Claim No. HP-2025-000043
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)
PATENTS COURT

The Rolls Building
7 Rolls Buildings
Fetter Lane
London, EC4A 1NL
Wednesday, 3rd December 2025

Before:
MR. JUSTICE MEADE

- - - - - - - -

B E T W E E N:

1) AMAZON.COM, INC.
(a company incorporated in the State of Delaware, USA)
(2) AMAZON DIGITAL UK LIMITED
(3) AMAZON EUROPE CORE SARL
(a company incorporated in Luxembourg)
(4) AMAZON EU SARL
(a company incorporated in Luxembourg)
(5) AMAZON TECHNOLOGIES, INC.
(a company incorporated in the State of Nevada, USA)

Claimants

- and -

(1) INTERDIGITAL VC HOLDINGS, INC.
(a company incorporated in the State of Delaware, USA)
(2) INTERDIGITAL, INC.
(a company incorporated in the State of Pennsylvania, USA)
(3) INTERDIGITAL MADISON PATENT HOLDINGS SAS
(a company incorporated in France)
(4) INTERDIGITAL PATENT HOLDINGS, INC.
(a company incorporated in the State of Delaware, USA)
(5) INTERDIGITAL CE PATENT HOLDINGS SAS
(a company incorporated in France)
(6) THOMSON LICENSING SAS
(a company incorporated in France)
(7) VANTIVA SA
(a company incorporated in France)

Defendants

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Transcript of the Stenograph Notes
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MR. ANDREW LYKIARDOPOULOS KC and MS. LIGIA OSEPCIU (instructed by Hogan Lovells International LLP) for the Claimants
MR. MICHAEL BLOCH KC and MR. THOMAS JONES (instructed by Bird & Bird LLP) for the First to Fifth Defendants

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PROCEEDINGS
(DAY ONE)

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BLOCH KC

MR. JUSTICE MEADE: Yes, Mr. Bloch?
MR. BLOCH: May it please my Lord. I appear with Mr. Jones, on behalf of the first to the fifth defendants. My learned friends, Mr. Lykiardopoulos KC and Ms. Osepciu appear on behalf of the claimants.
MR. JUSTICE MEADE: Yes.
MR. BLOCH: My Lord is, of course, familiar with this case and should have received, along with a very substantial amount of paper in hardcopy or electronic form, skeletons from both sides.
MR. JUSTICE MEADE: Yes; thank you.
MR. BLOCH: It was observed before that we appear to be, according to the screen, on mute. I do not know if that is actually working or not.
MR. JUSTICE MEADE: Usher?
THE USHER: We are not muted, but the TV says it is.
MR. JUSTICE MEADE: Somebody will send a message if the people watching and listening cannot hear and then we will sort it out; okay? Yes?
MR. BLOCH: My Lord will appreciate that this is InterDigital's application to set aside service.
MR. JUSTICE MEADE: Yes.
MR. BLOCH: By way of introduction, as we see it, this is a

BLOCH KC

dispute between two US-based enterprises concerning a contract governed by Swiss law relating to global patent licensing. The meaning and effect of the obligation under Swiss law is, of course, in dispute.
MR. JUSTICE MEADE: Yes.
MR. BLOCH: InterDigital contends it is an obligation to negotiate in good faith.
MR. JUSTICE MEADE: Yes.
MR. BLOCH: Amazon contends it is an obligation to offer a licence, the terms of which may be determined by a court. I mention that at the outset because, whilst it is, of course, a critical dispute and will need to be resolved in due course by whatever court or tribunal does resolve the overall dispute, it does not provide a basis on which to determine which tribunal or court is the proper place to resolve this overall dispute.
MR. JUSTICE MEADE: What does not? The fact that it is under Swiss law or what it means?
MR. BLOCH: What it means.
MR. JUSTICE MEADE: Yes; okay.
MR. BLOCH: What one is seeking, of course, for the purposes of jurisdiction, is a neutral characterisation of the dispute. The English court has developed a body of case-law in relation to the ETSI undertaking, which treats the French law ETSI

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1 BLOCH KC
2 undertaking as an obligation to offer a licence on terms which
3 may be determined by court. Amazon, apparently, assumes that
4 the English court will take a similar approach in relation to
5 the Swiss law ITU-T undertaking.
6 MR. JUSTICE MEADE: Right.
7 MR. BLOCH: That, of course, is just an assumption. In the Nokia
8 v OnePlus case, my Lord did hold, in relation to the ETSI
9 undertaking, that the court could determine what could be
10 FRAND to offer and to put it the way my Lord put it, that is
11 what it would be to hit the nail on the head. The relevant
12 passage, if it is helpful to go to your judgment ----
13 MR. JUSTICE MEADE: You mean rather than within the FRAND range?
14 MR. BLOCH: Yes, the phrase "hit the nail on the head" I take from
15 the judgment.
16 MR. JUSTICE MEADE: Yes, let us look at it, by all means.
17 MR. BLOCH: That is JA3, tab 2, page 57, paragraph ---
18 MR. JUSTICE MEADE: Also to say, there is absolutely no chance we
19 are going to get through this today and I do not mind how much
20 of tomorrow we use. We must finish tomorrow, so take your
21 time within those constraints.
22 MR. BLOCH: My Lord, I do not anticipate that should be an issue.
23 MR. JUSTICE MEADE: No, no, it is just in case you felt you were
24 under some pressure, both of you, to get finished today.
25 MR. BLOCH: I am grateful, my Lord.

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1 BLOCH KC
2 MR. JUSTICE MEADE: That is not going to happen, and if we occupy
3 even all of tomorrow, that is fine too. All right.
4 MR. BLOCH: Page 57 of JA.3, paragraph 260: "The court applies
5 the standard of whether the offer was FRAND or not. Because it
6 is almost impossible to hit the nail on the head, it is
7 usually found that the offer was not FRAND, but the court is
8 able to say what would be FRAND."
9 MR. JUSTICE MEADE: Yes.
10 MR. BLOCH: Therefore, on one view, the court is able to say what
11 it would be to hit the nail on the head, and on the
12 alternative view, the SEP-owner discharges its obligation to
13 ITU-T by making a bona fide RAND offer and there is, as it
14 were, no objectively determinable nail to hit at all.
15 MR. JUSTICE MEADE: Okay. Yes.
16 MR. BLOCH: The point that there may be no nail to hit was not one
17 that was argued in the Unwired Planet case.
18 MR. JUSTICE MEADE: No. That is because -- you mean by the time
19 of the Supreme Court?
20 MR. BLOCH: As I understand it, even before the Supreme Court.
21 The issue there was, at least primarily, concerned with the
22 scope of the licence the court would determine.
23 MR. JUSTICE MEADE: Yes.
24 MR. BLOCH: Rather than whether it could determine any licence at
25 all.

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1 BLOCH KC
2 MR. JUSTICE MEADE: Right. I think that is not true at trial, but
3 it was true by the time it had reached the Court of Appeal,
4 possibly, because the Court of Appeal commented on Birss J's
5 decision about whether there was only one ----
6 MR. BLOCH: Yes, and of course that was dealt with in the Court of
7 Appeal.
8 MR. JUSTICE MEADE: Yes.
9 MR. BLOCH: However, that, my Lord, perhaps dealt with a slightly
10 separate question.
11 MR. JUSTICE MEADE: Yes.
12 MR. BLOCH: As to whether where one does determine a rate, it will
13 fall within a range and where there is a range of determinable
14 rates, which one the SEP-owner is obliged to offer.
15 MR. JUSTICE MEADE: Yes.
16 MR. BLOCH: There may be a more fundamental distinction to be made
17 between the focus on the obligations and obligation of good
18 faith, where you are simply focusing on the conduct of the
19 party and the situation in which the court, for whatever
20 purpose, is saying this is the rate or this is the bounds of
21 the rate within which one can define FRAND.
22 MR. JUSTICE MEADE: Yes. I am not quite sure where this is going
23 exactly, but in the later cases, the ones where the court has
24 actually set a rate, InterDigital v Lenovo, Optis v Apple and
25 so on, this has not been resolved because both sides in all

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1 BLOCH KC
2 those cases, I think, have said, "Decide the number". I do
3 not think anybody has argued out, either patentee, "Let us
4 find out a range and then I am going to have the top number".
5 The patentee has not tried to have that argument, I do not
6 think, in the later cases.
7 MR. BLOCH: My Lord is, I believe, correct.
8 MR. JUSTICE MEADE: Yes.
9 MR. BLOCH: No one has argued, "Let us establish a range" and, as
10 I read the cases, the focus is on what the rate should be.
11 The issues in relation to conduct, which would go to unwilling
12 licensee or unwilling licensor, have been subsidiary ones and
13 it has been assumed that if there is a right to a licence or a
14 right to an injunction, subject to it being framed as a FRAND
15 injunction, the court is in a position to say what the terms
16 of the licence will be.
17 MR. JUSTICE MEADE: Yes.
18 MR. BLOCH: The reason I emphasise that at this stage is because,
19 as one looks at the way in which the argument between the
20 parties is framed, a principal issue is whether or not there
21 will be a court determination in available fora. We say that
22 it is important when considering that question to bear in mind
23 that there may be a prior question as to whether or not, under
24 the terms of the ITU-T undertaking, that is an appropriate
25 thing to do at all. What we say there is that when one looks

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1 BLOCH KC
2 at, for example, the approach taken in some civil law
3 countries, one sees that they do not see the undertaking in
4 terms that leads to the court's fixing of a rate, but see the
5 undertaking as akin to an obligation of good faith, which is
6 to be scrutinised as an obligation of good faith, having
7 regard to the offers that have been made and the
8 appropriateness of those offers.
9 My Lord, of course, will be familiar with how radically
10 different an approach that can be and, in particular, I could
11 cite, my Lord I think already has it, the recent Munich
12 judgment in the related proceedings between these parties.
13 MR. JUSTICE MEADE: Yes.
14 MR. BLOCH: If it is just helpful to indicate what I am referring
15 to there ----
16 MR. JUSTICE MEADE: Yes.
17 MR. BLOCH: --- one finds it in what is I think described as the
18 Munich bundle.
19 MR. JUSTICE MEADE: Right.
20 MR. BLOCH: Behind tab 14, which should be the last tab in the
21 bundle, unless something has been added over night.
22 MR. JUSTICE MEADE: Slow down. Yes, Munich bundle; yes.
23 MR. BLOCH: Just by example, the way in which the matter is put in
24 that judgment, which is primarily concerned with interim
25 licences, the practice in relation to that.

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1 BLOCH KC
2 MR. JUSTICE MEADE: Yes.
3 MR. BLOCH: But also it explains what is seen as fundamental to
4 the European approach to ITU-T.
5 MR. JUSTICE MEADE: Yes.
6 MR. BLOCH: A relevant passage would be the last two paragraphs on
7 page 17.
8 MR. JUSTICE MEADE: Right. Let me just have a look at that, then.
9 I received this in the course of the other hearing the other
10 day and I skimmed it then and I have not had time to return to
11 read it since, so okay.
12 MR. BLOCH: My Lord ----
13 MR. JUSTICE MEADE: The second part of (bb) ----
14 MR. BLOCH: Just beginning: "With regard to", to the bottom of
15 the page.
16 MR. JUSTICE MEADE: (Pause for reading) Right: "With regard" and
17 then: "In the overall assessment"?
18 MR. BLOCH: My Lord, yes, it is a quite different assessment and,
19 in due course, we might also go to the earlier judgment of the
20 UPC, to emphasise the focus on what one might call process and
21 the role of litigation within that process.
22 MR. JUSTICE MEADE: Right.
23 MR. BLOCH: My Lord, for present purposes ----
24 MR. JUSTICE MEADE: Mr. Bloch, as I understand it, I had not
25 understood previously really, we will call it the European

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1 BLOCH KC
2 approach, right, it is not all of Europe, it is Germany, plus
3 the UPC, the French have not done, it is Germany plus the UPC,
4 but we will call it European, they place, I can accept,
5 greater focus on conduct.
6 MR. BLOCH: Yes.
7 MR. JUSTICE MEADE: However, correct me if I am wrong, they have
8 not said, "Conduct is the only question, who has behaved
9 better and the winner of that is injunction, yes or no". What
10 they have decided is that the implementer loses the right to a
11 FRAND licence if their conduct renders them unwilling. If you
12 are a willing licensee, you might be able to get a rate set, I
13 think that is the consequence of the Panasonic decision of the
14 UPC. So it is not that it is just a straight conduct and
15 nothing else, it is just that you have to get, if you are the
16 implementer, you have to get through the conduct test before
17 you can have a rate set or before the court will engage with
18 what FRAND actually is. The court looks at whether the
19 patentee has gone obviously outside the FRAND corridor as part
20 of conduct, but it is not that the courts will not decide a
21 rate, it is just that conduct comes first. That is my
22 understanding.
23 MR. BLOCH: My Lord, it is no part of our case that the court
24 cannot in any circumstances decide a rate.
25 MR. JUSTICE MEADE: Right.

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1 BLOCH KC
2 MR. BLOCH: It is clear, however, that the circumstances in which
3 it might decide a rate are as a result of the way in which it
4 approaches the obligation, both as a matter of contract and as
5 a matter of competition law, much more limited than they are
6 according to the practice in this jurisdiction. It is in the
7 first instance, as my Lord rightly says, they are concerned
8 while whether or not the implementer has acted in a way which
9 would entitle it to receive an offer from the patentee, and
10 whether the conduct of the patentee is such that in the event
11 that the implementer declines to accept such an offer, it
12 would be entitled to injunctive relief.
13 MR. JUSTICE MEADE: Okay. Fine. (Alarm sounding) Just give it a
14 second. Let us carry on. I am sure it will resume if there
15 is in fact an alarm. It stopped halfway through, so we will
16 see.
17 I have that, Mr. Bloch. In fact, when you say as a
18 matter of contract and as a matter of competition law, I am
19 not sure that is right because many of those decisions have
20 been made without reference to contract law and that is part
21 of the way that the UK court sees it differently, but that may
22 not cut across your ----
23 MR. BLOCH: My Lord, respectfully, I am not sure it is right. It
24 is not entirely clear how we would analyse those cases and to
25 what extent the focus is on competition law with the

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1 BLOCH KC
2 contractual arrangements being, as it were, part of the
3 context for assessing them, or to what extent the focus is
4 more directly on the contract.
5 However, for present purposes, that may not matter.
6 What we would submit is that there is a substantial issue as
7 to the proper interpretation of the ITU-T obligation and in
8 relation to FRAND/RAND undertakings more generally. Different
9 courts in different jurisdictions are approaching them
10 differently. It may be that there will be a reconciliation or
11 harmonisation and that is, of course, desirable, but so long
12 as there are differences, (1) there is an obvious danger that
13 parties will forum-shop, seeking to have actions commenced in
14 the jurisdiction which they say will best-advantage them, and
15 (2) there is, we would submit, a need for an authoritative
16 determination, in a sense a determination which will assist
17 both the courts and the industry to come to a consensus as to
18 how these undertakings are to be analysed.
19 MR. JUSTICE MEADE: Yes. I can see why this is important to your
20 submissions, Mr. Bloch. One thing I think you are saying is
21 that it cannot be guaranteed in another court that a rate will
22 be set. It might not be.
23 MR. BLOCH: Yes.
24 MR. JUSTICE MEADE: That is because, given the Continental
25 approach, Amazon's conduct might disqualify it from getting a

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1 BLOCH KC
2 rate and being entitled to a licence, but you are not saying I
3 can decide whether that is right or wrong, it is just
4 arguable.
5 MR. BLOCH: Indeed. It is quite possible one would not get a rate
6 determined in another jurisdiction, because it would take the
7 view that is not the appropriate way to proceed. It must also
8 be quite possible, since the matter has not been decided in
9 this jurisdiction, that one would have the same result,
10 because we will be, if we remain in this jurisdiction, seeking
11 to persuade my Lord, at least in relation to the ITU-T
12 undertaking, the European, as it were, approach is the correct
13 one.
14 MR. JUSTICE MEADE: The European -- what is the European approach
15 in that context?
16 MR. BLOCH: I was going back to the way my Lord characterised it.
17 One focuses on the process, so that the obligation of the
18 patentee it is to make a bona fide offer. If the patentee has
19 made a bona fide offer, then it has discharged its undertaking
20 and, in the event that the offer is not taken up, may assert
21 its intellectual property rights.
22 MR. JUSTICE MEADE: Right. Okay. You will need to show me if the
23 European courts have decided that because I do not think they
24 have said -- it may not matter, but I do not think they have
25 said that the ETSI obligation, contractual obligation, is only

