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## Expedited trials in Patent Actions – a further update: ZTE v Ericsson (Judgment of Arnold J on 19th October 2011)

Brian Cordery (Bristows) · Tuesday, November 1st, 2011

The smartphone forum wars still show no sign of abating with another application for an expedited patent revocation action before the English Court (*ZTE v Ericsson* [2011] EWHC 2709 (Pat)), following closely on the heels of the *HTC v Apple* case that we reported on last month (judgment dated 19 September 2011; post dated 6 October 2011).

The facts initially appear similar but led to different results. In this case Ericsson had sued ZTE, a Chinese manufacturer of handsets, in Germany for infringement of a number of EP (DE) patents. ZTE applied to revoke the equivalent EP (UK) patents before the English Patents Court across four actions. In a previous application, Mann J had refused to grant expedition for two of the actions. The judge was unimpressed with the first factor relied on, commercial urgency, and only placed a small amount of weight on the second factor, the parallel German proceedings.

Undeterred, ZTE made another application for expedition in respect of the third action, where the equivalent EP (DE) action is due to be heard by the Mannheim Court in January 2012. The Court again applied the four factors identified by the Court of Appeal in *WL Gore & Associates v Geox* [2008] EWCA Civ 622 when considering applications for expedition, namely whether: (i) the applicant had shown good reason for expedition, (ii) expedition would interfere with the good administration of justice, (iii) expedition would cause prejudice to the other party, and (iv) there are any other special factors.

The two main factors relied on were the same factors relied on previously. Arnold J considered that he was not bound by the first judge's decision on the commercial urgency factor (the evidence was essentially the same as previously) but thought it undesirable for two judges to reach different conclusions on very similar applications and thus was not prepared to differ from Mann J's assessment (particularly as that assessment had not been challenged on appeal).

On the question of parallel proceedings in the Mannheim Court, Arnold J referred to his decision in *HTC v Apple*. Although the existence of parallel proceedings was a factor to consider, it was generally not one on which the Court would place much weight and the judge indicated that he was not aware of any case in which expedition had been ordered based on this factor alone. In this case, the judge thought that it would be impossible for the English Patents Court to render a judgment on the validity of the EP (UK) patent in time for the German hearing. In addition, one of the other patent families for which expedition had already been refused in the previous application is to be considered by the Mannheim Court at the same hearing in January 2012 and the judge could see no

reason why the case for expedition of the patent in question was stronger than for the previous application.

ZTE were also found to have delayed making the application and that expedition would cause prejudice to Ericsson, particularly where the trial of the first two actions are to be heard in June and November 2012. The application was therefore refused.

Whilst the English Patents Court has shown itself to be amenable in the past to order expedited trials where there is support for the application, particularly where interim injunctive relief is involved, the mere existence of parallel patent proceedings in another jurisdiction appear unlikely to be sufficient cause.

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