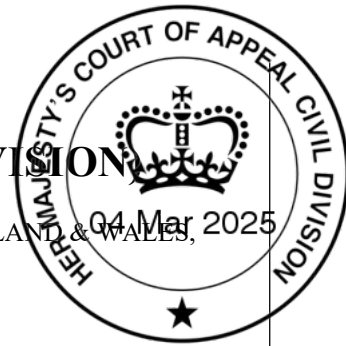




MONDAY 03 MARCH 2025



# IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES,  
INTELLECTUAL PROPERTY LIST (ChD)  
[2024] EWHC 2941 (Pat)  
MR JUSTICE RICHARDS

04 Mar 2025

CA-2024-002821

**BEFORE** LORD JUSTICE NEWNEY  
LORD JUSTICE ARNOLD  
LADY JUSTICE FALK

## REMOTE

Appeal No.

CA-2024-002821

## B E T W E E N

- (1) LENOVO GROUP LIMITED
- (2) LENOVO (UNITED STATES) INC.
- (3) LENOVO TECHNOLOGY (UNITED KINGDOM) LIMITED
- (4) MOTOROLA MOBILITY LLC
- (5) MOTOROLA MOBILITY UK LIMITED

**CLAIMANTS/APPELLANTS**

- and -

- (1) TELEFONAKTIEBOLAGET LM ERICSSON (publ)
- (2) ERICSSON LIMITED

**DEFENDANTS/RESPONDENTS**

**UPON** the FRAND trial in Action No. HP-2023-000036 (the “**E&W I Proceedings**”) being listed to be heard by the Patents Court commencing in the window from 29 April 2025 (the **FRAND Trial**);

**AND UPON** the Appellants (“**Lenovo**”) also seeking a determination of the terms and effect of the 2011 Motorola Mobility Licence in Action No. HP-2023-000041 (the “**E&W II Proceedings**”);

**AND UPON** Lenovo’s application dated 28 November 2023 for declaratory relief in respect of the terms of an interim licence to hold the ring pending the determination of FRAND terms by the Patents Court (the “**Interim Licence Application**”);

**AND UPON** the Interim Licence Application being dismissed by the judgment of Mr Justice Richards ([2024] EWHC 2941 (Pat)), as reflected in his Order dated 27 November 2024 (the “**Order**”), which Order also refused Lenovo’s application for permission to appeal;

**AND UPON** Lenovo's renewed Appeal by Appellants' Notice dated 18 December 2024;

**AND UPON** permission to appeal being granted by the Order of Lord Justice Arnold dated 8 January 2025;

**AND UPON** the Respondents ("Ericsson") filing a Respondents' Notice dated 22 January 2025;

**AND UPON** a CPR 31.22 order protecting confidentiality having been made (by consent) on 18 February 2025 at the hearing of the Appeal;

**AND UPON** hearing Andrew Lykiardopoulos KC, James Segan KC and Kathryn Pickard for Lenovo and Meredith Pickford KC, Nikolaus Grubeck and Edmund Eustace for Ericsson;

**AND UPON** Lenovo giving the following undertaking to the Court:

#### **UNDERTAKING**

Lenovo hereby undertake to the Court that they will immediately enter into the cross-licence agreement determined to be FRAND following the FRAND Trial. If the Court considers (either in the E&W I Proceedings or the E&W II Proceedings) that adjustments need to be made to that cross-licence agreement to take account of the findings of the Patents Court in the E&W II Proceedings, Lenovo will immediately enter into any such cross-licence, as adjusted by the Patents Court. The above undertaking also applies to any subsequent adjustments or amendments following any appeals, either to the Order following the FRAND Trial in the E&W I Proceedings or any Order in the E&W II Proceedings.

Further, if Ericsson gives the undertaking in Paragraph 4.2 below, Lenovo undertakes to abide by the terms of the Interim Licence as if the same were in full force and effect (including the payment provisions), pending the determination of any permission to appeal or further appeal to the Supreme Court.

#### **IT IS DECLARED THAT:**

1. Ericsson are in breach of their obligations of good faith under Clause 6.1 of the ETSI IPR Policy.

2. A willing licensor in the position of Ericsson, and in light of the undertaking given by Lenovo, would enter into the interim cross-licence with Lenovo on terms and including the sum to be paid by Lenovo by way of royalty in respect of the interim licence period as set out in Confidential Annex 1 to this Order (the “**Interim Licence**”).
3. The terms (including the sum to be paid) of the Interim Licence are subject to adjustment and amendment so as to bring the terms into line with the terms determined to be FRAND by the Patents Court after the FRAND Trial (subject also to any adjustment in light of the findings of the Patents Court in the E&W II Proceedings), and subject to any later adjustments or amendments following any appeals in the E&W I Proceedings or in the E&W II Proceedings.
4. In the event that, within 7 days of the date of this Order, Ericsson refuse either 4.1 or 4.2 below, Ericsson are in breach of their FRAND commitments under the ETSI IPR Policy and are unwilling licensors.
  - 4.1 To offer Lenovo the Interim Licence and to enter into the same with Lenovo; or
  - 4.2 Give the following undertaking to the Court on condition that Lenovo gives the reciprocal undertaking set out above:

Pending any application for permission to appeal to the Supreme Court or the determination of any such appeal, Ericsson undertake that they shall abide by the terms of the Interim Licence as if the same were in full force and effect and shall enter into the Interim Licence within 7 days of any such appeal or permission to appeal being refused or withdrawn. If any appeal to the Supreme Court is finally allowed, Ericsson shall repay any sums paid by Lenovo under their undertaking given above which the Court decides should be repaid (including interest if appropriate).

**IT IS ORDERED THAT:**

5. The Appeal is allowed.
6. The Respondents' Notice is dismissed.
7. The Order is set aside.
8. There shall be liberty to apply to the Judge hearing the FRAND Trial and/or the Judge in the E&W II Proceedings in respect of any disputes as to the requirements of paragraph 3 above.
9. Ericsson shall pay Lenovo's costs of this Appeal (including the costs of the Respondents' Notice), to be assessed on the standard basis if not agreed.
10. Ericsson shall pay Lenovo's costs of the Interim Licence Application below, to be assessed on the standard basis if not agreed.
11. Ericsson shall pay interest upon the costs provided for above at the rate of 1% above the Bank of England's base rate from the date of payment of such costs by Lenovo to their solicitors until the date of this Order, and at 8% thereafter until the date of payment by Ericsson pursuant to this Order.
12. Within 14 days of the date of this Order, Ericsson shall pay to Lenovo an interim payment of £1,050,000. Such sum being made up of £700,000 on account of Lenovo's costs below and £350,000 on account of Lenovo's costs of the Appeal.
13. Permission to appeal to the Supreme Court is refused.

**BY THE COURT**

**CONFIDENTIAL ANNEX 1**

[REDACTED]

[REDACTED]

[REDACTED]

**BY THE COURT**

\* This order was drawn by Pamela Okanyere (Associate) to whom all enquiries regarding this order should be made. When communicating with the Court please address correspondence to The Associate, Civil Appeals Office, Room E307, Royal Courts of Justice, Strand, London WC2A 2LL (DX 44456 Strand) and quote the Court of Appeal reference number. The Associate’s telephone number is 0207 947 7183 and 0207 947 7856.