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1 BLOCH KC
2 to make a non-risible offer. I do not think they have said
3 that.
4 MR. BLOCH: They certainly have not said that ----
5 MR. JUSTICE MEADE: It has not reached that stage, Mr. Bloch,
6 because they have done Huawei v ZTE, they have said, "Here is
7 the competition law, Huawei v ZTE. You, the implementer, have
8 not complied. Injunction". Therefore, I appreciate you say
9 there are two schools of thought. It is either, is it an
10 obligation just to negotiate in good faith or is it an
11 obligation to make an offer which actually is FRAND.
12 I appreciate you say that there are two positions that
13 can be taken and it is arguable. I do not think Amazon are
14 saying it is not arguable, but if you are saying, if it
15 matters to your submissions that the European Courts have
16 looked at the contractual content of the ETSI undertaking and
17 concluded that it is only an obligation to negotiate in good
18 faith, I do not think that is correct. Have a think about
19 that ----
20 MR. BLOCH: My Lord, I think I can answer ----
21 MR. JUSTICE MEADE: I think one of the things, one of the big
22 issues is, is it just competition law, is it competition law
23 plus contract law or is it just contract law and a landing
24 place has not been reached across Europe on that.
25 MR. BLOCH: My Lord, it is not my objective at this hearing to

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1 BLOCH KC
2 satisfy my Lord as to what the correct approach is ----
3 MR. JUSTICE MEADE: Okay.
4 MR. BLOCH: ---- or to attempt a definitive exposition of the way
5 in which the German court, the UPC court or any other
6 European Courts may approach this. For our purposes, we would
7 submit, it is sufficient that there are some very real issues
8 here.
9 MR. JUSTICE MEADE: Okay.
10 MR. BLOCH: They are creating a degree of conflict between
11 jurisdictions as well as uncertainty in the market and it is
12 desirable that they be resolved authoritatively. At the same
13 time, whilst one can see that parties are, assuming that you
14 will get particular outcomes or maybe assuming that you will
15 get particular outcomes in particular courts, it is going to
16 be open to the parties to argue their case as to the
17 construction of the ITU-T undertaking, both in this court if
18 this action proceeds or in any other. Therefore we will be
19 arguing that this court should take the approach that we,
20 rightly or wrongly, ascribe at a high level to the German and
21 UPC approach.
22 MR. JUSTICE MEADE: Okay. Right.
23 MR. BLOCH: But, for present purposes, the emphasis is on the need
24 for an authoritative determination and ----
25 MR. JUSTICE MEADE: Of what the ITU obligation means and the

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1 BLOCH KC
2 correct approach and balance as between competition law and
3 contract law?
4 MR. BLOCH: My Lord, first and foremost, the meaning and effect of
5 the ITU-T obligation.
6 MR. JUSTICE MEADE: Yes.
7 MR. BLOCH: In relation to that, as my Lord appreciates, we say
8 that there is only one court that can authoritatively
9 determine that matter as a matter of law, and that is the
10 Swiss court. The only appellate court qualified to deal with
11 it as a matter of their law will be the Swiss courts. Before
12 the English court, the matter will be dealt with as a matter
13 of fact and consequently the determination of the issue will
14 not give rise to precedent in the way that a decision on
15 English law would do because it is not a fact like which field
16 the cow is in, the MCC v Bishop case, issues there. But, none
17 the less, it is a fact and if an authoritative determination
18 is to be obtained, we would say it must have, must either be
19 in the Swiss courts or, at least there must be a fun
20 authoritative Swiss legal component to its determination.
21 That, of course, I put that way because we are arguing, first
22 and foremost, that the appropriate forum in this case is an
23 arbitration and then, in the event that the court is not with
24 us on that, that it should either be in the Swiss courts or
25 the home court of the parties which would be in the USA and,

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1 BLOCH KC
2 in particular, Delaware.
3 MR. JUSTICE MEADE: Yes.
4 MR. BLOCH: My Lord, just introducing issues to which we will need
5 to return in due course, I should also mention InterDigital's
6 undertaking. It has offered an undertaking to ensure that the
7 contractual issue between the parties can be pursued without
8 distraction from any patent issues. Of course it has its
9 reasons to do that, but we say that that is to be taken
10 seriously.
11 MR. JUSTICE MEADE: Yes.
12 MR. BLOCH: It is in a form which we believe addresses any
13 reasonable concerns that Amazon may have, in Mr. Vary's third
14 witness statement, which is ----
15 MR. JUSTICE MEADE: Yes, I tracked that down and read it
16 yesterday, Mr. Bloch. We can look at it now or whenever it
17 fits into your submissions, but I am aware it has been updated
18 and I have read the latest one.
19 MR. BLOCH: If it is convenient, my Lord, we can look at it now.
20 MR. JUSTICE MEADE: Look at it when it suits you. It is in -- I
21 have it flagged.
22 MR. BLOCH: It is D.1, tab 11, page 8.
23 MR. JUSTICE MEADE: Yes; exactly.
24 MR. BLOCH: My Lord has read it recently, so I am not going to
25 read it out or invite my Lord to read it again.

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1 BLOCH KC
2 MR. JUSTICE MEADE: Right.
3 MR. BLOCH: But, it may be helpful to have it there so that if
4 what I am about to say in characterising it appears to raise
5 any issues, we can look at the wording.
6 MR. JUSTICE MEADE: Yes.
7 MR. BLOCH: It is an offer which means that there would be no --
8 that the relevant patents would not be pursued to obtain
9 injunctive relief. But it goes further than that. It also
10 covers any claim to sue for damages on those patents and it is
11 an undertaking which, in this form, would continue for the
12 pendency of any proceedings elsewhere.
13 Amazon, as we understand it, contends that the ITU-T
14 undertaking is not satisfied by this offer and that it has an
15 entitlement to a licence in respect of those patents, that is
16 the relevant UK patents, even if there is no risk that it will
17 be sued, either for an injunction or for damages.
18 My Lord, that is a matter that may need to be decided in
19 due course. What we would emphasise, however, is that it is a
20 nakedly contractual issue whether or not, as a matter of
21 contract, they are entitled to that. It does not, in any way,
22 detract from the fact that there is no threat of those patents
23 being the basis for a claim, either for an injunction or for
24 damages, at any time whilst the issues between the parties in
25 relation to the meaning and effect of the ITU-T undertaking

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1 BLOCH KC
2 are resolved, wherever they may be. We would say that that
3 objection does not detract from what the effect of the
4 undertaking is; it simply identifies another contractual issue
5 between the parties.
6 The second respect in which InterDigital has sought to
7 facilitate what we contend would be the proper way of
8 resolving this dispute is by its arbitration offer.
9 MR. JUSTICE MEADE: Yes.
10 MR. BLOCH: And we can look at that in a bit more detail later,
11 perhaps. That is also dealt with in Vary 3. On this
12 occasion, it is paragraph 29 which is behind tab 10, at page
13 10 of the bundle. I do not, unless there is something you
14 want me to deal with at this stage, intend to say more about
15 it now.
16 MR. JUSTICE MEADE: No, no, when it suits you; yes.
17 MR. BLOCH: Third, InterDigital has committed to submit to the
18 jurisdiction of the Swiss courts or the Delaware courts and
19 that is dealt with, again, by Mr. Vary, in Vary 3, at
20 paragraph 16, on page 7, behind the same tab 11. There is
21 nothing in any way ambiguous about this. The fact that
22 InterDigital has not started proceedings does not in any way
23 undermine the significance of the commitment. A party, when
24 seeking to set aside service, is not obliged to start
25 proceedings anywhere.

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1 BLOCH KC
2 There is a suggestion in Amazon's skeleton argument, a
3 repeated suggestion, that it should somehow be entitled to
4 bank the timing advantage of starting the proceedings, as it
5 has done in this jurisdiction. I do not think one needs to go
6 to the references ----
7 MR. JUSTICE MEADE: I understand what you are saying.
8 MR. BLOCH: ---- but it is paragraph 47 and 140 of their skeleton
9 argument.
10 MR. JUSTICE MEADE: Yes.
11 MR. BLOCH: InterDigital, of course, considers that Amazon has
12 jumped the gun commencing these proceedings. I think my Lord
13 has already had occasion to review Stephens 1 and the
14 confidential matter dealt with there.
15 MR. JUSTICE MEADE: Yes.
16 MR. BLOCH: My Lord will appreciate from that, that InterDigital
17 takes the position that Amazon should have been continuing to
18 negotiate. All we say at this stage about timing is that, for
19 the purposes of this application again, one cannot ask the
20 court do decide who is right: did they jump the gun or were
21 they entitled to proceed here? In deciding the forum issue,
22 one needs to take a neutral position as to that.
23 Fourth, when going through the commitments that
24 InterDigital has made, there is the commitment to comply with
25 any determination made in any alternative forum. That was

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1 BLOCH KC
2 again in Vary 3, at paragraph 16, on page 7, behind tab 11.
3 MR. JUSTICE MEADE: Sorry, I am not quite sure I do know exactly
4 what that means. Hold on. Let me just have a look. (Pause)
5 MR. BLOCH: I should perhaps have taken you to that before putting
6 the bundle away. It is at tab 11, page 7, and it states ----
7 MR. JUSTICE MEADE: I am with you now; sorry.
8 MR. BLOCH: ---- "If Amazon were to bring the Contractual and
9 Licence Determination Claims in either of these jurisdictions"
10 -- which is Delaware or Switzerland -- "InterDigital would
11 accept and submit to the jurisdiction, that is, InterDigital
12 would consent to either the Delaware or the Swiss Courts
13 hearing the claim. InterDigital would further commit to
14 complying with any orders or outcomes that were made in those
15 proceedings."
16 MR. JUSTICE MEADE: Right.
17 MR. BLOCH: It is that last point that I am focusing on now.
18 Amazon says this commitment is inadequate as it does not
19 include a commitment that the court should determine the terms
20 of a licence.
21 MR. JUSTICE MEADE: Yes.
22 MR. BLOCH: But, we say, why should InterDigital be required to
23 concede that a court should determine the terms of a licence
24 when there is a seriously arguable case that that is not the
25 way in which it should proceed as a matter of Swiss law.

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1 BLOCH KC
2 MR. JUSTICE MEADE: Yes.
3 MR. BLOCH: Far from being inadequate, we would submit that the
4 InterDigital commitment, if that goes further than it needs
5 to, it permits InterDigital to offer Amazon a licence on any
6 terms that the court determines that InterDigital should do
7 so. So, it renders, in effect, a declaration by the court
8 specifically enforceable, even if specific enforcement is
9 unavailable as a matter of Swiss law. There is a positive
10 advantage by that concession that InterDigital is offering
11 Amazon there.
12 MR. JUSTICE MEADE: Where does it say that?
13 MR. BLOCH: In saying it would abide by any outcome, my Lord.
14 MR. JUSTICE MEADE: If the outcome is the Swiss court orders -- I
15 do not really understand this, because I cannot imagine a
16 company like InterDigital would not comply with an order or
17 outcome. But you are saying if the Swiss court determines
18 what FRAND terms would be, but finds that Amazon is not
19 entitled to specific performance, InterDigital will none the
20 less grant that licence?
21 MR. BLOCH: My Lord, correct.
22 MR. JUSTICE MEADE: But that is not what this says. That might be
23 your instructions, but that does not seem to me to be what
24 paragraph 16 says.
25 MR. BLOCH: It is certainly my instructions, my Lord, so I can

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1 BLOCH KC
2 clarify.
3 MR. JUSTICE MEADE: Right.
4 MR. BLOCH: The point that we make there is that, it takes off the
5 table certain issues as to what the powers of different courts
6 might be in relation to specific enforcement, but it goes
7 further because it also takes off the table as far as those
8 jurisdictions are concerned, a point which we reserve in the
9 event that these proceedings continue in this jurisdiction,
10 regarding specific performance.
11 MR. JUSTICE MEADE: Yes. In this jurisdiction you will say that
12 specific performance is not available and you will stick by
13 that, but whereas in Switzerland, you will not?
14 MR. BLOCH: I would not put it quite like that. In both cases, we
15 may contend that specific performance is not available, but
16 that is a separate issue as to whether or not we would, none
17 the less, commit to grant a licence in the terms of
18 any declarations that this court ----
19 MR. JUSTICE MEADE: In this court it would be a point of only
20 academic interest or of future interest, because you would
21 agree to specific performance, even if the Swiss court held
22 that was not available.
23 MR. BLOCH: My Lord, yes.
24 MR. JUSTICE MEADE: All right.
25 MR. BLOCH: It may be of academic interest ----

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1 BLOCH KC
2 MR. JUSTICE MEADE: It would be of interest to future cases, but
3 it would not be of importance to this case in Switzerland.
4 MR. BLOCH: It would not be of importance to this case in
5 Switzerland, that is correct.
6 MR. JUSTICE MEADE: Right. Against a different streaming
7 defendant, you might not make the same concession.
8 MR. BLOCH: My Lord, it is not a question of necessarily different
9 defendants. It could be in different circumstances before
10 different courts. The position is simply reserved as is
11 proper in circumstances in which ex hypothesi for those
12 purposes, specific performance may not be available.
13 MR. JUSTICE MEADE: Okay, all right. Thank you. This is very,
14 very helpful, Mr. Bloch, because one of the things that Amazon
15 said in their skeleton was that InterDigital had avoided
16 saying that rate-setting was available, have avoided saying
17 whether it would agree that rate-setting would be done in
18 Switzerland, Delaware or, I think, arbitration. Your position
19 is now clear: InterDigital reserves the right to say that it
20 ought not to be available.
21 MR. BLOCH: My Lord, yes and no. InterDigital's position is that
22 it is available in all those jurisdictions in the event that
23 they determine the meaning and effect of the ITU-T undertaking
24 in a way which renders that the correct thing to do.
25 MR. JUSTICE MEADE: Right.

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1 BLOCH KC
2 MR. BLOCH: What we are not doing is conceding that is the correct
3 thing to do. We are reserving the right to argue that issue
4 in those jurisdictions and, of course, we are also reserving
5 the right to argue that in this jurisdiction too.
6 MR. JUSTICE MEADE: I have it; yes.
7 MR. BLOCH: We say that what is put against us is not really a
8 jurisdiction point, it is a demand that we abandon a
9 legitimate defence as a condition of proceeding in one or
10 other of the jurisdictions which we ----
11 MR. JUSTICE MEADE: I have it. I think Amazon's point was a fair
12 one that your evidence had steered clear of saying one way or
13 another, but your submission is very clear.
14 MR. BLOCH: I am grateful, my Lord.
15 Just to get one other thing out of the way, Amazon has
16 spent a little time in its skeleton dealing with the fact that
17 InterDigital have started proceedings in other jurisdictions
18 and I think it is, in particular, paragraph 34, on page 10.
19 Our position is that InterDigital is entitled to start such
20 proceedings. The assertion of patent rights in the course of
21 negotiations is a feature of the RAND process as we contend it
22 to be and, of course, that is also, we say, part of the
23 understanding of the intellectual property rights as
24 characterised by the UPC. In particular, I think I have taken
25 you to this passage in a different context, paragraph 12 of

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1 BLOCH KC
2 the decision of the UPC, which is dealing with the same issue
3 as the Munich judgment. I do not know if it is desirable to
4 go to that, but just for your notes, it is in the UPC bundle,
5 behind tab 2, at page 7.
6 MR. JUSTICE MEADE: I think that one might be upstairs, actually.
7 I can get it at the break. Which part was it?
8 MR. BLOCH: I was referring my Lord to paragraph 12 on page 7.
9 My Lord has seen it before ----
10 MR. JUSTICE MEADE: Tell me what it says.
11 MR. BLOCH: It says: "The application is also well-founded. The
12 applicants are entitled to assert their patent rights in legal
13 proceedings in this forum. This also includes enforcement of
14 a claim for injunctive relief. This claim is inherent in the
15 asserted patent because in addition to its substantive
16 content, the patent also has inherent procedural
17 enforceability."
18 MR. JUSTICE MEADE: Right.
19 MR. BLOCH: It is that aspect of the matter which we have
20 previously emphasised.
21 What we are saying for present purposes, it is always
22 tempting, if counsel think that the court will be hostile to
23 proceedings that have been taken elsewhere, to spend a little
24 bit of time on it in the skeleton, but it is something to
25 which we are at least seriously arguably entitled to have done

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1 BLOCH KC
2 and should not figure in any calculation as to which
3 jurisdiction is the appropriate one to take forward this
4 dispute.
5 MR. JUSTICE MEADE: I understand the submission. It is factually
6 correct that there is no -- you have not asked for a rate to
7 be assessed in any of the proceedings that have been started.
8 MR. BLOCH: My Lord, I believe that is correct; yes.
9 MR. JUSTICE MEADE: Including you have not done it in the UPC,
10 where it may very well be available.
11 MR. BLOCH: What my Lord says is correct; there is no extant
12 application for that.
13 MR. JUSTICE MEADE: No.
14 MR. BLOCH: But, of course, that is consistent with the
15 construction of the obligation that we state and does not
16 preclude Amazon from taking such steps in that jurisdiction or
17 any other if it believes that on its construction it is
18 entitled to.
19 MR. JUSTICE MEADE: Yes, and I think the UPC attitude may well be,
20 it is yet to be determined formally, but their attitude may
21 well be, "We can do it, but it is up to the defendant to raise
22 that".
23 MR. BLOCH: Exactly.
24 MR. JUSTICE MEADE: Yes.
25 MR. BLOCH: I am just told, for clarity, that the patents at issue

