there were such a thing as a freestanding claim to an injunction to restrain patent infringement, gateway 16A excludes claims for negative declarations in respect of claims which would fall within gateway 2 (claims for injunctions ordering the defendant to do or refrain from doing acts within the jurisdiction).

51. Accordingly, I conclude that the RAND Claims do not pass through gateway 16A.

Gateway 4A (appeal ground 10)

52. Gateway 4A is as follows:

“A claim is made against the defendant which—

- (a) was served on the defendant within the jurisdiction without the need for the defendant’s agreement to accept such service;
- (b) falls within CPR rule 6.33; or
- (c) falls within one or more of paragraphs (1A), (2), (6) to (16A) or (19) to (23),

and a further claim is made against the same defendant which arises out of the same or closely connected facts.”

53. For present purposes it must be assumed that the RAND Claims do not pass through either gateway 11 (contrary to my conclusion above) or gateway 16A (as I have concluded above). The Claimants rely upon the Patent Claims as anchor claims and argue that the RAND Claims arise out of the same or closely connected facts.

54. The judge accepted this argument, but I respectfully disagree. As discussed above, the Patent Claims concern invalidity of the Challenged Patents, non-essentiality of the Challenged Patents and non-infringement of the Challenged Patents based on the Microsoft pass-through licence and workarounds. None of those claims have anything to do with Nokia’s RAND obligation. Accordingly, the RAND Claims do not arise out of the same or closely connected facts as the Patent Claims.

55. The Claimants contend by a respondent’s notice that the RAND Claims pass through gateway 4A because the non-infringement case, if successful, will affect the scope of the RAND licence required by the Claimants if and when they implement the workarounds, and hence the amount that should be paid for it. I do not accept this argument. Even if the non-infringement case is successful and the Claimants do implement the workarounds, this will have no bearing on the scope of the licence

required, and hence the amount payable, up to that point in time. As for the future, success on the non-infringement case and a decision to implement the workarounds will not necessarily compel the conclusion that a lower amount should be paid for a RAND licence of the portfolio. Even if it did support that conclusion, this would be a consequence of the Patents Court's determination of the non-infringement claim for which allowance could be made when setting the RAND rate. It does not mean that the same two claims arise out of the same or closely connected facts.

Conclusion on jurisdiction

56. For the reasons given above I would dismiss the appeal in so far as it challenges the judge's rejection of Nokia's jurisdictional challenges.

Case management stay

57. On the appeal Nokia accepts that, if the RAND Claims pass through one or more of the gateways relied on by the Claimants, the English courts have jurisdiction in respect of these claims as at the dates when permission to serve the claim forms outside the jurisdiction was granted. Nokia nevertheless contends that the RAND Claims should be stayed on case management grounds. The basis for this contention is Nokia's Adjustable Licence Offers. Nokia argues that these mean that there is no serious issue to be tried on the RAND Claims.
58. As became clear during submissions, this is not a conventional application for a stay on case management grounds. It is well established that the court has power in rare or compelling circumstances to order a temporary stay of English proceedings where there are parallel proceedings in another jurisdiction, raising the same or similar issues between the same or similar parties, and where the earlier resolution of those issues in the foreign proceedings would better serve the interests of justice: see *Unwired Planet* at [99]. This power is also available where the issues are raised in an arbitration: see Dicey, Morris and Collins, *The Conflict of Laws* (16th ed) at 12-018.
59. Nokia is not seeking a temporary stay of these proceedings pending the decision of the arbitral tribunal, it is seeking a permanent stay. Furthermore, the ground upon which it seeks a stay is not based on the relative merits of the issues being determined by the arbitral tribunal versus determination by the English courts. Rather, it is that the RAND Claims have no real prospect of success. Nokia has not applied for summary judgment, however.
60. Does it matter that Nokia has not applied for summary judgment? The question is one of procedural fairness. It would not be fair to permit Nokia to make what is in substance an application for summary judgment without going through the proper procedure for making such an application if that would prejudice the Claimants in any way. In the circumstances of the present case, there is no prejudice to the Claimants. The substance of Nokia's argument remains exactly the same whether it is characterised as an application for a case management stay or an application for summary judgment, namely that the RAND Claims should not be permitted to proceed because they have no real prospect of success.

