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## Lenovo v Ericsson: anti-suit injunctions “by the back door” in FRAND SEP cases

Francion Brooks (Bristows) · Thursday, May 30th, 2024

On the 23 May 2024, the English Patents Court dismissed an application by Lenovo for an interim injunction to prevent Ericsson infringing one of Lenovo’s patents pending the outcome of the UK proceedings ([2024] EWHC 1267 (Ch)). In particular, the Court found that the application failed on the basis that damages are an adequate remedy for Lenovo.

Lenovo’s application was made in the context of a long-running multi-jurisdictional dispute between the parties as to the global licensing of their respective SEP patent portfolios. As part of that dispute, Ericsson had already obtained injunctions against Lenovo in Brazil and Colombia, in respect of Lenovo’s alleged infringement of Ericsson’s patents in those jurisdictions.

Unusually, in this application, Lenovo sought an order for an interim injunction with the proviso that the injunction would not apply if Ericsson agreed to one of three alternatives. Each of these alternatives, in practice, meant that Ericsson would not seek to enforce the injunctions against Lenovo in Brazil and Colombia, or likewise seek or pursue injunctions in any other jurisdiction. The Court noted that the reason for Lenovo’s application (which Lenovo did not disguise) was nothing to do with the protection of Lenovo’s right under the EP 649 patent but instead to act as a bargaining chip for the purposes of the Brazilian and Colombian proceedings.

The judge, Bacon J, applied the usual principles for the grant of interim relief in the *American Cyanamid* case, noting that there is no precedent in the English courts for the grant of an interim injunction in relation to the alleged infringement of a SEP patent as the patentee’s loss can normally be quantified as the sum which the patentee would have earned under the FRAND licence. In reaching its decision that damages were an adequate remedy for Lenovo, the Court declined to take account of the losses which Lenovo claimed arose from the injunctions it faced in Brazil and Colombia (being two of Lenovo’s most significant markets for handsets). These losses could not, on any basis, be said to be caused by the infringement of Lenovo’s patent in the UK.

This judgment provides yet another example of the continuing wranglings between parties in SEP disputes dealing with the complications that arise in parallel proceedings in multiple jurisdictions. In this case the judge considered that the application by Lenovo was an attempt for an anti-suit injunction “by the back door”. Ericsson made the same criticism of an earlier application by Lenovo in the same proceedings to amend its pleading to add a claim for an interim licence between the parties. In that application Richards J granted the application to amend the claim but found that there was force in Ericsson’s arguments ([2024] EWHC 846 (Ch)). Indeed, he had

shortly before accepted some similar arguments in refusing an application for a declaration that a particular form of interim licence agreement would be FRAND in *Lenovo v InterDigital* ((2024] EWHC 596 (Ch)).

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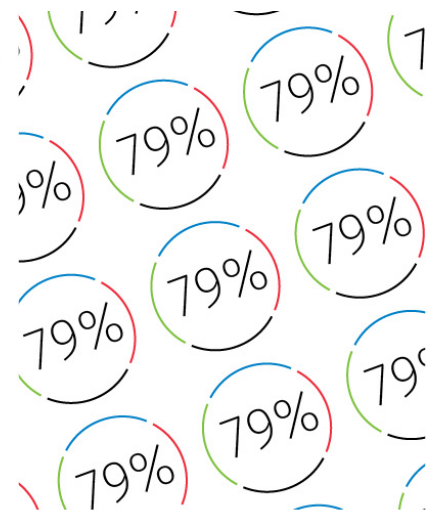
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