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1 BLOCH KC
2 in the UPC are not SEPs.
3 MR. JUSTICE MEADE: Okay. I do not have a sort of feel of
4 that. That is a point that Amazon make generically in the
5 paragraphs you just showed me, actually.
6 MR. BLOCH: My Lord, yes. Of course, it is a contractual issue as
7 to how significant that may be, because of course Amazon also
8 says that whilst they are not SEPs, it is entitled to a
9 licence to them by virtue of what it is entitled to in
10 relation to the SEPs themselves.
11 MR. JUSTICE MEADE: Yes.
12 MR. BLOCH: The next ----
13 MR. JUSTICE MEADE: Are they pure implementation patents or are
14 they encoding patents?
15 MR. BLOCH: I will need some assistance, as will those beside me.
16 MR. JUSTICE MEADE: Okay.
17 MR. BLOCH: My Lord, the next point I wanted to address was how
18 this fits in with the approach taken in the Unwired Planet
19 case and the cases that have followed it. That, of course,
20 concerned the ETSI undertaking.
21 There is no final decision of the English court of the
22 meaning and effect of the ITU-T undertaking and, as we have
23 observed, there is no case, in fact, at least as we read even
24 the judgment of first instance of Birss J (as he then was) in
25 Unwired Planet, dealing with the arguments that we are seeking

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1 BLOCH KC
2 to raise in relation to the ITU-T undertaking as regards
3 process. What there is, however, is a passage from the
4 Conversant case, which we say is instructive when considering
5 the proper way in which to characterise those cases which were
6 addressed by the Supreme Court in the Unwired Planet decision.
7 The passage I want to take you to is in the judgment of
8 Floyd LJ. It is in the Joint Authorities bundle 2, behind tab
9 10, at page 34. The relevant paragraphs are paragraphs
10 101-104, about five lines down in paragraph 104. I would
11 invite you just to remind yourself of those passages. I am
12 sure my Lord is familiar with them.
13 MR. JUSTICE MEADE: Yes, I looked at this yesterday, but what is
14 the point you want from it?
15 MR. BLOCH: What we say is that in that judgment, Floyd LJ
16 identified the salient features of that case and of the kind
17 of case which might reasonably be characterised as a global
18 case. The salient features of the Conversant case were
19 respects in which the case required a resolution of patent
20 issues. If one looks at paragraph 101 on page 34, you see the
21 focus there is on the difference between proceeding in the UK
22 and proceeding in China. There would be different claims,
23 different prior art, different issues of essentiality,
24 different acts of infringement, and the observation is: "I
25 find it impossible to view such a dispute as being the same

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1 BLOCH KC
2 dispute as that which would arise in the English court."
3 The Conversant case, with those features, is contrasted
4 with the case that Conversant was seeking to present; a case
5 without those features. We say it is implicit in the
6 reasoning of Floyd LJ, that a case which did not have that
7 patent focus, as identified in paragraph 101, could fairly be
8 considered a global dispute rather than a UK patent-specific
9 one. We say, of course, that this case lacks all of those
10 features and that this case may be properly characterised as a
11 global portfolio dispute.
12 Of course, we know, indeed it is stated in terms in
13 paragraph 103 of the same Conversant judgment, that the
14 Supreme Court in Unwired Planet teaches us there is no such
15 thing as a global portfolio right to enforce. There may still
16 be a contractual right given to implementers which is global.
17 That is a right to a global licence which attaches to all of
18 the patents in the portfolio. As we read it, and we will look
19 at it in a little bit more detail in due course, that is in
20 substance what Amazon is claiming in these proceedings.
21 MR. JUSTICE MEADE: A global licence which attaches to all the
22 patents in the portfolio. Yes, that is consistent with what
23 Zacaroli J said in that passage that as been cited a few times
24 about the scope of the licence and the scope of the claim.
25 MR. BLOCH: My Lord, yes.

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1 BLOCH KC
2 MR. JUSTICE MEADE: In other words, I think you are right, I think
3 that is what they are saying, broadly speaking, at least.
4 MR. BLOCH: My Lord, it is consistent with what Zacaroli J said in
5 that case and, of course, the submissions that I am developing
6 here, if I cannot distinguish this case, lead me to say that
7 that decision was wrong.
8 MR. JUSTICE MEADE: You mean ----
9 MR. BLOCH: The approach taken by Zacaroli J in that case.
10 MR. JUSTICE MEADE: Right. Yes, sure.
11 MR. BLOCH: My Lord, that, I think, is ----
12 MR. JUSTICE MEADE: I think, in a sense, what you are saying is
13 what Floyd LJ was saying there just does not work once you
14 have given -- I think particularly, although you have not
15 expressed it this way, just does not work given especially
16 InterDigital's undertaking because all of these points about
17 validity and infringement and specific patents have gone out
18 the window because InterDigital will agree not to enforce
19 those.
20 MR. BLOCH: My Lord, yes. I would not put it in terms of it just
21 does not work. We would say it is drawing a distinction there
22 between cases which have those features and those cases which
23 do not and we clearly fall into the latter category.
24 MR. JUSTICE MEADE: Yes, because of the undertaking, though,
25 primarily.

1 BLOCH KC
2 MR. BLOCH: My Lord, the undertaking makes it very clear that when
3 one looks at the disconnect between the way in which the RAND
4 claims are put and the patent claims, we would say that it
5 would be true even without the undertaking, but I will need to
6 develop that submission.
7 Having looked at Unwired, which is of course a case
8 concerned with, brought by the patentee where the enforcement
9 of the patents were at issue, one comes to the reverse claims,
10 as they are sometimes called. They are not brought to enforce
11 patent rights at all. An implementer, of course, has no
12 interest in the patent which they put in force. They are
13 brought in respect of no essential characteristic of the
14 patent. They are not brought asserting validity or
15 infringement. It is sometimes said that the undertaking
16 encumbers the SEPs to which it relates, but encumbrance in
17 that context is not being used as a term of art. The
18 undertaking does not attach to the patents per se. Indeed,
19 that is why there are the various contractual issues that have
20 been raised, but we believe now have effectively gone away, in
21 relation to the Thomson defendants. The undertaking is
22 contractual, it attaches to the patents contractually and we
23 submit it does not relate to UK patents any more than any
24 others.
25 In due course, of course, I am going to have to develop

1 BLOCH KC
2 our submissions in relation to CPR 63.14 and it is in the
3 context of what I have just said that I will endeavour to do
4 so. Before doing that, because it also enables us to look at
5 some of the issues of principle, I wanted to deal with certain
6 aspects of the gateways.
7 My Lord, the Supreme Court has provided some guidance on
8 how one should construct the gateways and I want first to go
9 to the judgment of Lord Leggatt in what we referred to as
10 Brownlie II. That is in the second of the Joint Authorities
11 bundles, behind 8.
12 MR. JUSTICE MEADE: Yes.
13 MR. BLOCH: The relevant passage is on page 60, paragraphs
14 191-193.
15 MR. JUSTICE MEADE: Yes. I read this yesterday as well. I think
16 it goes through into -- yes, okay. I think I was pointed
17 through to 197.
18 MR. BLOCH: My Lord, yes. I focused, in particular, on those
19 three paragraphs and also within it on the citation from the
20 judgment of Lord Sumption in the earlier Brownlie case, which
21 one sees in the second half of paragraph 192.
22 MR. JUSTICE MEADE: Yes.
23 MR. BLOCH: The critical points to draw from it being that these
24 provide the threshold, having regard to comity and the nature
25 of the assertion of jurisdiction over parties who are

1 BLOCH KC
2 otherwise not amenable to it. Secondly, in the judgment of
3 Lord Sumption in Brownlie I, the consequence that the
4 connecting factor that justifies the exercise of jurisdiction
5 needs to be more than merely casual or adventitious; there
6 needs to be a substantial link.
7 MR. JUSTICE MEADE: Yes.
8 MR. BLOCH: Therefore, there is a policy reason here for restraint
9 and there is also a requirement which reflects that policy of
10 a substantial link.
11 MR. JUSTICE MEADE: Yes.
12 MR. BLOCH: One also notes that what is being discussed is causes
13 of action; a cause of action being a set of facts or matters
14 which give rise to a claim.
15 MR. JUSTICE MEADE: Yes.
16 MR. BLOCH: It is broader than the formulation of the claim, or it
17 may be, and it is that cause of action which we say needs to
18 have a substantial link with this jurisdiction in order to get
19 through the gateways.
20 MR. JUSTICE MEADE: Yes.
21 MR. BLOCH: If one then turns to the reverse RAND cases or perhaps
22 I should go to the way that Amazon puts its case, one sees
23 that at B.1, tab 2, page 33.
24 MR. JUSTICE MEADE: Hold on. Sorry, this is all a bit of a mess
25 because I was given some boxes of papers to bring down for

1 BLOCH KC
2 this one the other day and I do not think I had a list of ones
3 from my other set to bring.
4 MR. BLOCH: It may be no consolation to my Lord, but you are not
5 the only person who suffered from this problem.
6 MR. JUSTICE MEADE: I am not criticising. There are moving parts
7 with all the different hearings. I think what we will do is
8 we will take the break a little bit earlier and I will go and
9 find my B.1 and my UPC bundle because I think it is best that
10 I do actually have the bundle. We will just take the break a
11 little bit earlier than normal, for ten minutes.
12 (A short break)
13 MR. JUSTICE MEADE: Right, I have those, Mr. Bloch.
14 MR. BLOCH: My Lord, we were about to look ----
15 MR. JUSTICE MEADE: Just give me one moment because I have just
16 slightly more than one trolley's worth of stuff. I will put
17 the Delaware legal authority there, slightly out of reach
18 there but I do not think we will spending a huge amount of
19 time on those.
20 MR. BLOCH: B.1, tab 2, page 33, the prayer for relief.
21 MR. JUSTICE MEADE: This is very important; yes.
22 MR. BLOCH: The first thing to note is that claims (1), (2), (3),
23 (5) and (6) are independent of the existence of any UK patent.
24 There is, of course, a reference to the challenged patents in
25 claim (4), which we shall see makes no difference to the scope

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1 BLOCH KC
2 of the licence that is being sought under (1), (2) or (3) or
3 as to the conduct covered by (5) and (6).
4 MR. JUSTICE MEADE: Okay.
5 MR. BLOCH: In considering if the cause of action has a sufficient
6 link with England it is relevant to consider what facts and
7 matters are being relied upon in support of the claims. We
8 say, from the particulars of claim itself and, indeed, from
9 the RAND statement of case, which we will need to look at in a
10 little bit more detail in due course, it is clear that nothing
11 specifically concerning the UK patents is relied upon at all.
12 MR. JUSTICE MEADE: Yes. Are you coming to the RAND statement of
13 case before lunch, Mr. Bloch, because I did not bring that one
14 down? If you are, that is fine, I will just send for it.
15 B.2. You carry on, Mr. Bloch.
16 MR. BLOCH: Thank you, my Lord. We say there is no suggestion
17 that the licence which Amazon might seek in relation to any
18 other patents would have any different scope to that which it
19 seeks by reference to the challenged patents.
20 MR. JUSTICE MEADE: Okay.
21 MR. BLOCH: When there is ----
22 MR. JUSTICE MEADE: Yes. At some point I would benefit from a
23 list of all these things. I know challenged patents is
24 defined in the pleadings, but your skeleton refers to
25 untracked claims, I think, and I am not sure they are actually

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1 BLOCH KC
2 definitively defined, so I would benefit from a glossary of
3 all these things, whether they come from the pleadings or your
4 skeleton, but it does not matter for now.
5 MR. BLOCH: When I talk about the contract claims, and I will be
6 corrected if I am wrong, I am focusing on claims (1)-(6).
7 MR. JUSTICE MEADE: Right.
8 MR. BLOCH: (Pause for instructions)
9 MR. JUSTICE MEADE: The fact that Mr. Jones is explaining it to
10 you, Mr. Bloch, I make no criticism, but does just illustrate
11 that I would really benefit ----
12 MR. BLOCH: We will provide it. Despite Mr. Jones explanation, I
13 will stay with what I said.
14 MR. JUSTICE MEADE: Quite. (Laughter) I just want a list, please,
15 and it is a team effort because there are references in the
16 pleadings and there are references in the skeleton. Thank
17 you.
18 MR. BLOCH: My Lord, yes. We say no suggestion that the licence
19 which Amazon might seek in relation to foreign patents would
20 have any different scope from that which it seeks by reference
21 to the challenged patents and we contrast that situation with
22 that where, as in Unwired, there was a genuine dispute about
23 whether or not the licence should be global or territorially
24 specific. Of course, if it were territorially specific, it
25 would be territorially specific to, so far as any action in

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1 BLOCH KC
2 this country was concerned, the United Kingdom.
3 Therefore, to adopt the language of Lord Sumption in the
4 Brownlie I case, we say there is no link of substance here
5 between the UK patent claims and the contractual FRAND claims,
6 including the claim to a licence in respect of all of those
7 patents.
8 One comes then to the gateways.
9 MR. JUSTICE MEADE: Pausing there, Mr. Bloch, can I ask you just
10 to consider later on clarifying one thing you said this
11 morning and then I have just an organisational question for
12 you. When you said this morning, earlier this morning, that
13 InterDigital would dispute, both in this court and in the
14 foreign courts, whether rate-setting was something that should
15 be done, I understand that. The thing you focused on was
16 whether the standard-setting organisation's regime gives an
17 entitlement to that and the impact of conduct. That is one
18 thing.
19 As I understand it, there are other reasons, for
20 example, why US courts do not do rate-setting and it is just
21 because they do not think it is an appropriate thing to do,
22 justiciability may not be quite the right word, it is a sort
23 of, "We are just not going to do that", and I assume
24 InterDigital reserves its rights to take those sorts of points
25 as well.

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1 BLOCH KC
2 MR. BLOCH: The short answer is no, but just in case -- we are not
3 reserving that right.
4 MR. JUSTICE MEADE: You are not reserving that right.
5 MR. BLOCH: Rather, I should perhaps elaborate because it may be
6 misinterpreted.
7 MR. JUSTICE MEADE: Yes.
8 MR. BLOCH: It is InterDigital's position that such a
9 determination would be justiciable in any of the fora which we
10 are proposing, so there is no justiciability issue. There is,
11 in relation to, I think, Delaware, some difference between the
12 experts as to the circumstances in which the court would be
13 willing to do it and there is reference to the reluctance or
14 refusal of some US courts to deliver what they would regard as
15 purely advisory opinions. We have addressed that by the
16 commitments that we have made and in circumstances where we
17 have committed to offer any licence that the court may
18 determine, be it in Switzerland or Delaware, that issue of it
19 being purely advisable simply falls away.
20 Therefore, there is a lot of discussion of what we would
21 say are somewhat academic, if not sterile, points of Delaware
22 law as to what the court would do, (a), without the consent of
23 a party, and (b), in circumstances where the party would not
24 act on the declaration that was being sought. Since we would
25 consent to the determination in circumstances where it was

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1 BLOCH KC
2 contractually found to be the proper thing to do and (2) we
3 will and are committed to offering a licence on the terms
4 found, if that is what the court does ----
5 MR. JUSTICE MEADE: Right.
6 MR. BLOCH: --- that issue simply falls away.
7 MR. JUSTICE MEADE: Right. Okay. Put it another way round, the
8 only objection you are taking to rate-setting in the foreign
9 courts is that the ITU contractual regime does not give them
10 an entitlement to it?
11 MR. BLOCH: Yes.
12 MR. JUSTICE MEADE: Right. Okay. That is helpful. I had not
13 squeezed that out of your skeleton or Mr. Vary's evidence or
14 any of the evidence, I have to say, Mr. Bloch, and if that is
15 the position, I think it really needs to be spelled out more
16 clearly than just in an exchange between the Bar and the
17 bench.
18 MR. BLOCH: We can certainly endeavour to do that. In
19 saying -- we are not taking a justiciability point ----
20 MR. JUSTICE MEADE: No, justiciability is my word, Mr. Bloch. It
21 is just reticence, unsuitability ----
22 MR. BLOCH: It is perhaps more specific than that and it goes back
23 to what I said in introduction about the different perceptions
24 of the nature of the obligation. The point that we are taking
25 is that if we are right about the nature of the obligation,

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1 BLOCH KC
2 you simply do not get there.
3 MR. JUSTICE MEADE: Yes, I completely understand the submission
4 and I also understand your submission that that is a point you
5 are going to take in England, in this court.
6 MR. BLOCH: Yes.
7 MR. JUSTICE MEADE: I fully understand that, I totally get that.
8 I was just trying to focus in on whether that is the only
9 point.
10 MR. BLOCH: That is the point.
11 MR. JUSTICE MEADE: The only point.
12 MR. BLOCH: The only point.
13 MR. JUSTICE MEADE: I had not got out of the papers that that was
14 the only point you were taking about rate-setting in those
15 other courts.
16 MR. BLOCH: If rate-setting is as a matter of proper construction
17 of the agreement, and obviously on the facts of the case, the
18 thing to do, then far from objecting to it, we have
19 endeavoured to ensure that it can be done by the commitments
20 that we have offered.
21 MR. JUSTICE MEADE: Right. Okay. Everything we have just gone
22 through also reflects your position in arbitration, if that is
23 where it goes.
24 MR. BLOCH: My Lord, yes. Yes, it does.
25 MR. JUSTICE MEADE: At some point, we will look at Phase I/Phase