Appeal ground 11

61. Ground 11 is that, in dealing with the application for a case management stay, the judge did not address Nokia's argument and was wrong. I do not consider that the first point is fair to the judge. He commented at [359] that he did not really understand the basis upon which Nokia sought a case management stay. His puzzlement is readily understandable for the reasons I have explained above. Furthermore, he went on in [362] to address the substance of Nokia's argument. Although he understandably did not articulate it in these terms, it is clear that he did not accept that the Adjustable Licence Offers meant that the RAND Claims had no real prospect of success. The real question is whether he reached the right conclusion. This depends on the correctness of his analysis of the Adjustable Licence Offers earlier in his judgment.

Analysis of the Adjustable Licence Offers (appeal grounds 1-5)

62. Although the arguments ranged more widely, stripped to their essentials each side's case on the Adjustable Licence Offers is a straightforward one. Before considering those arguments, it is pertinent to begin by noting four points which are not in dispute.
63. First, a dispute between a SEP owner and an implementer as to what licence terms are (F)RAND can be determined by arbitration. As the Court of Justice of the European Union stated in its seminal decision in Case C-170/13 *Huawei Technologies Co. Ltd v ZTE Corp* [EU:C:2015:817] at [68], "where no agreement is reached on the details of the FRAND terms ..., the parties may, by common agreement, request that the amount of the royalty be determined by an independent third party ...".
64. Secondly, a number of (F)RAND disputes have been determined by arbitration, including two involving Nokia.
65. Thirdly, where a licence on (F)RAND terms is agreed through negotiation, the licence will sometimes contain a clause stipulating that any dispute as to terms for a renewal of the licence after it expires be determined by arbitration.
66. Fourthly, there is nevertheless no settled industry practice for (F)RAND disputes to be determined by arbitration.
67. The Claimants say that it is a fundamental principle that arbitration is a consensual process. Consent may be given either in a contractual arbitration clause or *ad hoc*, but it must be freely given. In the present case the contractual framework under the ITU-T Declaration makes no provision for arbitration, indeed it is silent on the topic of arbitration. The Claimants do not consent to arbitration *ad hoc*. It would run counter to this fundamental principle for Nokia to be permitted to force the Claimants to arbitrate what terms are RAND.
68. This is all the more objectionable, say the Claimants, because it is clear from Nokia's conduct in parallel litigation that Nokia does not contend that all disputes as to (F)RAND terms should be arbitrated, but rather reserves the right unilaterally to decide which should be arbitrated and which should be determined by a court. Thus in *Warner Bros v Nokia* and *Paramount v Nokia*, Nokia agreed at a hearing before Meade J on 27 February 2026 to accept the jurisdiction of the English courts to determine RAND terms

and agreed to grant the claimants in those cases an interim licence pending that determination.

69. Nokia does not dispute the fundamental principle that arbitration is consensual, but says that this is no answer to its case. Nokia argues that the logic underpinning its stance is exactly the same as the logic underpinning the decision of the Supreme Court in *Unwired Planet*, namely that it is legitimate to require the implementer to choose between accepting a global licence on (F)RAND terms and being excluded from the UK market by an injunction to restrain infringement of UK SEPs. Nokia accepts in this Court that implementers have the right to be offered a licence to the Nokia Codec SEP Portfolio on RAND terms which is capable of acceptance. Nokia says that the Adjustable Licence Offer is an offer of a licence on RAND terms which is capable of acceptance. Furthermore, it is immaterial that other licence terms might also be RAND, since it is settled law that, if more than one set of terms is RAND, Nokia is entitled to select the RAND terms that are most favourable to itself. If Nokia is right that the Adjustable Licence Offer is an offer of a licence on RAND terms, then implementers are faced with a choice. An implementer can choose to accept the Adjustable Licence Offer or it can choose to refuse it. If the implementer accepts the Adjustable Licence Offer, then it thereby consents to arbitration. If the implementer refuses the Adjustable Licence Offer, it must take the consequences. The first consequence is that the implementer has thereby demonstrated that it is unwilling to take a licence on RAND terms. The second consequence is that an unwilling licensee cannot invoke the English court's jurisdiction to determine what licence terms are RAND.
70. Nokia also makes an additional point, which is that the Claimants have already undertaken to take a licence on terms determined to be RAND, whether interim or final. Thus they have already committed themselves to accept the Adjustable Licence Offers if those offers are determined by the court to be RAND. This point is not essential to Nokia's argument, however.
71. As for the Claimants' point about Nokia's stance in other litigation, Nokia does not shrink from the fact that, whilst its general preference is for arbitration, it is prepared to accept determination of (F)RAND terms by the English courts in some cases. Nokia says that there is nothing wrong with this.
72. The judge accepted the Claimants' argument which I have summarised in paragraph 67 above. The point mentioned in paragraph 68 above did not arise before him, because the inconsistency in Nokia's position only emerged subsequently.
73. Nokia challenges the judge's analysis of the Adjustable Licence Offers on five grounds. Ground 1 is that the judge was wrong to hold at [24] that:
- “... the ... Adjustable Licence Offers plainly do not constitute the offer of a RAND licence which is capable of acceptance. Each such Offer is merely an offer to enter into arbitration. The result of the arbitration (if it takes place) will be RAND terms. Only at the conclusion of the arbitration will a RAND licence offer be made available which is capable of acceptance by the Claimants.”

