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Patents

Huawei and Samsung Prevail in Latest Chapter of Unwired Planet Saga

By John Leeming, Partner, J A Kemp, London; email: jleeming@jakemp.com

In another closely watched decision regarding standard essential patents, the Patents Court in the High Court of Justice has ruled that two patents held by patent assertion entity Unwired Planet International are invalid (*Unwired Planet Limited International Ltd. v. Huawei Technologies Co., Limited*, [2016] EWHC 94 (Pat), HCJ, HP-2014-000005, 1/29/16(UK)).

It seems unlikely that an in-depth knowledge of mobile telecommunications standards was on Colin Birss' CV when he was appointed a High Court Judge in the English Patents Court in 2013 but he is certainly learning fast on the job. His recent judgment in *Unwired Planet v Huawei Technologies and Others* is the second technical trial (referred to as Trial B) in a planned series of five, along with a sixth covering issues relating to FRAND licensing, between these parties. He has also given extensive judgments in *Vringo v HTC* and *IPcom v HTC*.

All of these cases are part of a complex multinational web of patent infringement actions relating to standard-essential patents (SEPs), with operating companies including handset and infrastructure manufacturers and network operators on one side, and non-

operating companies on the other. The Patent Court in London is demonstrating its ability to deliver well-reasoned judgments and its role as an important venue in the mobile wars.

Unwired Trial B evens the score with a win for the defendants: Unwired Planet's patents were held to be obvious, although they would have been infringed had they been valid. In *Unwired Trial A* Unwired Planet's patent was held valid and essential to the standard and therefore infringed.

The defendants here were Huawei, Samsung and Google, though Google settled before the case reached trial.

The Patents.

The two patents at issue in *Unwired Trial B* were a parent and divisional relating to "plug and play" networks and originally acquired from Ericsson, like much of Unwired Planet's portfolio. The problem underlying the invention is that a base station in a cellular network needs to know what its neighbors are so that it can hand over calls to them as a user moves between cells. In 2G (GSM) and most 3G (UMTS) networks the distribution of base stations was planned in advance and each base station is given a list of its neighbors centrally. When the specifications for 4G (LTE) were being developed, an aim was to enable the network to "self-configure" or "self-optimize" so that it could respond to changes in circumstances, such as the introduction of a new base station or changes to buildings that af-

fect cell coverage. According to the invention of Unwired Planet's patents, a base station uses the phones that it is communicating with to assist in the discovery of adjacent cells and their unique identifiers. The claimed process was admitted to be implemented in 4G LTE, specifically 3GPP TS 36.300, so that if the patents were valid, infringement followed.

Obviousness.

The defendants had initially advanced different attacks on the validity of the patents based on prior art, but by the end of the trial these had narrowed to two: that the invention was obvious over a prior proposal by Qualcomm, and that the invention was obvious over the common general knowledge of a person skilled in the art. There were also attacks on clarity and sufficiency.

The Qualcomm proposal put forward the same basic idea as the patent: that the mobile should report to a base station the identities of other base stations it can communicate with. However, the Qualcomm proposal lacked some of the detail in the claim relating to when and how the phones would detect and report new neighboring cells.

Birss J held that skilled person would have considered there were only two approaches to implementation of the Qualcomm proposal, making use of no more than the common general knowledge. The different approaches made different trade-offs between resources expended and the frequency of useful information being reported, but making such trade-offs is the normal practice of the engineer. Of the two approaches to implementation of the Qualcomm proposal, one resulted in the invention of Unwired's patents. Birss J considered this enough on its own to say that the invention was obvious but went on to find that the approach leading to the invention was the more obvious of the two. Therefore, Unwired Planet's patents were invalid for lack of an inventive step. However, the attack based on common general knowledge alone failed.

A Strategic Attack.

Although the attack on Unwired's patents as lacking a sufficient description to allow the invention to be put into effect did not succeed, this tactic complimented the obviousness attack by boxing in the patent holder. The description of embodiments, common to both of Unwired's patents, is only ten short paragraphs long and

thus includes little detail. So when Unwired defended against a sufficiency objection, which is that the skilled person cannot without undue effort put the invention into effect based on that sparse description, they unavoidably undermine their defense that the invention was not obvious over the similarly sparse disclosure of the Qualcomm proposal.

One Step in a Long Fight.

It is clear that, absent a settlement, Unwired, Huawei and Samsung will be a fixture of the London legal scene for the rest of 2016 and likely into 2017. Trial A, relating to EP (UK) 2 229 744 which claimed an efficient polling system (i.e. a system for allowing a receiver to confirm whether data was received correctly) was a win for Unwired but has been appealed by both Huawei and Samsung. Trial B concerning EP (UK) 2 119 287 and EP (UK) 2 485 514 discussed above we can expect to be appealed as well.

Unwired has a considerable patent arsenal at its disposal. Still to be litigated are the standard-essential patents EP (UK) 1 105 991 and EP (UK) 1 230 818 as well as a non-essential patent EP (UK) 0 989 712. Then there is a trial relating to FRAND issues which is scheduled to last 10-13 weeks in the autumn of this year and an appeal relating to case management issues for that trial.

EP (UK) 1 105 991 relates to the encoding of data with so-called scrambling codes and the synchronization of transmitter and receiver. EP (UK) 1 230 818 relates to communicating signal strength measurements in the handover of a call from a 2G (GSM) network to a 3G (UMTS) network. Non-essential patent EP (UK) 0 989 712 relates to secure communication of data over wireless networks. This patent was not acquired from Ericsson but developed by Unwired's own engineers in its period as an operating company.

For its part, Unwired sounds ready to litigate and unapologetic about its willingness to assert its patents. In one Bloomberg article, the company's general counsel Noah Mesel reportedly said: "You can call us anything you like. We happen to be at the point in our business cycle where what's left is a patent portfolio."

In the Patents Court, Trial C is underway at the time of writing, Trial D is scheduled for early May and Trial E for early July.