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1 BLOCH KC
2 II, however that shakes out in terms of how the arbitration
3 is, does not really matter. You are going to say in the
4 arbitration, you reserve the right to say in the arbitration
5 that the ITU contractual regime does not entitle Amazon to
6 rate-setting. You are going to say that.
7 MR. BLOCH: Yes.
8 MR. JUSTICE MEADE: That is it in terms of trying to resist
9 rate-setting in the arbitral forum.
10 MR. BLOCH: Yes. The argument that we would seek to advance in
11 the arbitration is precisely the same one as we would look to
12 advance either in Switzerland or in Delaware or, indeed, here.
13 MR. JUSTICE MEADE: Okay.
14 MR. BLOCH: In all four jurisdictions, we would not be seeking to
15 exclude the determination that the court or tribunal
16 determined was appropriate on its understanding of the
17 undertaking and the application of our obligations under that
18 undertaking to the facts of the case.
19 MR. JUSTICE MEADE: Okay. The procedural issue is, I do need, at
20 some point, a list of what I need to decide and how decision A
21 conditions decision B. What I mean is, you have been making
22 general submissions and I understand why, which are applicable
23 to 63.14 and the gateways. But at least Amazon says, if they
24 get home on 63.14, then one set of standards has to be
25 applied, but if it goes through the gateways, it is something

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1 BLOCH KC
2 else in terms of who has to show where the burden lies and the
3 time at which it has to be assessed. You may agree or
4 disagree about what that logic is, but I want to
5 understand what your decision tree is. You do not have to do
6 it now because you will ----
7 MR. BLOCH: I think I can indicate where we are going. Before
8 doing so, just to the avoidance of any doubt, I am not sure
9 there was doubt, of course, we are also reserving the right to
10 take, and anticipate we will take, a point about the scope of
11 any licence to be determined, just in the same way as we take
12 a point about the scope of any licence which in good faith we
13 may offer.
14 MR. JUSTICE MEADE: Encoding, decoding and NEPs ----
15 MR. BLOCH: Yes.
16 MR. JUSTICE MEADE: Of course I understand that, yes.
17 MR. BLOCH: Thank you, my Lord. On the decision tree, yes, we
18 accept that in the event that there has been good service
19 under 63.14, then the burden would shift to us.
20 MR. JUSTICE MEADE: Right.
21 MR. BLOCH: We also accept the Erste point, if I might put it that
22 way, which is raised in my learned friends' skeleton, in
23 relation to timing, in relation to the undertaking. If that
24 becomes a critical point, it may not save us from having to
25 discharge the burden, but ----

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1 BLOCH KC
2 MR. JUSTICE MEADE: If they are right about 63.14, then you accept
3 the burden is on you and the time for assessment of ----
4 MR. BLOCH: The time for assessment of whether or not, of where
5 the available forum is, is at the hearing, so now.
6 MR. JUSTICE MEADE: Right.
7 MR. BLOCH: But in considering the adequacy of the service for the
8 purpose of the gateways, it may be the earlier date, so hence
9 why the undertaking is ----
10 MR. JUSTICE MEADE: This is why I need it written down.
11 MR. BLOCH: That is why, my Lord, we will write it down. I think
12 we are agreed.
13 MR. JUSTICE MEADE: C and D, otherwise E and F. In terms of
14 timing, burden.
15 MR. BLOCH: I well-appreciate that as much as anyone, my Lord, so
16 yes.
17 MR. JUSTICE MEADE: Right, okay. You have both written it down in
18 your skeletons in different ways and I am not sure they match.
19 MR. BLOCH: I think, my Lord, we will endeavour to agree it. I
20 think apart from the Erste point, we were in substantial
21 agreement and I think we are conceding that point, but it will
22 be better if we write it down.
23 MR. JUSTICE MEADE: Okay, yes, please. Thank you. On we go.
24 MR. BLOCH: Gateway 11: we are in volume 1, page 339. Sorry,
25 my Lord, in the White Book.

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1 BLOCH KC
2 MR. JUSTICE MEADE: Oh, in the White Book. Sorry, yes.
3 MR. BLOCH: Volume 1, page 339.
4 MR. JUSTICE MEADE: Yes, thank you.
5 MR. BLOCH: Gateway 11.
6 MR. JUSTICE MEADE: Yes. Sorry, I should say, since we have this
7 out, I have written it down, I also need to understand whether
8 any different point arises on the different defendants past
9 D1, depending on where we are in the decision tree. I think
10 the answer is there is not, but I need that clarified.
11 MR. BLOCH: We will endeavour to clarify it. I believe that is
12 right.
13 MR. JUSTICE MEADE: Okay.
14 MR. BLOCH: "The subject-matter of the claim relates wholly or
15 principally to property within the jurisdiction": that is
16 what is covered by this gateway. It is the subject-matter of
17 the claim, which we would say is another way of referring to
18 the cause of action, the facts and matters which give rise to
19 the claims for relief. It is wider, we say, than simply
20 focusing on the language of the claim itself. Then it has to
21 relate "wholly or principally".
22 As a matter of grammar, these words relate to the
23 subject-matter of the claim. So if one construes them with an
24 eye on the purpose of the gateways, as explained by
25 Lord Leggatt in Brownlie II, one would expect the facts or

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1 BLOCH KC
2 matters that give rise to the relief to be principally, wholly
3 or principally matters relating to the property located in
4 this jurisdiction.
5 There are, of course, cases which take a different
6 approach and in Vestel, which is perhaps the earliest of those
7 cases, one has the obiter dicta of Birss LJ. The cases that
8 then followed that, we deal with in our skeleton at paragraphs
9 25-27.
10 MR. JUSTICE MEADE: Yes.
11 MR. BLOCH: I was not proposing to go to all of those, though we
12 would note in particular the obiter dicta of Arnold LJ in his
13 dissenting judgment in the Tesla case. My Lord is no doubt
14 familiar with that. The critical paragraph is paragraph 109
15 and without intending to go to it ----
16 MR. JUSTICE MEADE: I looked at it yesterday.
17 MR. BLOCH: Similarly, there is what we concede is the ratio of
18 the decision of Leech J in the MediaTek case and the relevant
19 paragraph there is 184. We do respectfully submit that that
20 decision is wrong, but we also contend that this case is
21 distinguishable from the Tesla case, or Tesla and MediaTek.
22 In the Tesla case, what Arnold LJ noted was the way in
23 which the matter was dealt with in another case that went the
24 same way, the Nokia v Oppo case. In the passage at paragraph
25 109 of his judgment in Tesla, he refers to the fact that in

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1 BLOCH KC
2 Nokia v Oppo, the UK patents were, I think, 0.5% of the
3 portfolio and that was, none the less, said to be sufficient
4 to satisfy Gateway 11. However, Arnold LJ also noted that, in
5 that case, infringement was at issue. So, infringement being
6 at issue, one can see immediately why this case is
7 distinguishable.
8 What we say is required when interpreting Gateway 11 is
9 to distinguish two extremes, as it were, or two polar
10 approaches. The first makes it largely a matter of drafting.
11 So a claim to the distribution of a Bermudian trust fund will
12 relate wholly or principally to property in the UK if it
13 contains one UK patent along with billions of dollars of real
14 estate and businesses in Bermuda and Miami; because you can
15 easily formulate that claim as relating to the distribution of
16 the trust fund of which the UK patent is a member. That is
17 the just a matter of drafting approach.
18 The second approach, which I said was, as it were, at
19 the opposite pole, but is in fact one that allows one to have
20 regard to the facts and nuances of the case, is that there
21 must be some relevant link between the relief and the role of
22 the relevant property and the cause of action. That, we say,
23 is an approach which is much more consonant and in fact of the
24 two, is the only one which is consonant with the observations
25 of Lord Sumption in Brownlie I and Lord Leggatt in

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1 BLOCH KC
2 Brownlie II.
3 The Bermudian trust case, which is always a rather
4 unsatisfactory way of making a submission because, if
5 accepted, one gets nowhere, but it cannot be right that one
6 patent in a trust fund which could have billions of dollars of
7 interests all over the world, renders a dispute in relation to
8 that trust fund a matter wholly or principally concerning the
9 UK, especially in circumstances where the question of whether
10 or not the fund should be distributed may have nothing to do
11 with anything relating to the validity or infringement of the
12 UK patent.
13 There must be some substance, some sufficient link, and
14 therefore when looking at the line of cases which will be said
15 to be against us, one has to look carefully to see whether or
16 not there was, as there was, for example in the Nokia v Oppo
17 case, a sufficient link or whether or not it is simply taking
18 the Bermudian trust point, in which case we would say that it
19 is in error.
20 MR. JUSTICE MEADE: Right. Okay. This all makes it important,
21 does it not; your point that it is distinguishable makes it
22 important to be clear about whether the undertaking means that
23 infringement is not in issue.
24 MR. BLOCH: Yes.
25 MR. JUSTICE MEADE: Okay.

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1 BLOCH KC
2 MR. BLOCH: There is one point I will need to pick up again, in
3 relation to the particulars of claim, where it is said that
4 the RAND claim is relied on by way of defence, but when one
5 looks to the pleading, we will say that is not a fair
6 characterisation of the pleading, especially having regard to
7 the undertaking.
8 My Lord, before coming to that, I would look at
9 Gateway 16A. That is on page 340 of volume 1 of the
10 White Book. It relates to claims for a declaration of
11 non-liability ----
12 MR. JUSTICE MEADE: Yes.
13 MR. BLOCH: ---- I said before coming to that and I think we are
14 about to come to it.
15 These claims are, of course, patent claims. The claims
16 to non-liability are pleaded extensively and with
17 particularity and the one reference which is relied on by
18 Amazon is at paragraph 186 of the particulars of claim, so if
19 one turns to bundle 1, tab 2, page 29.
20 MR. JUSTICE MEADE: Sorry, my brain deleted the 1.
21 MR. BLOCH: I am grateful, my Lord.
22 MR. JUSTICE MEADE: Yes.
23 MR. BLOCH: Amazon states, in paragraph 86, it: "... will rely
24 upon its entitlement to a RAND licence to the Challenged
25 Patents (such licence also covering UK patents in the

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1 BLOCH KC
2 InterDigital Video Portfolio, alternatively to the Codec SEPs
3 in the InterDigital Video Portfolio) as a defence to the grant
4 of any injunctive relief sought in respect of any patent(s) in
5 the InterDigital Video Portfolio ...". My Lord, it is as a
6 defence to the grant of any injunctive relief sought.
7 The short answer is that we are not seeking any
8 injunctive relief and, indeed, we have undertaken not to do
9 so. So that point, we say, falls away.
10 MR. JUSTICE MEADE: Sorry, yes, yes. That is part of the
11 undertaking, is it? I have not focused on that.
12 MR. BLOCH: Yes. We will not be seeking an injunction and we will
13 not be seeking damages. So we will not be bringing a claim
14 for infringement.
15 MR. JUSTICE MEADE: Okay.
16 MR. BLOCH: In fact, Amazon did go slightly further. In its
17 skeleton argument, at paragraph 99, it suggests (that is at
18 page 24 of its skeleton) that its competition claim is also
19 part and parcel of its claim for a declaration of
20 non-infringement under this gateway. But as one can see, as
21 we read it, there is no reference to a Chapter II Claim in
22 paragraph 86 and, in any event, even if there were, it would
23 also be an irrelevance, given that the paragraph is only
24 concerned with a defence to an injunction, which we have made
25 clear will not be met.

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1 BLOCH KC
2 MR. JUSTICE MEADE: Yes, I do not think they were saying
3 Chapter II is referred to in paragraph 86, they are saying
4 they have an entitlement to a licence two ways. Paragraph 86
5 refers to the ITU obligation. It just refers to the
6 entitlement to the licence from whichever source, but ----
7 MR. BLOCH: My Lord, that is correct.
8 MR. JUSTICE MEADE: They also say that it is relied on in support
9 of a declaration of non-infringement and you say not so, it is
10 only relied on as a defence to injunctive relief.
11 MR. BLOCH: My Lord, precisely.
12 MR. JUSTICE MEADE: All right. Thank you.
13 MR. BLOCH: One then comes to Gateway 4A, which is volume 1, at
14 339.
15 MR. JUSTICE MEADE: Yes.
16 MR. BLOCH: That gateway requires that the claims arise out of the
17 same or closely connected facts.
18 MR. JUSTICE MEADE: Yes.
19 MR. BLOCH: What Gateway 4A does not say is that it is sufficient
20 for there to be some overlap between the facts out of which
21 the different claims arise. They must arise out of the same
22 or closely connected facts. In this case, the facts out of
23 which the patent claims arise are technical ones relating to
24 the construction of the patents, the nature of the technology,
25 the relevant prior art, et cetera.

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1 BLOCH KC
2 MR. JUSTICE MEADE: Okay.
3 MR. BLOCH: There is simply, we say, no, and certainly no
4 sufficient factual nexus here in order to get these claims in
5 under Gateway 4A.
6 MR. JUSTICE MEADE: Okay.
7 MR. BLOCH: In Alcatel, I think it is referred to by my learned
8 friends, Zacaroli J did refer to Gateway 4A. One sees that if
9 one goes to the Joint Authorities bundle 1 ----
10 MR. JUSTICE MEADE: Yes.
11 MR. BLOCH: ---- tab 2, page 21, paragraph 114, the last paragraph
12 under the "Gateway 4A" heading in the middle of the page.
13 MR. JUSTICE MEADE: Yes.
14 MR. BLOCH: "Amazon contends, however, that the two claims are
15 linked because Amazon pleads the availability of a RAND
16 licence as a reason for the declaration of non-infringement.
17 I agree, for the same reasons I have set out above in the
18 context of Gateway 16A."
19 So, my Lord, the facts in that case were simply
20 different. The pleading was at least characterised and
21 therefore, we assume, different.
22 MR. JUSTICE MEADE: Right. Okay.
23 MR. BLOCH: One comes then to 63 ----
24 MR. JUSTICE MEADE: I do not suppose the pleading from that case
25 was set out -- maybe it was. Anyway, if you would not

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1 BLOCH KC
2 mind ----
3 MR. BLOCH: We will check that, my Lord. I did not check that
4 before.
5 MR. JUSTICE MEADE: It looks like it is not, but anyway, okay.
6 Thank you.
7 MR. BLOCH: We come then to 63.14.
8 MR. JUSTICE MEADE: Yes.
9 MR. BLOCH: It may be helpful to have that to hand. That is in
10 the second volume of the White Book.
11 MR. JUSTICE MEADE: Do you know what, I have not brought that
12 down, but I am sure it is set out somewhere. It must be in
13 one of the judgments, must it not?
14 MR. BLOCH: I am told there is a White Book. I anticipate that it
15 is not covered in notes. (Same handed)
16 MR. JUSTICE MEADE: Thanks. I will bring mine down afterwards,
17 but I am sure it must be set out in one of the judgments.
18 Anyway, go on.
19 MR. BLOCH: If my Lord now has that, it is page 1078 where one
20 starts, at 63.14. We have addressed the relevant case-law in
21 our skeleton argument, at paragraphs 33-37.
22 MR. JUSTICE MEADE: Yes.
23 MR. BLOCH: There is an issue, I am not quite sure, about this
24 including patents, which of course it does.
25 MR. JUSTICE MEADE: Then you do not need to spend any more time on

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1 BLOCH KC
2 it. I think it was a defensive point, really. I know what
3 you mean. I know the part of their skeleton you have in mind,
4 so do not spend any more time on that.
5 MR. BLOCH: Is the critical point, we would say, one can get if
6 one turns to 63.1, so the beginning of this part, which is at
7 page 1046.
8 MR. JUSTICE MEADE: Right.
9 MR. BLOCH: We are concerned in 63.1 with: "This Part applies to
10 all intellectual property claims, including".
11 MR. JUSTICE MEADE: Yes.
12 MR. BLOCH: Sp we are concerned with intellectual property claims.
13 MR. JUSTICE MEADE: Yes.
14 MR. BLOCH: If one reads 63.14(2) with that in mind, we say that
15 claims relating to registered rights there are intellectual
16 property claims, not contractual ones.
17 MR. JUSTICE MEADE: Okay.
18 MR. BLOCH: That, we say, makes sense because there is a specific
19 need for provisions in relation, in particular, to registered
20 rights and maintaining maintenance of accurate determinations
21 in relation to registered rights, especially bearing in mind
22 the third party interest s in any disputes in relation to
23 their status.
24 What one should not do in construing 63.14 is do it in a
25 way which will cut across the gateways and, in particular, do