The judge repeated this point later in his judgment, in particular at [30] and [408].

74. Nokia's argument can be broken down into three stages. The first is that it has offered each of the Claimants an immediate global licence to the Nokia Codec SEP Portfolio, and that offer is capable of acceptance. This achieves one of the Claimants' key objectives, which is to avoid being excluded from their markets in Germany, the territory covered by the UPC, the USA, Brazil and India in the near future. The offer is not merely to enter into arbitration with the prospect of a licence at the end of that process, which would potentially leave the Claimants vulnerable to exclusion in the meantime. (Whether a mere offer of arbitration would suffice for the SEP owner's purposes is not an issue which arises in the present case, and that question will have to await a case in which it arises for decision.)
75. The second stage is that the fact that the licence Nokia has offered is an interim licence whose terms are adjustable in accordance with the terms determined for the final licence neither prevents that offer from being capable of acceptance, nor means that the terms offered are not RAND. On the contrary, the terms of the interim licence are RAND because, subject to the question of the mechanism for determining the terms of the final licence, they are agreed. Nokia relies upon what I said in *Alcatel Lucent SAS v Amazon Digital UK Ltd* [2025] EWCA Civ 43, [2025] RPC 6 at [75]:
- “... the question of what terms are (F)RAND for an interim licence is quite different to the question of what terms are (F)RAND for a final licence, and determining such terms is a much more limited task. As Amazon submit, this is because the interim licence is only designed to hold the ring pending determination of the terms of the final licence, and the payments made pursuant to it will be adjusted to the extent necessary in consequence of the determination of the terms of the final licence.”
76. The third stage is that the fact that the interim licence Nokia has offered provides for the final licence terms to be determined by arbitration neither prevents that offer from being capable of acceptance, nor means that terms offered are not RAND. On the contrary, the terms of the final licence are necessarily RAND because Nokia is offering whatever terms for the final licence the arbitral tribunal determines to be RAND.
77. I did not understand counsel for the Claimants to dispute the first stage of Nokia's argument. As for the second stage, he argued that this does not assist Nokia unless the third stage is correct. I agree with this: while the question of what terms are RAND for an interim licence is different to the question of what terms are RAND for a final licence, the term of the interim licence that is in dispute concerns the mechanism for determining the terms of the final licence. So far as the third stage is concerned, counsel for the Claimants disputed that the terms offered by Nokia were RAND because they involved arbitration without the Claimants' consent. It follows that what divides the parties is not whether Nokia's Adjustable Licence Offer is an offer of a licence which is capable of acceptance by the Claimants, as the judge appears to have thought, but whether the terms of the Adjustable Licence are RAND. In fairness to the judge, I suspect that Nokia's argument on this aspect of the case was rather clearer in this Court than it was below.
78. This takes me to grounds 2 and 3. Ground 2 is that the judge was wrong to criticise arbitration on ICC Rules as proposed by Nokia as a means for determining RAND

terms. Ground 3 is that the judge was wrong to hold the terms for the final licence offered by Nokia were not RAND because arbitration is a consensual process, the ITU-T Declaration makes no provision for arbitration and the Claimants do not consent to arbitration.

