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Expedited Trials in English Patent Actions – HTC v Apple (judgment of Arnold J on 19th September 2011)

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The smartphone wars appear to be continuing unabated in much of the developed world. In July 2011, Apple commenced infringement proceedings against HTC in Germany in respect of three patents (two in Munich and one in Mannheim). HTC responded in August 2011 by initiating proceedings in the English Patents Court seeking to revoke the corresponding UK patents to the patents asserted in Germany. Apple's response was to allege infringement of these patents and a fourth patent in the English Court.

At a hearing before Arnold J. on 19 September 2011, HTC sought to expedite the English proceedings.

It usually takes about a year from the issue of the Claim Form to the trial of patent proceedings of conventional length in the English Court. In relation to three of the four patents in issue, HTC sought what the judge described a "modest degree of expedition" so that the trial could be listed between the end of March and the end of April.

In the absence of any serious opposition by Apple, and having regard to the leading authority on the subject of expedition – the Court of Appeal decision in *Gore v Geox* [2008] which basically states that expedition is appropriate where there is good reason and where there would be no prejudice to either side – the Judge considered that it would be appropriate to order the trial to take place in the requested spring window.

The more interesting aspect of the application concerned the fourth patent referred to by the parties as the '859 patent. This was the subject of proceedings in the Mannheim Court. Essentially, HTC were concerned that the trial in Mannheim could take place in January or February 2012 and, because of the bifurcated German system in which validity is tried separately, there was a risk that there could be a period of time during which it was restrained by injunction from infringing the '859 patent in Germany even if it was ultimately successful in invalidating the patent in the nullity proceedings in the Federal Patent Court.

HTC considered that a decision of the English Court finding the UK designation of the '859 invalid would be of assistance to it in seeking a stay of the Mannheim proceedings. It therefore sought a trial of the English proceedings in January 2012.

Relying on dicta from Laddie J. in *RIM v Inpro* [2005], Arnold J. held that it was permissible to

consider the impact in the German Court when considering an application for expedition. However, bearing in mind all the circumstances, including the fact that the Mannheim Court had yet to fix a timetable to the trial, the desirability of having all four patents tried together and the prejudice that could be caused by forcing Apple into a trial in four months, the Judge considered that it was appropriate for the '859 to be tried with the other three patents.

This judgment shows that the English Courts are very much open to the possibility of expedition bearing in mind that "business needs to know where it stands" (in the words of Jacob LJ). However such expedition should not be at the expense of allowing both sides the ability to prepare fully for the trial. Recent judgments have also shown that if a party is seeking interim relief, it almost invariably must be able to submit to the Court that it is prepared to consent to a speedy trial.

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