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1 BLOCH KC
2 it in a way which would cut across the contractual gateways
3 because, of course, when one looks at the gateways, there are
4 specific provisions dealing with the kinds of contractual
5 dispute that will get through the gateways.
6 MR. JUSTICE MEADE: Right.
7 MR. BLOCH: Whether one is construing 63.14 or, indeed,
8 Gateway 11, one has to have in mind that there has been a
9 demarcation in relation to contractual disputes in those
10 gateways and that if one were to interpret 63.14 or Gateway 11
11 in the way that my learned friends interpret it, one has the,
12 as it were, we would call it the Bermuda fund problem. One
13 patent is enough to get one through either Gateway 11 or
14 63.14, regardless of the true complexion of the cause of
15 action and the real dispute.
16 My Lord, it is a short point, but a fundamental point
17 about the relationship between these different provisions,
18 where we say the proper interpretation should not only take
19 into account the overall framework of these provisions, but
20 importantly the function of the gateways and service under
21 63.14, as described by Lord Leggatt and Lord Sumption.
22 My Lord, that is all that I would seek to say in
23 relation to the gateways and in relation to 63.14, but of
24 course ----
25 MR. JUSTICE MEADE: Is there not any general learning about

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1 BLOCH KC
2 mutually exclusive nature of gateways, one to another, or of
3 rights are served here as of right versus gateways ----
4 MR. BLOCH: My Lord, had we found it, we would have referred to
5 it. One would have thought it should be there and we will
6 continue to look.
7 MR. JUSTICE MEADE: Right.
8 MR. BLOCH: However, we have not found anything that assists
9 beyond the issues of general principle that we have raised.
10 MR. JUSTICE MEADE: Right.
11 MR. BLOCH: I then come to forum conveniens.
12 MR. JUSTICE MEADE: Okay. I am going to give this back before I
13 forget and I will bring mine down later. Just give me one
14 second. (Pause) I do not think you are saying that there are
15 cases where you can pass through more than one gateway.
16 Obviously, there are. You could pass through all of the
17 contract gateways all at once.
18 MR. BLOCH: Yes.
19 MR. JUSTICE MEADE: It is not that they are mutually exclusive one
20 to another, so what is the position?
21 MR. BLOCH: What one has is a set of gateways which deals with the
22 kind of contract in respect of which the court, having regard
23 to their contractual complexion, thinks it appropriate to
24 consider exercising jurisdiction. On my learned friend's
25 submission Gateway 11 and 63.14 would enable one, were there

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1 BLOCH KC
2 was a contract, however unconnected it is with the
3 jurisdiction, to pass through that rule of service. We say
4 that even if they are not mutually exclusive, and of course
5 the contractual gateways are not mutually exclusive, what they
6 show is a framework and a framework of materiality which gives
7 us a demarcations to the kinds of contractual claim which the
8 court would consider it appropriate for it to take.
9 It does not exclude, as a matter of logic, the
10 possibility of a non-contractual gateway also overlapping, and
11 of course for example where there is a contractual and a
12 tortious claim, the same facts and matters may be at issue in
13 both and to that extent you may come under both, but what it
14 does do is give us a reason to pause because it would be
15 introducing a new category of contract without there being any
16 or any sufficient, we would argue, basis for its introduction.
17 MR. JUSTICE MEADE: Okay. A related question on 63.14, you said
18 that it is there because of the notice function, the
19 importance of the register, notice to third parties and so on.
20 I do not know that that is the objective or subjective purpose
21 why it is there, so that may be part of it, but I just test
22 the submission that that is the only reason. I have always
23 thought, and this may be the reason why it came in, another
24 reason for it was you did not want a patentee having a patent
25 in the UK, affecting what people can do here, but with the

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1 BLOCH KC
2 patentee sitting pretty in a jurisdiction where they could not
3 get served for a year, preventing determination of whether
4 their rights stop something happening or not.
5 MR. BLOCH: My Lord, yes.
6 MR. JUSTICE MEADE: I think one purpose of it, subjectively, and
7 possibly objectively, I do not know, was to make sure that you
8 could not have a monopoly in the UK whose scope and validity
9 could not be tested appropriately rapidly. Do you see what I
10 mean?
11 MR. BLOCH: My Lord, we would respectfully agree.
12 MR. JUSTICE MEADE: Right.
13 MR. BLOCH: That is an example of a concern in relation to the
14 registered right which I would have seen as falling within the
15 characterisation that I offered my Lord.
16 As to the history of the rule, we have not provided an
17 account of that so I think I can only go this far. I cannot
18 say that that is the only reason or the cluster of
19 considerations which I have adverted to and which my Lord has
20 observed are the only ones, but what I can say is that there
21 are such considerations and they would be sufficient to
22 explain why there should be a special rule, but in so far as
23 they may explain why there is a special rule, they also point
24 to a narrow construction ----
25 MR. JUSTICE MEADE: Yes, I get it. There is a difference between

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1 BLOCH KC
2 needing a rule and how far it goes. Okay. I think it has
3 quite a chequered history, actually, because I think it is one
4 of the provisions that had to change around Brexit and there
5 used to be a rule that you had to have an address for service
6 in the jurisdiction and then you had to have an address for
7 service in the EU and then that changed again. I think there
8 is quite a complicated history to that. That is separate to
9 the question of why we have it at all, but I think if you dig
10 into it ----
11 MR. BLOCH: On the adoption of the Brussels Convention, it was
12 certainly amended as I recall.
13 MR. JUSTICE MEADE: I think it was amended because of case law,
14 actually. There was a challenge that it was unlawful to have
15 a requirement, or maybe it was not a challenge. Anyway, it
16 does not matter.
17 MR. BLOCH: There was such an issue, certainly, my Lord.
18 MR. JUSTICE MEADE: Okay.
19 MR. BLOCH: One comes then to forum conveniens.
20 MR. JUSTICE MEADE: Yes.
21 MR. BLOCH: It is difficult to start anywhere other than where
22 Lord Goff's speech in The Spiliada, so that is in Joint
23 Authorities bundle 3, at tab -- sorry, I might have given a
24 bad reference there. It is Joint Authorities bundle 1, I
25 apologise, at tab 7.

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1 BLOCH KC
2 MR. JUSTICE MEADE: Yes.
3 MR. BLOCH: My Lord is of course familiar with the case. The
4 passage which we rely on in particular is starting at internal
5 page 482, bundle page 23, just above E, where it says: "The
6 key to the solution of this problem ...". One can go on,
7 perhaps, until just below C, the end of the first paragraph on
8 page 483. (Pause for reading).
9 MR. JUSTICE MEADE: Right.
10 MR. BLOCH: This passage is often cited as much for the things
11 that is excludes as irrelevant as to the things which it says
12 are relevant. The test is clear, one has to consider whether
13 the case may be tried suitably for the interests of all
14 parties and for the ends of justice.
15 Then, there are various potential advantages of one
16 jurisdiction over another, which are considered and dismissed,
17 whether they are the possibility of getting damages on a
18 higher scale or discovery or disclosure on a basis which one
19 or other party regards as more attractive. Indeed, if one
20 looks at the passage at the top of page 483, an issue in this
21 very case appears to have been considered, but four lines
22 down, where reference is made to the Trendtex case: "... this
23 House thought it right that a stay of proceedings in this
24 country should be granted where the appropriate forum was
25 Switzerland, even though the plaintiffs were thereby deprived

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1 BLOCH KC
2 of the advantage of the more extensive English procedure of
3 discovery of documents in a case of fraud."
4 One has to be careful before one engages with some of
5 the points that have been made by Amazon in relation to
6 the relative strengths and weaknesses, as they see it, of
7 proceeding in different jurisdictions. The essential question
8 will be does that jurisdiction offer a forum in which there
9 will be substantial justice? In relation to the three that we
10 are proposing, we would say that cannot seriously be in doubt.
11 More generally, at the end of that section, it is
12 stated: "I do not think that an English court would, in
13 ordinary circumstances, hesitate to stay proceedings brought
14 by one of them against the other in this country merely
15 because he would be deprived of a higher award of damages
16 here." Of course, for damages one can read, in this context,
17 an expectation of obtaining a higher or, if you are an
18 implementer, lower declaration as to what a royalty rate
19 should be.
20 MR. JUSTICE MEADE: I am not sure why you are saying or anybody is
21 saying why the number that comes out of the process will be
22 higher or lower here or in Switzerland or in Delaware. Nobody
23 has said that, have they?
24 MR. BLOCH: There is no reason in principle why it should be.
25 MR. JUSTICE MEADE: No.

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1 BLOCH KC
2 MR. BLOCH: However, it may be that my Lord will have -- I am sure
3 my Lord will have noted that at the outset of the
4 Unwired Planet jurisprudence, it was patentees who were
5 seeking to establish jurisdiction.
6 MR. JUSTICE MEADE: Yes.
7 MR. BLOCH: Now, it is implementers who are seeking to establish
8 jurisdiction.
9 MR. JUSTICE MEADE: Yes.
10 MR. BLOCH: Both sides, in deciding where to bring proceedings and
11 whether to resist proceedings may be taken to have had regard
12 to where they expect to get the best commercial outcome for
13 themselves. There is no impropriety in that. It is not
14 necessarily the case that that one will get a higher rate in
15 any particular jurisdiction, but it may well be when parties
16 look at past cases and the approach to determination in
17 different courts, that they will see some advantage in having
18 their dispute resolved in one rather than another. That,
19 pretty plainly, is what is going on today and why it is the
20 implementers who are pressing enthusiastically for reverse
21 FRAND proceedings in this country. It is not that they have a
22 fundamental interest in these matters as a matter of academic
23 interest; it is a commercial matter. It is not illegitimate,
24 but it is plainly what is going on.
25 It is, in a sense, forum shopping. That is not to say

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1 BLOCH KC
2 it is necessarily forum shopping in a pejorative sense, but it
3 is undoubtedly an attempt to get matters litigated in the
4 forum which is thought to be most advantageous to them.
5 We said this, I think, in our evidence and there was
6 push-back in Amazon's skeleton argument. The extent of the
7 push-back was rather striking. What they protested, and I
8 cannot immediately give you the paragraph reference, is that
9 we were being unfair to them because it was always possible
10 that the court would award a sum which was larger than they
11 wanted to pay. That may well be true. It could be that the
12 court will award a sum that is larger than they wanted to pay,
13 but they what they could not, and one would not expect them to
14 be able to dispute, is that they would prefer to litigate in
15 those jurisdictions or a jurisdiction in which they can expect
16 to pay as little as possible. That is not illegitimate, but
17 it is something one has to have regard to when considering
18 whether or not on mutual forum grounds they are entitled to
19 succeed in that objective.
20 MR. JUSTICE MEADE: What do you mean by mutual?
21 MR. BLOCH: One looks at the character of the claim independently
22 of the advantage that its litigation in one country rather
23 than another might bestow on one party rather than another.
24 One comes to characterisation and it is ----
25 MR. JUSTICE MEADE: I do not think it matters, but nobody has

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1 BLOCH KC
2 pointed out any systematic difference of approach in the UK or
3 anywhere else which would lead to a different RAND number
4 coming out at the end of the day. There are no data points to
5 do that with. There is China, but that is not in play in this
6 case, but there are no data points to assess that. It is not
7 like, for example, you are saying the UK does comparables and
8 the Swiss only do top down. There is just no data to make
9 that comparison. Nobody has said that the type of the
10 analysis that goes on to get to a number would be different:
11 it is just a general sentiment about where you might do
12 better.
13 MR. BLOCH: There is certainly, it would appear, a general
14 sentiment as to where you might do better.
15 MR. JUSTICE MEADE: Yes.
16 MR. BLOCH: There may also be a sentiment as to whether you do
17 better under the Unwired ETSI/FRAND approach to the
18 undertaking or under what we have referred to as the European
19 approach or the German UPC approach to the undertaking.
20 MR. JUSTICE MEADE: Yes. It is obvious that you do better there
21 but that is not because rate -setting is done differently; it
22 is because rate-setting is not done at all. You are obviously
23 going to do better if you get an injunction and Amazon have to
24 make a deal with you when their streaming in Germany is going
25 to be closed down. That is not because the rate-setting

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1 BLOCH KC
2 exercise is different; it is because they do not get a rate
3 set at all.
4 MR. BLOCH: It is not necessarily as obvious as first appears, if
5 that is not a curious way of putting it. If there is an
6 obligation to act in good faith, then it may or may not only
7 require you to make an offer within a range and therefore
8 potentially it would lean towards the upper part of the range,
9 so it could work in that way, but one would need to look
10 carefully at the nature of the obligation before one said it
11 was obvious that it must work in that way.
12 MR. JUSTICE MEADE: Okay.
13 MR. BLOCH: Equally, I would accept, my Lord, that the market
14 perception may well be that one is likely to end up with an
15 agreement at a higher rate under the process as envisaged by
16 the jurisprudence of the German court and the UPC, than you
17 would having regard to the recent determinations as to FRAND
18 rates in recent cases, but even that one has to be a little
19 cautious about if one is talking about it in this context
20 because, of course, some of those determinations are going on
21 appeal and others have changed substantially.
22 MR. JUSTICE MEADE: Which ones are going on appeal? I do not
23 think there are any left to go on appeal at the moment.
24 MR. BLOCH: Apple is going to the Supreme Court.
25 MR. JUSTICE MEADE: The Supreme Court, yes; you are quite right.

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1 BLOCH KC
2 MR. BLOCH: Also, of course, there have been substantial changes
3 of rate between first instance and appeal and there are some
4 who would say there has been some substantial difference in
5 rates at first instance, if one compares the rates in Unwired
6 to others, but my Lord it would be invidious to attempt to go
7 into that and for present purposes I do not need to.
8 MR. JUSTICE MEADE: Yes.
9 MR. BLOCH: The only point I am making is that there is, perfectly
10 naturally, a degree of forum shopping going on here, rightly
11 or wrongly, one side or other perceives this jurisdiction to
12 be the advantageous one for it, so it wants that.
13 MR. JUSTICE MEADE: Yes.
14 MR. BLOCH: But one has to be wary of becoming, as it
15 were plaintiff or claimant bias. The fact they have chosen to
16 start proceedings where they think they have the greatest
17 advantage does not mean that this is the proper place for
18 their determination.
19 MR. JUSTICE MEADE: Okay, fair enough.
20 MR. BLOCH: One comes to characterisation. I have said a little
21 bit about that already. The celebrated exposition about how
22 this should be done and, indeed, how it is not to be done is
23 in the judgment of Bingham LJ in the Re Harrods Buenos Aries
24 case, and you will be familiar with that, in particular the
25 passage at page 124, which I think we have referred to in our

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1 BLOCH KC
2 skeleton argument. I was not proposing to take my Lord to
3 that.
4 MR. JUSTICE MEADE: I have refreshed my memory about that.
5 MR. BLOCH: What one might go to is the judgment of the Supreme
6 Court in Unwired Planet, paragraph 94, which is also in the
7 Joint Authorities bundle 1, behind tab 9. Paragraph 94 is on
8 page 35 and if one picks it up about 12 lines down: "The
9 requirement in complex litigation to define, at the outset,
10 what is 'the case' ...". Then there is the reference to the
11 Harrods (Buenos Aries) case.
12 Then, in particular, after describing what that case
13 involved, the Supreme Court went on and states: "Like the
14 Court of Appeal in the present case, we therefore prefer for
15 present purposes to identify the dispute between the parties
16 as the matter to be tried, lest reference to 'the case' should
17 introduce undue formalism into the analysis of a question of
18 substance." Again, there is an emphasis, as one sees also in
19 the Brownlie cases, on having to characterise the matter as a
20 matter of substance, rather than as a matter of form or of
21 drafting.
22 One comes on then to the question of which courts or
23 tribunals are available. The first thing we submit is that it
24 is sufficient that a court or tribunal is available as a
25 result of the consent of the party that is seeking to set

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1 BLOCH KC
2 aside service here. In support of that proposition, we rely
3 on the judgment of Lord Hope, in Lubbe v cape. It may be
4 my Lord is familiar with that and I do not ----
5 MR. JUSTICE MEADE: That is the South African asbestosis one.
6 MR. BLOCH: Exactly.
7 MR. JUSTICE MEADE: As you say, the South African jurisdiction was
8 made available because the party concerned offered to submit
9 to the jurisdiction.
10 MR. BLOCH: Precisely; yes.
11 MR. JUSTICE MEADE: Yes. Mr. Lykiardopoulos may say that can be
12 distinguished or whatever, but that is what happened in that
13 case.
14 MR. BLOCH: Exactly. For present purposes, until I hear how it
15 may be distinguished, that is all I would seek to get out of
16 it.
17 MR. JUSTICE MEADE: Yes. You agree to jurisdiction in
18 Switzerland. You also agree that the only point you will take
19 against the Swiss court doing rate-setting is that the ITU
20 obligation does not require it, does not give an entitlement
21 to it.
22 MR. BLOCH: Exactly.
23 MR. JUSTICE MEADE: Okay. That is how they become available.
24 MR. BLOCH: My Lord, yes.
25 MR. JUSTICE MEADE: Okay, fine. Thank you.