79. I can deal with ground 2 shortly. This is because, although the judge criticised arbitration as a means for determining RAND as lacking in transparency, counsel for the Claimants did not in oral argument rely upon the judge's criticism as justifying the conclusion that the terms for the final licence offered by Nokia are not RAND. I would only add two points. The first is that, as Nokia pointed out, the ICC Rules differ from some other sets of arbitral rules with respect to confidentiality in that there is no automatic or default provision for confidentiality. Instead, this is a matter for determination by the arbitrators. The second is that I see no good reason why an arbitral tribunal determining RAND terms should not publish its award subject to any necessary redaction of truly confidential information in the same way as the English courts do. Nokia's recent proposal (paragraph 29 above) is a step in the right direction, but it would be preferable to go further. Nokia has said that it is open to any reasonable suggestion with respect to confidentiality, but the Claimants have so far declined to engage with this question.
80. The consequence is that ground 3 must be approached on the footing that there can be no objection to Nokia's proposal for arbitration in accordance with the ICC Rules other than the Claimants' argument based on the need for consent. As noted above, the Claimants have made no counterproposal for arbitration. (What the position would be if the implementer had a legitimate and substantiated objection to the SEP owner's proposal for arbitration is thus another issue which does not arise for decision in this case.)
81. Ground 3 is thus the core ground of appeal. Before turning to the arguments outlined in paragraphs 67-71 above, it is convenient first to consider the relevance of the fact that the ITU-T Declaration makes no provision for arbitration. The Claimants do not dispute that the key advantage of arbitration in this context is that it provides a mechanism for resolving the dispute as to what terms are RAND by a single tribunal whose jurisdiction is global and whose award can be enforced under the New York Convention. By contrast, even if a national court determines what terms for a global licence are RAND, it can generally only enforce its decision by orders whose effect is territorially limited. (I say generally, because the position may differ somewhat if an order for specific performance can be obtained.) This leads to the risk of jurisdictional conflict discussed in so much of this Court's recent case law. The Claimants contend, however, that the absence of arbitration clauses from the intellectual property policies of standards development organisations ("SDOs") like ITU-T is a structural issue which cannot be solved by any national court, nor should any national court attempt to do so.
82. I entirely agree with the Claimants that it is not for national courts to attempt to solve structural issues in SDOs' IP policies. It follows that this Court must approach ground 3 with some caution. Nevertheless, Nokia's argument is that the absence of any provision for arbitration in the ITU-T Declaration is not an answer to its case, nor is the absence of *ad hoc* consent to arbitration. The question is whether Nokia is right.
83. This depends on whether Nokia is correct that the Adjustable Licence Offer does not violate the principle that arbitration is consensual because it does not compel the

Claimants to arbitrate, but presents them with a choice, albeit that there are consequences if the Claimants choose not to arbitrate.

84. After some hesitation I have concluded that Nokia is right about this. For the reasons I have explained, there can be no objection to Nokia's proposal for arbitration in accordance with the ICC Rules. It follows that arbitration will involve determination of RAND terms by an independent and impartial tribunal whose suitability to undertake that task is unquestionable. Thus determination by that tribunal is RAND. Nokia has offered the Claimants an immediate licence on whatever terms that tribunal ultimately determines to be RAND. Thus Nokia is offering a licence on terms which are objectively RAND. That complies with Nokia's RAND obligation.
85. The Claimants are not compelled to agree to arbitration: they do have a choice. But if they refuse the Adjustable Licence Offer, they are refusing an offer of a licence on RAND terms. That means they cannot invoke the English courts' jurisdiction to declare what terms are RAND at the behest of an implementer, because that jurisdiction depends on the implementer being willing to accept a licence on RAND terms. It is no answer to this for the Claimants to argue that they are willing to accept a licence on RAND terms determined by the English courts, because that argument assumes that the Claimants are entitled to reject one set of RAND terms in favour of another set of RAND terms when the choice lies with Nokia. In other words, the Claimants' argument is to that extent a circular one. Even if the remedy of specific performance would otherwise be available to the implementer, the same analysis must apply.
86. I confess that I am troubled by the inconsistency between Nokia's stance in this litigation and its stance in the *Warner Bros/Paramount* litigation. As noted above, Nokia does not shrink from the proposition that it is entitled to choose whether to arbitrate or whether to accept court determination of RAND terms. Counsel for Nokia submitted that this reflected an inherent asymmetry in disputes such as these between the position of the SEP owner and the position of the implementer. First, the SEP owner can bring infringement proceedings, whereas, in the absence of any infringement claim, the implementer can only seek declaratory relief as to what terms are RAND (and possibly an order for specific performance). Even if the court has jurisdiction over the implementer's claim for declaratory relief (and possibly specific performance), this is a more limited basis for jurisdiction than an infringement claim. Secondly, as noted above, the SEP owner is entitled to insist on the RAND terms most favourable to itself.
87. There was some debate during the course of argument as to whether, and if so in what circumstances, an implementer might be able to rely upon an offer to take a licence on RAND terms to be determined by an arbitral tribunal if the SEP owner was unwilling to agree to arbitration. That is a question that must await a case in which it arises for decision.
88. So far as the issue in the present case is concerned, I have concluded that Nokia is correct about the inherent asymmetry in disputes such as these. It is well established that SDO IP policies should be interpreted and applied so far as possible so as to avoid both hold-up by SEP owners and hold-out by implementers. To that extent, courts should attempt to ensure that there is a level playing-field between SEP owners and implementers. Nevertheless, it is not the function of the courts to attempt to redress perceived imbalances which are inherent in the (F)RAND system. Although forum shopping should not be encouraged, a SEP owner is entitled in each case to choose the

