

EIP



Significant judgment on Standard Essential Patents handed down by the Court of Appeal

EIP has today secured a judgment on behalf of its client Unwired Planet, in a case which has significant international implications for all patent holders and licensees of Standard Essential Patents (SEPs).

This morning the Court of Appeal handed down its judgment in Unwired Planet v Huawei, upholding Mr Justice Birss' decision. Notably, the Court of Appeal ruled that that a global SEP portfolio owner can meet its FRAND obligations by offering a worldwide licence, and if that offer is refused, then the implementor may be subject to an injunction preventing further infringements in the UK.

In assessing this, the Court commented that global licensing is efficient and aligns with world-wide cellular standards and sales of mobile phones. The Court noted that Mr Justice Birss correctly took into account the realities of the unnecessary costs and risks of country-by-country licensing and of industry practice when ruling that global licensing was FRAND.

The Court of Appeal also held that Unwired Planet had not discriminated against Huawei, and that the FRAND obligation did not amount to a "most favoured nation" approach to licensing. Instead, a SEP holder's FRAND undertaking requires it to offer licences which reflect the proper valuation of its portfolio.

Huawei have indicated that they intend to seek permission to appeal to the Supreme Court. Permission was refused by the Court of Appeal but it remains open to Huawei to seek permission from the Supreme Court itself.

Gary Moss, Head of Litigation at EIP, said:

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“We are pleased by the outcome of the appeal. The court’s judgment confirms several important points of principle as to the appropriate scope and value of SEP licences. This provides global patent holders and licensees with a more efficient framework to help resolve SEP licensing issues.”

The EIP team comprised Gary Moss, Andrew Sharples, Angela Jack, Catherine Howell, Jack Dickerson and Owen Waugh.