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1 BLOCH KC
2 MR. BLOCH: I am not sure, my Lord has seen the commitment in Vary
3 3. The point is taken that this commitment might go on
4 indefinitely in certain circumstances, but if that is the
5 case, so be it, we are not seeking to resile from it.
6 MR. JUSTICE MEADE: I am not quite with you then.
7 MR. BLOCH: There is a point in paragraph 59 of my learned
8 friends' skeleton ----
9 MR. JUSTICE MEADE: Yes.
10 MR. BLOCH: ---- where they critique the undertaking and they say,
11 paragraph 59, on page 15, they take a point as to the lack of
12 clarity. In fact, it is not paragraph 59, it is 58 and 59.
13 MR. JUSTICE MEADE: Yes.
14 MR. BLOCH: They are referring there to its continuing
15 indefinitely. We say the commitment is what it is. If it
16 continues indefinitely, so be it. We are not resiling from
17 that. That, in itself, is not a complaint. What is said ----
18 MR. JUSTICE MEADE: I just note in 58, at the top of page 15 for
19 me, it says: "It is not clear what happens if InterDigital is
20 not ordered to grant any licences (which is InterDigital's
21 case) ...". Your position is not any more, InterDigital will
22 grant a licence, even if it is not ordered to.
23 MR. BLOCH: It will grant a licence if that is the outcome of the
24 proceedings, i.e. that there is a licence to be determined
25 which we should grant.

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1 BLOCH KC
2 MR. JUSTICE MEADE: No, I think earlier you said, Mr. Bloch, if
3 the Swiss court decided what a licence would be, but does not
4 grant specific performance of it ----
5 MR. BLOCH: Precisely my Lord.
6 MR. JUSTICE MEADE: ---- you will none the less give it.
7 MR. BLOCH: My Lord, that formulation I endorse.
8 MR. JUSTICE MEADE: Yes. That is not how Amazon had understood
9 it, clearly, is all I am saying.
10 MR. BLOCH: I see. I apologise, my Lord. No, that is what is
11 intended by it and if it needs clarification in that regard,
12 we will give it.
13 MR. JUSTICE MEADE: Just let me get that back. Yes, I just notice
14 that the undertaking says, does actually say, I am looking at
15 paragraph 23 of Mr. Vary's third, where it bridges pages 8 and
16 9, it says: "... until such time as the proceedings before
17 the [X courts] are over (including any appeals) and
18 InterDigital has granted Amazon such licences as it has been
19 ordered to do so ...". That is different from saying that
20 InterDigital will grant licences as are determined to be the
21 right ones, even if it is not ordered to do so. So that does
22 seem to be a further variation. That is not a pun.
23 MR. BLOCH: My Lord, there may be some infelicity there, but for
24 these purposes, if there is -- the commitment continues until
25 it terminates.

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1 BLOCH KC
2 MR. JUSTICE MEADE: Yes.
3 MR. BLOCH: What we are talking about is respects in which the
4 circumstances in which it terminates are unclear.
5 MR. JUSTICE MEADE: Right.
6 MR. BLOCH: What I am saying in relation to that is that we do not
7 resile from the commitment. The points that are being taken
8 would suggest that the commitment could go on potentially
9 indefinitely.
10 MR. JUSTICE MEADE: I understand that.
11 MR. BLOCH: So be it.
12 MR. JUSTICE MEADE: You say if it does it does. But I am talking
13 about the content, in the sense we have already discussed it,
14 you and I, which is if there is a decision about what the
15 licence would be but not an order to give it, what will
16 InterDigital do? Mr. Vary's undertaking seems to be it will
17 give the ones it is ordered to, but your explanation to me is
18 it will give ones that are declared to be the appropriate one,
19 even if it is not ordered to.
20 MR. BLOCH: Mr. Jones is absolutely right, we are at slight
21 cross-purposes here. The undertaking refers to -- is the
22 restraint on exercising patent rights.
23 MR. JUSTICE MEADE: Yes. Understood.
24 MR. BLOCH: What we have been discussing in this context, what I
25 was addressing in this context was the commitment in relation

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1 BLOCH KC
2 to the foreign proceedings.
3 MR. JUSTICE MEADE: Yes. Okay. Where do I find that then?
4 MR. BLOCH: That is paragraph 16 of Vary 3, which I think it is
5 the paragraph which we went to a little earlier.
6 MR. JUSTICE MEADE: Yes, okay, you are quite right. Let me just
7 check that. That is the commitment. Hold on. Yes. Right.
8 MR. BLOCH: The issue in relation to ----
9 MR. JUSTICE MEADE: Okay, but that may not be directly
10 inconsistent, but it at least leaves this open because it
11 said: "... Interdigital would... commit to complying with any
12 orders or outcomes ...", whatever that is. But that is where
13 you say that what that means is that InterDigital will agree
14 to give a RAND licence that is determined, even if the Swiss
15 court ----
16 MR. BLOCH: Yes, if one takes, it is the wrong interpretation, if
17 one takes a narrow interpretation of what it is to comply with
18 an order, one only complies with an order in circumstances
19 where you would otherwise be in breach of it.
20 MR. JUSTICE MEADE: Yes.
21 MR. BLOCH: Where the order is a declaration that you should do
22 something, you could also say that compliance involves your
23 then doing that which you have been declared to have to do.
24 MR. JUSTICE MEADE: Yes.
25 MR. BLOCH: But in any event, my Lord, I am happy to acknowledge

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1 BLOCH KC
2 that it could have been clearer and hope that what I have now
3 said is clear.
4 MR. JUSTICE MEADE: No, but I think it has to be written down,
5 Mr. Bloch. It really does. Is InterDigital binding itself
6 that it will not say in the Swiss court even if you, the Swiss
7 court, declare what RAND terms are, you do not order us to do
8 it, we will do it.
9 MR. BLOCH: My Lord, yes.
10 MR. JUSTICE MEADE: With all due respect, I do not think that is
11 what paragraph 16 says. So if you need to take instructions
12 about that, take instructions over lunch, by all means.
13 MR. BLOCH: My Lord, I will do that.
14 MR. JUSTICE MEADE: Thank you.
15 MR. BLOCH: Just rounding off what I what is saying about
16 availability generally, and then it may be convenient, my
17 Lord, to rise ----
18 MR. JUSTICE MEADE: Yes.
19 MR. BLOCH: ---- Amazon takes the point about the commitment being
20 indefinite. It then says, in 62 of its skeleton, that:
21 "These valuation calculations are fundamental and part of
22 Amazon's claim as of right to a licence." If one takes it
23 over the page, in paragraph 63, they state: "All that
24 InterDigital's undertakings remove is the risk of injunction
25 in the UK for the (very unclear) period now given ... But this

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1 BLOCH KC
2 dispute in the UK is not about injunction risk ...".
3 MR. JUSTICE MEADE: Yes.
4 MR. BLOCH: "This action is about the meaning and enforceability
5 of the contractual obligation, the scope of the licence and
6 the value of the licence over the UK rights which Amazon says
7 it has a contractual right to obtain. "
8 We would emphasise that this case, contractual case, is
9 not about injunction risk. It is purely contractual. Also,
10 of course, you have our submissions in relation to the extent
11 to which it is in any way linked to the UK patents as opposed
12 to any others.
13 My Lord, if that is a convenient moment ----
14 MR. JUSTICE MEADE: I understand, and in a sense I had already
15 highlighted paragraph 63. That goes back to what you said
16 about paragraph 86, I think it was, of the particulars of
17 claim.
18 MR. BLOCH: Exactly.
19 MR. JUSTICE MEADE: Thank you very much. Two o'clock.
20 MR. LYKIARDOPOULOS: My Lord ----
21 MR. JUSTICE MEADE: Yes, sorry?
22 MR. LYKIARDOPOULOS: ---- just on the recent discussion with my
23 learned friend about new undertaking, and I am just thinking
24 about my own clients' knowing and understanding the position.
25 MR. JUSTICE MEADE: Yes.

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1 BLOCH KC
2 MR. LYKIARDOPOULOS: I think what my Lord has suggested and my
3 learned friend has agreed to do, is they are going to be
4 looking at revising and providing a revised undertaking in
5 both 16 and 23, because they do go together, the two Vary --
6 one he called a "commitment" and one an "undertaking".
7 MR. JUSTICE MEADE: Yes.
8 MR. LYKIARDOPOULOS: We have heard a number of things now about
9 what they are meant to mean, which we had not understood them
10 that way, and we would say that as soon as we can have that in
11 writing, so my clients can understand what case they are now
12 meeting.
13 MR. JUSTICE MEADE: Yes, okay. Thank you very much.
14 (Adjourned for a short time)
15 MR. JUSTICE MEADE: Yes?
16 MR. BLOCH: My Lord, thank you for giving us the extra time to
17 obtain instructions.
18 MR. JUSTICE MEADE: Yes.
19 MR. BLOCH: It has not yet borne complete fruit, but I can say
20 where we have got to.
21 MR. JUSTICE MEADE: Okay.
22 MR. BLOCH: I appreciate that, obviously, it would assist my
23 learned friend to know what the target is before he has to hit
24 it.
25 MR. JUSTICE MEADE: Yes.

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1 BLOCH KC
2 MR. BLOCH: I can deal, I think, with a couple of points quite
3 simply. Before we adjourned, I may have at times, in response
4 to questions from my Lord, confused the undertaking which has
5 been given in relation to the UK patents or the relevant UK
6 patents, and the separate commitment given in relation to what
7 we would do in response to any determination in Switzerland or
8 Delaware.
9 MR. JUSTICE MEADE: Yes.
10 MR. BLOCH: My learned friend says, "Well, it is now unclear
11 whether or not they are co-terminus commitments, in the sense
12 that they would come to an end in exactly the same
13 circumstances". I think he is right; it is unclear whether
14 they would come to an end in exactly the same circumstances.
15 MR. JUSTICE MEADE: Yes.
16 MR. BLOCH: But, our position is that it is not necessary for them
17 to do so. The undertaking ----
18 MR. JUSTICE MEADE: I understand that. They are for different
19 things and so long as they each last long enough to serve
20 their individual purposes, then I can see why they might come
21 to an end at a different time.
22 MR. BLOCH: My Lord, thank you.
23 MR. JUSTICE MEADE: It might be worse if they tied together at the
24 same time and as a result one did not do what it was supposed
25 to. I get what you are saying.

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1 BLOCH KC
2 MR. BLOCH: That point we have not endeavoured to address.
3 MR. JUSTICE MEADE: No.
4 MR. BLOCH: The point that we are seeking to address is the point
5 that I was seeking to clarify and my Lord did not see in
6 Mr. Vary's statement. Nothing that I said this morning is --
7 We do not resile from what I was saying this morning, so that
8 remains good. But, of course, my Lord has said you wish us to
9 reduce it to a clear, written undertaking.
10 MR. JUSTICE MEADE: Yes.
11 MR. BLOCH: Steps have been taken in that regard and the
12 difficulty is that once one starts talking in terms of claims
13 and causes of action and relief and the like, quickly
14 ambiguities and concerns creep into the discussion,
15 particularly when those from whom we take instructions, or
16 specifically the principal person from whom we take
17 instructions is currently in the air on airborne WiFi, but,
18 none the less, in the air which does not make it easy.
19 MR. JUSTICE MEADE: I was very happy to give you the bit of time.
20 It is not your fault it has not allowed everything to be
21 brought to complete finality, but there we are. I am not
22 criticising.
23 MR. BLOCH: I am grateful, my Lord.
24 The only additional things I would say before moving on,
25 first of all, of course, if, and there are those working on

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1 BLOCH KC
2 this in the meantime, it gets clarified, if it or those
3 instructing me land, we will be in a position to update it.
4 MR. JUSTICE MEADE: Yes.
5 MR. BLOCH: Secondly, we are talking here about a commitment being
6 given in proceedings, in these proceedings, and of course the
7 nature and extent of that commitment is in part a matter for
8 this court and the nature and extent of that commitment is
9 something which the court may bear in mind in delivering its
10 judgment, if it feels that we have not gone far enough. It
11 can, of course, make any provision that it would otherwise
12 make, subject to us going further. I am not suggesting we
13 should have to go further, but of course that is always a
14 possibility.
15 I say we should not have to go further, in part because
16 there is a sense in which this is a case of no good deed goes
17 unpunished. What we are talking about is going further than
18 we should need to do at all. So perhaps I should leave that
19 there for now. The first forum, we say, would be arbitration.
20 MR. JUSTICE MEADE: Yes.
21 MR. BLOCH: We deal with that in our skeleton, at paragraphs
22 63-67. There is a dispute between the parties as to whether
23 arbitration can constitute a forum for these purposes.
24 MR. JUSTICE MEADE: Yes.
25 MR. BLOCH: I can make some general observations and will make

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1 BLOCH KC
2 some general observations in relation to that, but I cannot
3 point my Lord to an authority which resolves it. Speaking
4 generally, arbitration is, of course, encouraged as a means of
5 resolving international commercial disputes. Arbitration
6 awards are enforceable in much the same way as foreign
7 judgments and arbitration is the prescribed way of resolving
8 disputes between States under, for example TRIPS. Of course
9 the English court will enforce agreements to arbitrate and it
10 is implicit in the fact the English court will enforce
11 agreements to arbitrate that arbitration is regarded as an
12 alternative forum; otherwise the court would be depriving a
13 party of a route to justice.
14 The appropriateness of arbitration as a means of
15 resolving RAND or FRAND disputes specifically is recognised in
16 the judgment of Arnold LJ in the Nokia v OnePlus case and it
17 may just be helpful to go to what he says there.
18 MR. JUSTICE MEADE: Okay.
19 MR. BLOCH: That is in the third Joint Authorities bundle behind
20 tab 1 and the relevant paragraphs are paragraphs 11 and 17, so
21 starting at page 9, it is the last six lines: "As the Supreme
22 Court noted in Unwired Planet at [90], the IPR policies of
23 SDOs such as ETSI do not provide for any international
24 tribunal to determine such disputes. It follows that, in the
25 absence of an agreement to arbitrate, the only dispute

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1 BLOCH KC
2 resolution systems available to such parties are the national
3 courts competent to adjudicate upon patent disputes."
4 Of course, in the case of a reverse claim, that may not
5 be quite right, but that was not what the focus was there.
6 Then, in paragraph 17, on the following page, Arnold LJ deals
7 with the way to avoid the problems that have emerged as he
8 sees them: "The only sure way to avoid these problems is to
9 use a supranational dispute resolution procedure, and the only
10 supranational procedure currently available is arbitration."
11 The only sure way to avoid these problems is to use a supra
12 national -- currently available is arbitration.
13 MR. JUSTICE MEADE: Yes.
14 MR. BLOCH: He is specifically discussing there or envisaging a
15 procedure which has been agreed by the SDO or its members, but
16 there is no reason why this court should not recognise the
17 suitability of arbitration on an ad hoc basis. It is said by
18 Amazon that that is somehow contrary to what Fancourt J held
19 in the Kigen case, but what he was dealing with there was
20 mediation.
21 MR. JUSTICE MEADE: Yes, correct, he was.
22 MR. BLOCH: Of course, mediation is a very different beast.
23 MR. JUSTICE MEADE: Yes.
24 MR. BLOCH: Mediators have no power to decide anything, so it may
25 be that one does not need to go any further in relation to

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1 BLOCH KC
2 that.
3 It seems that neither side can cite an authority that
4 greatly assists. I think we have, possibly to our discredit,
5 cited the Sim v Robinow case, not least because it is actually
6 referred to in Spiliada and it does refer to Tribunals rather
7 than courts, but it is a soundbite. I do not believe that
8 that case, or that judgment, had in mind arbitration, it just
9 uses the term "tribunal" rather than "court", so we cannot
10 really put any great weight on that.
11 MR. JUSTICE MEADE: Yes.
12 MR. BLOCH: However, as a matter of principle, we would say, there
13 is no reason why a suitably constituted arbitration should not
14 be afforded appropriate respect and if there is a technical
15 reason, and I am jumping ahead here now, it is none the less
16 thought desirable for there to be arbitration. This might be
17 one much those circumstances in which it would be appropriate
18 to consider a case management stay, even if it were not
19 possible to deal with this matter under ordinary
20 forum conveniens principles.
21 MR. JUSTICE MEADE: What would that look like, a case management
22 stay ----
23 MR. BLOCH: If my Lord thought that the appropriate forum was
24 arbitration, but there was some technical reason why one could
25 not actually treat it as an alternative forum in accordance

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1 BLOCH KC
2 with the The Spiliada principles, it would still be open to
3 my Lord to say it is the right way forward and, therefore, it
4 would be possible to make a case management stay, conditional,
5 of course, on the pursuit of the arbitration.
6 MR. JUSTICE MEADE: The arbitration would be a specification that
7 I wrote, you mean ----
8 MR. BLOCH: No -- well, whether it needs to be the arbitration or
9 an arbitration is a separate matter.
10 MR. JUSTICE MEADE: Right.
11 MR. BLOCH: What we have done in our evidence and outlined in our
12 skeleton argument is propose a particular form of arbitration.
13 MR. JUSTICE MEADE: That is what I mean. That is what I mean.
14 MR. BLOCH: We see a particular advantage in that form of
15 arbitration because it meets Amazon's concern and possibly a
16 wider trade concern that there should be an open determination
17 of the issues relating to the proper construction of the ITU-T
18 undertaking. It also enables one to set up a panel which will
19 both reflect the significance of the determination of Swiss
20 law, but also, because my Lord has indicated this case, or
21 these kinds of disputes also raise competition issues and
22 these kinds of disputes have been dealt with in different
23 jurisdictions, would enable the breadth of those views to be
24 represented on the panel so that the determination can be seen
25 as an authoritative attempt to resolve the dispute in a way

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1 BLOCH KC
2 which will invite both the industry and, one hopes, the courts
3 of different jurisdictions to proceed in a more harmonious
4 fashion. They would not, of course, be obliged to do so, but
5 in so far as it would have persuasive authority and it would
6 be capable of influencing market practice and what would
7 ordinarily be regarded as good faith behaviour, it could well
8 achieve that objective.
9 MR. JUSTICE MEADE: Yes, breadth of which view? I am not sure
10 what you mean. Do you mean the English versus the UPC/German
11 way of looking at the world, or what?
12 MR. BLOCH: What we propose is a panel which would have a
13 precedent who has the Swiss law expertise and other members
14 who would be drawn from the different, not just
15 jurisprudential traditions, as it were, but also the principal
16 markets in which this litigation is conducted, so we have
17 suggested the UK be one of them, we have suggested that the US
18 be another, et cetera.
19 Therefore, what we would hope to do, and one would have
20 thought there should be a real prospect of doing, is bringing
21 them together in a way which will produce a consensus result.
22 That is what, leaving aside the advantage which any individual
23 operators may see from the ongoing tension and uncertainty of
24 the current position, one would have thought we should all be
25 seeking to achieve.