forum which it considers best suits its interests: see *Samsung v ZTE* at [73]-[74]. It follows that Nokia is entitled to make Adjustable Licence Offers to the Claimants, with the consequences discussed above, while accepting determination of RAND terms by the English courts in the *Warner Bros/Paramount* case.

89. Ground 4 traverses questions I have already considered. First, Nokia says that the judge should have held that Nokia's Adjustable Licence Offers were offers of licences on RAND terms which were capable of acceptance by the Claimants. Secondly, Nokia says that the judge should not have held that the Claimants were willing licensees if they refused the Adjustable Licence Offers. For the reasons given above I agree with both contentions.
90. Ground 5, which concerns the identity between the interim licences offered by Nokia and those sought by the Claimants apart from the mechanism for determining the final licence terms, adds nothing to the points I have already considered.

Conclusion on case management stay

91. For the reasons given above I conclude that Nokia's Adjustable Licence Offers are offers of licences on RAND terms which are capable of acceptance by the Claimants. Accordingly, Nokia has complied with its RAND obligation by making those offers. It follows that, if the Claimants refuse to accept those offers, they are not willing to take licences on the RAND terms offered by Nokia and cannot invoke the declaratory jurisdiction of the English courts to determine what terms are RAND. Accordingly, the RAND Claims have no real prospect of success. (On Nokia's case, the Claimants would also be in breach of their undertakings to enter into any licence determined by the English courts to be RAND; but it is not necessary to determine that question.)
92. I would therefore grant the case management stay sought by Nokia. Since a case management stay is a discretionary remedy, I propose that the stay be subject to the condition that Nokia agrees that, in the event that the Claimants or either of them agree to accept the Adjustable Licence Offers, (i) the statements of case on the Final RAND Licence Claims served by the parties in these proceedings stand as the statements of case in the arbitration, (ii) all documents disclosed in these proceedings as being relevant to the Final RAND Licence Claims be admitted into the arbitration, (iii) all evidence served by the parties in these proceedings on the Final RAND Licence Claims be admitted into the arbitration and (iv) the costs incurred by the parties on the Final RAND Licence Claims be costs in the arbitration. The purpose of this condition is to try to minimise wastage of the costs incurred in these proceedings. Since this condition was not the subject of argument at the hearing, the parties should have permission to file written submissions, if so advised, as to whether it should be imposed. It will also be necessary to consider the issue left open in paragraph 28 above.

Interim licence declarations (appeal grounds 12 and 13)

93. Given my conclusion on the case management stay, the interim licence declarations made by the judge must be discharged. It is therefore not necessary to consider whether, if he was correct to refuse the case management stay, the judge was correct to make the interim licence declarations.

Disposition

94. For the reasons given above I would dismiss Nokia's appeal on jurisdiction, but allow its appeal on the case management stay.

Lord Justice Zacaroli:

95. I agree.

Lord Justice Peter Jackson:

96. I also agree.