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1 BLOCH KC
2 MR. JUSTICE MEADE: Okay. All right.
3 MR. BLOCH: I am not sure quite what the objection to arbitration
4 really is, if one strips away timing, and no doubt my learned
5 friend will develop them, but on the face of it, it is not
6 only a recognised way of dealing with international disputes,
7 even between States, but it is a way in which we can address
8 the conflicts that have emerged in relation to the practice in
9 relation to FRAND and RAND cases.
10 MR. JUSTICE MEADE: Sorry, by that, you mean the fact that conduct
11 gets a lot more airtime in the UPC and Germany than it does in
12 the UK and the UK does set rates and the UPC and Germany do
13 not? When you say we are going to reach international peace
14 over this, over what?
15 MR. BLOCH: It all sounds a bit like apple pie, I appreciate that.
16 MR. JUSTICE MEADE: It does, yes, but you were saying there are
17 some things that would be resolved in a way that would be
18 authoritative; what sort of things?
19 MR. BLOCH: The current differences in practice appear to reflect
20 differences in the approach to the meaning and effect of the
21 relevant undertakings and the relationship between those
22 undertakings and relevant competition law.
23 MR. JUSTICE MEADE: Yes.
24 MR. BLOCH: As my Lord observed this morning, to what extent those
25 differences are borne of a different approach to competition

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1 BLOCH KC
2 law rather than a different approach to the contract is not
3 always or may not be clear, but what is clear is that there is
4 a lack of clarity in this area, which is not only giving rise
5 to jurisdictional conflicts, but creating uncertainty for the
6 industry. When my Lord asked, what would one hope to resolve?
7 The answer is any and all of those issues.
8 MR. JUSTICE MEADE: Okay.
9 MR. BLOCH: In so far as they arise in relation to this dispute.
10 MR. JUSTICE MEADE: Okay. I am just a bit uncertain why -- is
11 this arbitration going to find an average place, like mixing
12 together two pots of paint, or is it just going to say whether
13 Arnold LJ is right or a judge in the UPC? If it just comes
14 down to five arbitrators, not being a national court, just
15 come down in favour of one rather than the other, I am not
16 sure how that is authoritative.
17 MR. BLOCH: It rather depends what one means by authority and
18 bearing in mind I am appearing in front of the court, I must
19 choose my words carefully.
20 MR. JUSTICE MEADE: Yes.
21 MR. BLOCH: From a global, commercial perspective, in a world in
22 which the courts of different national States appear to be
23 going in different directions, a suitably constituted arbitral
24 body might have more authority than any individual State
25 court.

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1 BLOCH KC
2 MR. JUSTICE MEADE: Right. Okay.
3 MR. BLOCH: Because, in a sense, part of the problem here is,
4 rightly or wrongly, people think they know what they will get
5 from one court and what they will get from another. What one
6 is looking for is to set up in a neutral but authoritative
7 way, a panel which can come to a decision. It could come down
8 entirely on one side or entirely on the other. One does not
9 know. It does not necessarily have to come down in the
10 middle, but it will be a decision of a panel so-constituted,
11 one would hope that at the very least both the industry and
12 all courts will take it very seriously.
13 MR. JUSTICE MEADE: Okay.
14 MR. BLOCH: Beyond that, my Lord, on a global scale, the decisions
15 of any one court may or may not be respected in a different
16 jurisdiction.
17 MR. JUSTICE MEADE: No, quite so. Quite so.
18 MR. BLOCH: One is trying to get away from that.
19 MR. JUSTICE MEADE: Okay. Fair enough. Yes.
20 MR. BLOCH: If one puts that to one side, and that is our first
21 preference, in a sense the obvious preference, if it should be
22 a court, is that it should be the Swiss court.
23 MR. JUSTICE MEADE: Right. Yes. Because it is Swiss law.
24 MR. BLOCH: Because it is Swiss law. There is, in relation to the
25 meaning and effect of this agreement, what appears to be the

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1 BLOCH KC
2 potential for serious differences as to how that Swiss law
3 should be applied.
4 We deal with that in our skeleton, in paragraphs 68-72.
5 We say not only is the contract governed by Swiss law, but in
6 so far as it is relevant to look at the parties, the key party
7 here is the SSO to whom the undertakings are given, and that
8 of course is a Swiss entity. The meaning and effect of the
9 undertaking as given to the ITU-T cannot vary according to the
10 identity of the SEP-holders or as to the identity of the third
11 party beneficiaries, so it is the establishment of the ITU-T
12 in Switzerland which truly characterises the complexion of the
13 parties when it comes to the construction of the undertaking.
14 Is the Swiss court an available forum? This is a
15 slightly curious question to even have to address in relation
16 to a Swiss-law-governed contract. One starts with the perhaps
17 not unreasonable proposition that Swiss court s could exercise
18 jurisdiction over a Swiss-law-governed contract. There is
19 some dispute between the experts as to whether the Swiss
20 courts would exercise jurisdiction over this RAND dispute if
21 the parties did not consent to it. There is no dispute as to
22 the fact that the Swiss courts would exercise jurisdiction
23 over the dispute if the parties do consent to it and, of
24 course, InterDigital does consent and it is a matter for
25 Amazon whether it wishes to bring the proceedings. As long as

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1 BLOCH KC
2 InterDigital consents, the jurisdiction is established for
3 relevant purposes.
4 My Lord, if my Lord is interested in the finer points of
5 Swiss law, our case as to whether or not the Swiss courts
6 would deal with this matter absent InterDigital's consent, is
7 set out in the expert report of Dr. Holzer, that is his first
8 report, at paragraph 33, but he is entirely clear what the
9 position would be with consent. That is dealt with in
10 paragraphs 31 and 32, which I will give you the reference, I
11 do not think any of this will be disputed, it is D.1, tab 9,
12 page 10.
13 Therefore, there should really be no issue as to this.
14 One point that is raised by Ms. Dorigo, she raises a point as
15 to, she raises a number of points as to what the position
16 would be if there was not consent, but as we read her evidence
17 (and I just draw attention to paragraphs 21 and 43, but they
18 are not the only ones), there is no dispute as to what is
19 possible with consent.
20 Therefore, can the Swiss courts determine the issues and
21 grant relief which is available under Swiss law? It should be
22 obvious that the Swiss court can grant any relief which is
23 probably available under Swiss law.
24 MR. JUSTICE MEADE: Right.
25 MR. BLOCH: Also, I do not think it is seriously being suggested

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1 BLOCH KC
2 that the Swiss courts are incapable of conducting a valuation,
3 even if Amazon thinks that it prefers the disclosure practices
4 or the ways in which expert evidence is taken in this country,
5 that is something which we know from The Spiliada is not a
6 basis on which to say a forum is not available if it can
7 provide, can do substantial justice between the parties.
8 There is the recurring concern on Amazon's part that it
9 may not get a RAND determination, but that is the ground we
10 have already gone over.
11 MR. JUSTICE MEADE: Yes.
12 MR. BLOCH: If it is entitled to one, according to Swiss law, then
13 the Swiss courts are capable of doing it. If it is not
14 entitled to one, then if Amazon are willing to accept the
15 commitment we have indicated, what does it get? It does not
16 get more if this is simply a FRAND/RAND good faith obligation,
17 but if it is entitled to a declaration as to the terms of a
18 licence, then it gets the benefit of the commitment as to
19 InterDigital's willingness to offer it. So there is more, as
20 I said more generally before the short adjournment, available
21 to Amazon, on any view, if it proceeds in Switzerland than in
22 this jurisdiction, in so far as we are taking specific
23 performance off the table.
24 If, despite that, Amazon is unwilling to proceed in
25 Switzerland, one has to ask why? We are removing an issue

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1 BLOCH KC
2 which could otherwise be of concern to it; what is the
3 legitimate juridical advantage it obtains from proceeding in
4 this country, rather than that of the courts of the governing
5 law of the undertaking?
6 My Lord ----
7 MR. JUSTICE MEADE: I think the answer is, I know what your
8 response is, the answer is a greater confidence that a rate
9 will be set and you say, okay, there you are, but that does
10 not enter into the picture.
11 MR. BLOCH: (1), it does not enter the picture and it is the
12 assumption as to the way in which this court will review
13 issues of law which it is yet to have heard.
14 MR. JUSTICE MEADE: Yes, but they have taken a view about the
15 likely outcome of that.
16 MR. BLOCH: My Lord, yes.
17 MR. JUSTICE MEADE: You are not asking me to enter into even a
18 provisional assessment of who is right or wrong about what
19 the ----
20 MR. BLOCH: My Lord, no.
21 MR. JUSTICE MEADE: No.
22 MR. BLOCH: There is an issue that is touched on in some of the
23 cases about a party's right to choose.
24 MR. JUSTICE MEADE: Yes.
25 MR. BLOCH: This is something which my Lord addressed in, I think,

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1 BLOCH KC
2 Nokia v OnePlus and my Lord will be very familiar with what
3 you said there. It is in paragraphs 271-273. What my Lord
4 said in that case, what my Lord envisaged, was that there
5 might be a right to choose, for example, between different
6 licence structures, but not necessarily to choose between the
7 court's that will determine what that licence or what
8 irrelevant obligation is.
9 MR. JUSTICE MEADE: Yes, that is right.
10 MR. BLOCH: All I would observe about that, and I am not sure to
11 what extent it really is an issue at this stage, is the extent
12 to which a portfolio-owner may have a right to choose will
13 depend, at least in part, and we would say fundamentally, on
14 the meaning and effect of the undertaking because it is the
15 undertaking which defines what conduct it is, how it is
16 obliged to conduct itself, so it is not, as it were, a matter
17 that could be resolved or should be resolved, we would submit,
18 by the court a priori or by reference to its own practices.
19 The right that one is talking about is a contractual one and
20 so it will ultimately be a matter for whoever resolves the
21 contractual dispute to say to what extent there is a right to
22 choose, whether it is in relation to the structure or scope of
23 the licence offered or as to the court that determines it.
24 There are many professional organisations which specify
25 dispute resolution, there is no reason why that should not be

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1 BLOCH KC
2 the case. There are many bodies.
3 MR. JUSTICE MEADE: With the ITU?
4 MR. BLOCH: No, as a matter of general principle.
5 MR. JUSTICE MEADE: Sure, of course. As you probably know, ETSI
6 were quite close to including a dispute resolution mechanism
7 when it was first set up and it failed by, the opportunity was
8 missed by, as I understand it, only a narrow margin. We would
9 all be probably in a different place. Anyway.
10 MR. BLOCH: That is right.
11 MR. JUSTICE MEADE: Everybody agrees they could, but it has not
12 happened.
13 MR. BLOCH: My Lord, that is correct. The point I was seeking to
14 develop is a slightly different one and it is whether or not
15 it is open to the portfolio-owner, in the absence of such a
16 specified dispute resolution system to choose which court it
17 will proceed in, and the submission is that whether or not it
18 is open to the portfolio-owner to choose is a question of the
19 nature and extent of its obligation under the undertaking
20 itself.
21 MR. JUSTICE MEADE: I understand that. If you come to this
22 hearing with evidence that the ITU obligation implicitly
23 included a right for InterDigital to choose, I would have to
24 rule on that. But that is not what has happened. You are
25 leveraging my decision in Nokia v Oppo to say that, as it

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1 BLOCH KC
2 were, the structure means that they can because in ETSI all
3 they have to do is make an offer.
4 MR. BLOCH: My Lord, I am not so bold. I am not seeking to
5 leverage what my Lord said in that case. I am acknowledging
6 that what my Lord said in that case and submitting that the
7 answer to the question in relation to the extent to which the
8 portfolio-owner can choose is ultimately a matter of contract
9 to be resolved as a matter of contract. But, and it may have
10 taken a long time to get here, one thing is clear: the
11 implementer does not have any right to choose. It is not the
12 implementer's undertaking that we are talking about here. The
13 implementer cannot ----
14 MR. JUSTICE MEADE: No, but Amazon are not saying they have a
15 contractual right to choose the forum.
16 MR. BLOCH: My Lord, they are not, but they are seeking to take
17 advantage of the fact that they have chosen.
18 MR. JUSTICE MEADE: They have, but that is just under the rules of
19 international conflict ----
20 MR. BLOCH: My Lord, yes. When one is considering what weight to
21 place on the fact that they have, as we would say, jumped the
22 gun, one needs to understand that if anyone has a right to
23 choose, we would submit it must be the portfolio-owner.
24 MR. JUSTICE MEADE: Okay. They do not have a right to choose,
25 agreed; at least they are not arguing they have and I agree,

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1 BLOCH KC
2 because they have not. But they do not have a right to choose
3 does not mean you have.
4 MR. BLOCH: My Lord, that is right and I have not produced
5 evidence and I would not expect my Lord to, in any event, wish
6 to make a determination as to the construction of the ITU-T
7 undertaking ----
8 MR. JUSTICE MEADE: Just taking where you are going with it, since
9 you cited it, what I decided in, as I recall, in Nokia, was
10 that the patentee can choose the form of the licence. So the
11 patentee can say, "I am going to give you a lump sum licence
12 and that is FRAND, so that is up to me", and the implementer
13 is not allowed to say, "No, I insist on a running royalty
14 licence". If it so happens that in court A, the court is
15 looking at running royalty and in court B it is looking at
16 lump sum, the patentee can say, "I am only interested in the
17 lump sum court because I am entitled to insist on that one".
18 So the insistence on a court depends on there being a
19 difference in the type of the licence. I was not, I do not
20 believe I said that London was preferred to Chongqing.
21 MR. BLOCH: My Lord did not.
22 MR. JUSTICE MEADE: No.
23 MR. BLOCH: Perhaps I should take my Lord to it. But what my Lord
24 went on to say is that a different situation may arise where
25 one is talking about court decisions prospectively.

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1 BLOCH KC
2 MR. JUSTICE MEADE: I think we better get is straight then.
3 MR. BLOCH: Yes, it is JA.3, tab 2, page 58.
4 MR. JUSTICE MEADE: Yes, all right.
5 MR. BLOCH: It is quite a substantial section. The critical bit
6 may be in paragraph -- Paragraphs 271 and 272, I think my Lord
7 has just summarised.
8 MR. JUSTICE MEADE: Let me just read it and remind myself. (Pause
9 for reading) Yes. Then I went on to look at the details
10 and ----
11 MR. BLOCH: I think, my Lord, it is paragraph 273, where you refer
12 to the muddying of the waters.
13 MR. JUSTICE MEADE: Yes, but in the end I decided in favour, at
14 292, "... the overall thrust of what Nokia says ..." because,
15 and I said at least because of cross-licence, Nokia was making
16 a real choice between two different FRAND options which it was
17 allowed to do.
18 MR. BLOCH: Yes.
19 MR. JUSTICE MEADE: Yes.
20 MR. BLOCH: For our purposes, it is, I think, 273 that I would
21 like to focus on. Because if one approaches this from a good
22 faith position and says that the obligation is a process
23 obligation and you must act in good faith, let us suppose
24 that, for the sake of argument, the courts of country A do
25 generally produce higher royalties than the decisions of the

1 BLOCH KC
2 courts of country B.
3 MR. JUSTICE MEADE: Okay.
4 MR. BLOCH: If this is a good faith obligation and the courts of
5 country A are as respected as any other courts, one may ask
6 why it should be inappropriate or a breach of good faith to
7 wish to have one's claims determined by that court.
8 MR. JUSTICE MEADE: Okay.
9 MR. BLOCH: It is an open question, it is a question of
10 construction, but one thing that is clear is that it is not a
11 choice that falls to the patentee. Sorry, quite right, the
12 implementer.
13 MR. JUSTICE MEADE: Yes.
14 MR. BLOCH: Rather important to get the punchline right!
15 MR. JUSTICE MEADE: Yes.
16 MR. BLOCH: I come on then, my Lord, to the third potential forum
17 and that is the Delaware courts. We say, of course, that
18 Delaware is an available court. We deal with that in our
19 skeleton from paragraphs 73-78.
20 MR. JUSTICE MEADE: Yes.
21 MR. BLOCH: It is the domicile of the first claimant and of the
22 first defendant. Both enterprises operate globally, but it
23 is, of course, generally regarded as convenient to determine
24 cases in one's own country and in one's own time zones, so
25 there are some obvious practical advantages. It may be

1 BLOCH KC
2 regarded as a somewhat default forum of choice. There is a
3 faint dispute between the parties as to where their businesses
4 operate. In, I think, paragraph 12 of Amazon's skeleton
5 argument, on page 5, they say they have a substantial business
6 in the United Kingdom. We, of course, do not dispute that.
7 We do not dispute that Amazon and InterDigital have business
8 interests in other countries than the United States, including
9 the United Kingdom. However, if and in so far as the location
10 of commercial interests of the parties is a connecting factor
11 when considering where the proper place to determine the
12 dispute is, undoubtedly the principal commercial interests lie
13 in the United States.
14 Similarly, we do not dispute that both Amazon and
15 InterDigital litigate in this country. This is not one of
16 those cases where we are saying that there is a fundamental
17 problem of corruption or incompetence in a jurisdiction that
18 has been considered, but obviously there are advantages to
19 proceeding in one's home courts. I do not think I need to
20 deal with the questions of discovery and the like because the
21 same issues arise in relation to them as arise in relation to
22 Swiss practice.
23 The question of whether or not the court would be
24 willing to make a determination, I think I have already
25 touched on that. The suggestion that the United States courts

1 BLOCH KC
2 might be unwilling to make advisory opinions in the light of
3 the commitment that we have made, however one construes it, we
4 would say that that problem falls away.
5 MR. JUSTICE MEADE: This is the point about you consent to
6 rate-setting, as long as the ITU obligation entitles Amazon to
7 it, and that is it. That is "yes"/"no" ----
8 MR. BLOCH: And we have gone further than that because we have
9 indicated that in the event that the rate is set, but for
10 whatever reason not specifically performable ----
11 MR. JUSTICE MEADE: No ----
12 MR. BLOCH: ---- we would, none the less, offer the licence.
13 MR. JUSTICE MEADE: Yes. You sometimes hear it expressed that the
14 US courts will not get involved in global rate-setting because
15 of territoriality, whatever, but if the parties consent (and
16 you will consent), then they do.
17 MR. BLOCH: Yes.
18 MR. JUSTICE MEADE: Your consent is not, you know, you are not
19 running towards it, but you consent to it happening if the ITU
20 obligation requires it.
21 MR. BLOCH: Yes.
22 MR. JUSTICE MEADE: Right. Okay.
23 MR. BLOCH: I think, then, that I can go to deal with one
24 outstanding issue and that is the position in relation to
25 competition law.

1 BLOCH KC
2 MR. JUSTICE MEADE: Right.
3 MR. BLOCH: It may well be unsurprising if the EU and EEA courts
4 would not initially expect to look at a dispute of this kind
5 through the lens of their own competition law. It may be that
6 the United States would also initially approach this through
7 the lens of its own antitrust law. But what they would be
8 doing if they do that is no different from what Amazon is
9 inviting the English court to do in this case. Amazon has not
10 come to this court and said, "We would like an English-law
11 competition determination in relation to matters specifically
12 concerning England. We would like a different one in so far
13 as we are concerned with any other jurisdiction."
14 What Amazon is seeking here is a resolution of
15 competition law issues which will affect a global licence. It
16 may well be that they can, in addition, either here or in
17 other jurisdictions, bring specific competition law claims,
18 but, of course, as of now, whilst there is a formal
19 reservation of a claim to damages, they have not actually
20 articulated any damages claim, the competition law claim or
21 cause of action is brought to achieve the same purpose as its
22 contractual claim and is to be viewed, we would submit,
23 through that lens, in very much the way that in some other
24 jurisdictions the whole dispute would naturally be viewed.
25 MR. JUSTICE MEADE: Okay. Wait a minute. (Pause) Okay. All

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1 BLOCH KC
2 right.
3 MR. BLOCH: So, my Lord, we do not see any distinct issue in
4 relation to the competition law claim or its characterisation
5 in neutral terms.
6 MR. JUSTICE MEADE: Right. Sorry, so the case goes off to
7 Delaware, Amazon says, "We want a licence to the UK patent and
8 all the others, we want a licence to all the UK patents
9 because InterDigital is obliged to give us one under
10 competition law as it applies in the UK" and InterDigital's
11 position is that the US court would apply US competition law
12 to decide whether a licence for the UK patents must be given.
13 MR. BLOCH: The position is that the law that the US would apply
14 and whether it applies one law or more ----
15 MR. JUSTICE MEADE: Yes.
16 MR. BLOCH: ---- will be a matter for the US court, quite
17 properly.
18 MR. JUSTICE MEADE: Right.
19 MR. BLOCH: In the same way as it would be a matter for this court
20 if it retains jurisdiction over the claims. What one cannot
21 do and would amount to committing the Harrods fallacy, would
22 be to say, "The US court or the Swiss court must apply in
23 relation to this dispute, the English law".
24 MR. JUSTICE MEADE: Right.
25 MR. BLOCH: It may be that there is scope for a specific English

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1 BLOCH KC
2 law claim, but there is no entitlement to have this dispute,
3 if properly characterised as a global dispute, determined in
4 accordance with English competition law as opposed to the
5 competition law of any other country.
6 MR. JUSTICE MEADE: I see. Okay. You say in the same way that in
7 Harrods it was -- you could not say it has to be the Companies
8 Act of the UK.
9 MR. BLOCH: Exactly, my Lord. In that case, of course, one was
10 concerned just with issues of incorporation and the like,
11 which may or may not have been argued to have been additional
12 specific factors to be taken into account. But it is common
13 that the law in different countries, in relation to the same
14 dispute, will be different, whether it is statutory,
15 code-based or common law and that one may potentially get
16 different outcomes.
17 MR. JUSTICE MEADE: Right.
18 MR. BLOCH: There is no reason, in principle, why a competition
19 law claim should not be analysed in the same way as any other
20 such claim. The only point that I am making in addition, is,
21 of course, if there is a specific claim then Amazon is free to
22 formulate it. In this country, it has not attempted to do so,
23 it has simply taken the claim which matches the jurisdiction.
24 That is a product of the jurisdiction which it sought to start
25 proceedings in.

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1 BLOCH KC
2 MR. JUSTICE MEADE: Right. Okay. Yes.
3 MR. BLOCH: So, my Lord, what is left? There is the interests of
4 justice and there is case management.
5 MR. JUSTICE MEADE: Yes.
6 MR. BLOCH: As far as case management is concerned, I have touched
7 on that already. There is much learning and a little heat as
8 to how readily the court should exercise its powers and how
9 one should properly characterise the circumstances in which it
10 should do so.
11 MR. JUSTICE MEADE: Yes.
12 MR. BLOCH: We are only inviting it to do so in one specific
13 situation, which we anticipate does not arise.
14 MR. JUSTICE MEADE: Yes.
15 MR. BLOCH: That is in the event that the court thinks that
16 arbitration would be the right way to go, but there is some
17 technical reason why it cannot simply say so when making a
18 Spiliada forum conveniens analysis ----
19 MR. JUSTICE MEADE: The case management comes in if arbitration is
20 correct. You know what I mean by "correct"?
21 MR. BLOCH: Yes.
22 MR. JUSTICE MEADE: But, as it were, not strictly, I will put it
23 this way, a forum; is that right?
24 MR. BLOCH: Yes. I am reminded, of course, what I am saying does
25 not apply to the patent claims.

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1 BLOCH KC
2 MR. JUSTICE MEADE: No, no, I understand that.
3 MR. BLOCH: Although there might be a separate reason to stay
4 those because in the light of the undertakings, particularly
5 if the real show goes off elsewhere, there can be very little
6 point. We cannot formally say they have no right to challenge
7 the validity of patents as a matter of policy, but quite what
8 is achieved by it is another matter.
9 MR. JUSTICE MEADE: That might be something on which you are
10 agreed. No doubt it has implications, but I do not think
11 either of you think any particular patent will resolve the
12 dispute in this court. It might in other courts, where an
13 injunction follows inevitably, but anyway, that is a practical
14 observation.
15 MR. BLOCH: My Lord, there remains the interests of justice.
16 My Lord is aware there are a huge number of reverse FRAND and
17 reverse RAND cases being commenced by implementers in this
18 country.
19 MR. JUSTICE MEADE: Yes.
20 MR. BLOCH: It is taking up a very considerable amount of court
21 time.
22 MR. JUSTICE MEADE: When you say there are "a huge number" of
23 those cases, I think you mean to say there are a number of
24 huge cases. (Laughter)
25 MR. BLOCH: It is quite a large number. We have listed the ones

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1 BLOCH KC
2 that occurs to us.
3 MR. JUSTICE MEADE: They are all heffalumps!
4 MR. BLOCH: Yes. I think we listed about five or six of them. As
5 my Lord says, they are pretty considerable.
6 MR. JUSTICE MEADE: Yes.
7 MR. BLOCH: They are taking up a lot of court time and that must
8 be a pressure, both on the court and on other court-users,
9 particularly because so many of them are, for whatever reason,
10 the subject of orders for early trials or expedited trials.
11 MR. JUSTICE MEADE: Yes.
12 MR. BLOCH: Then, of course, there is the question of
13 international disharmony.
14 MR. JUSTICE MEADE: Right.
15 MR. BLOCH: We say that what we are proposing addresses both those
16 considerations and that those are proper considerations for
17 the court to take into account.
18 MR. JUSTICE MEADE: Yes. I had a look at Bright J's decision. I
19 did not really think that was what he was saying. He was
20 talking about that particular case being enormous, I thought.
21 I do not think he was talking about a category of litigation
22 placing a burden on the court should he should take a
23 particular view of jurisdiction.
24 MR. BLOCH: My Lord, that may well be a fair reading. I do not
25 think he was excluding it either.

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1 BLOCH KC
2 MR. JUSTICE MEADE: Right. Okay.
3 MR. BLOCH: We would say it is clearly a -- The impact on the
4 court, for whatever reason, whether it is a category of case
5 or the sheer weight of a particular case, is something that is
6 legitimate to take into account.
7 MR. JUSTICE MEADE: Okay. Then the international disharmony you
8 have in mind is what?
9 MR. BLOCH: It is illustrated by the current spate or line of
10 anti-suits and anti-anti-suits.
11 MR. JUSTICE MEADE: Okay.
12 MR. BLOCH: But that is between the courts. There is also, as
13 long as there are significantly different approaches in
14 different courts, so that a determination in one court will
15 impact the value or the price paid in relation to patents
16 granted by other territories, there is both a commercial
17 uncertainty which is undesirable and a tension which one hoped
18 after the determination of the Supreme Court in the Unwired
19 Planet case would not be an issue, but without some sort of
20 resolution of a common way of going forward, may raise all the
21 same issues as were worrying those who were opposing the
22 determination of global licences in the first place.
23 It was perhaps less of an issue where the litigation was
24 being commenced by the patentees and then it would be the
25 patentees' behaviour that could be judged from the competition

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1 BLOCH KC
2 law perspective in other jurisdictions. The reverse claims
3 raise an issue which was not really anticipated in the Unwired
4 Planet case and if there is an absence of harmony between
5 different courts in relation to the proper approach to these
6 kinds of dispute, that may well be an ongoing problem.
7 MR. JUSTICE MEADE: Okay.
8 MR. BLOCH: My Lord, unless I can assist you further ----
9 MR. JUSTICE MEADE: As I said earlier, I want to get my decision
10 tree straight, at least before Mr. Lykiardopoulos starts.
11 Just help me: if Amazon are right about 63.14 and they have
12 served the proceedings in the jurisdiction as of right,
13 validly under that, then I think from your skeleton and
14 Mr. Vary's evidence, you are not saying that there is, first
15 of all, a different point about defendants 2-5?
16 MR. BLOCH: No.
17 MR. JUSTICE MEADE: No; okay. If they have served validly, served
18 in validly, then it is your burden to show ----
19 MR. BLOCH: Yes.
20 MR. JUSTICE MEADE: ---- that there is, whatever the word is, a
21 significantly better forum. Is that right?
22 MR. BLOCH: Yes.
23 MR. JUSTICE MEADE: Yes. That is judged, you say, at which point
24 in time?
25 MR. BLOCH: That is judged as of the date of the hearing, so

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1 BLOCH KC
2 today.
3 MR. JUSTICE MEADE: Your undertakings and clarifications come in?
4 MR. BLOCH: Yes.
5 MR. JUSTICE MEADE: Okay. Thank you. Then if it is a gateway,
6 then it is Amazon's burden to show that this is the most
7 appropriate forum.
8 MR. BLOCH: Yes.
9 MR. JUSTICE MEADE: And that is judged ----
10 MR. BLOCH: That is again -- there are two separate questions.
11 The forum question is always judged as of the date of the
12 application.
13 MR. JUSTICE MEADE: Is that as of now?
14 MR. BLOCH: As of now. Yes, as of the hearing, yes, not the date
15 the application was issued.
16 MR. JUSTICE MEADE: Right.
17 MR. BLOCH: In a sense, that may seem obvious because the court is
18 hardly going to give a judgment which said if I was free to do
19 so, I think this is the wrong jurisdiction but in light of the
20 time in question I am going to take it anyway, so it is at the
21 date of the hearing.
22 A separate issue arises when considering whether or not
23 they have got through a gateway and it is in relation to the
24 gateway issue that they rely on the Erste case and say that,
25 for those purposes, whether they satisfied the gateway, we may

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1 BLOCH KC
2 be too late in the undertakings that we served, the varied
3 undertakings that we served.
4 MR. JUSTICE MEADE: Okay. And those undertakings, as it were, go
5 to the proper characterisation; right?
6 MR. BLOCH: Yes.
7 MR. JUSTICE MEADE: Therefore, although, I do not think it has
8 been spelled out, it would be logical if that were the same
9 for 63.14; right?
10 MR. BLOCH: Many of the same arguments apply; yes.
11 MR. JUSTICE MEADE: Yes, but it would be, because you used ----
12 MR. BLOCH: Sorry, my Lord, yes. The answer is yes.
13 MR. JUSTICE MEADE: Whether it is characterised as a patent
14 dispute or a contract dispute ----
15 MR. BLOCH: The relevance, in so far as the undertaking may be
16 relevant, the same timing consideration applies.
17 MR. JUSTICE MEADE: Right.
18 MR. BLOCH: Obviously, the arguments are slightly different in
19 relation to ----
20 MR. JUSTICE MEADE: No, no, I understand that, but the timing
21 point is the same?
22 MR. BLOCH: The timing point is the same.
23 MR. JUSTICE MEADE: Okay. I think that is what I thought. There
24 are so many points swirling around. We will see if there is
25 common ground about at least those points of analysis.

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1 BLOCH KC
2 MR. BLOCH: Thank you, my Lord.
3 MR. JUSTICE MEADE: Mr. Jones?
4 MR. JONES: I sat in this chair by accident.
5 MR. JUSTICE MEADE: Okay, all right. Somebody might want to
6 update you about something, I do not know, there has been a
7 lot of laptop-waving going on. No? Okay. We will take the
8 break now, and we will start at 3.30, Mr. Lykiardopoulos, and
9 go to 4.30.
10 (A short break)
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1 LYKIARDOPOULOS KC
2 MR. JUSTICE MEADE: Yes, Mr. Lykiardopoulos?
3 MR. LYKIARDOPOULOS: My Lord, I was going to start with the point
4 that we just ended on, so that my Lord has fresh in your mind
5 our position on the differences between service in under
6 63.14, and service out today.
7 MR. JUSTICE MEADE: Yes.
8 MR. LYKIARDOPOULOS: There is broad agreement, but I would say
9 there are a couple of points of nuance which it is important
10 the court understand.
11 Starting first with service in, and if we are correct
12 about service in, on that, there seems to be agreement. That,
13 my Lord, will look at as of today, that is the Erste Bank
14 case, and they have the burden. The burden is on them to show
15 both that there is an alternative available forum and that
16 that forum or forums is clearly and distinctly or clearly or
17 distinctly more appropriate than this court.
18 MR. JUSTICE MEADE: Yes.
19 MR. LYKIARDOPOULOS: That is, if correct on service in, 63.14.
20 The second point is if we are wrong on that and we need
21 to rely on service out, and that is the order of the Master,
22 again, there is agreement that that is an application to set
23 that aside, following again Erste Bank. That is looked at at
24 the date of that order, which is 18th September 2025.
25 MR. JUSTICE MEADE: You mean the existence of the gateway?

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1 LYKIARDOPOULOS KC
2 MR. LYKIARDOPOULOS: Actually, no, we say you look at the whole on
3 whether the order should be set aside. On that you look at
4 without taking into account what has happened since then and
5 you look at whether there is a serious question to be tried,
6 gateway and the decision on forum. For that, we have ----
7 MR. JUSTICE MEADE: Right.
8 MR. LYKIARDOPOULOS: And for them, they have the burden on whether
9 or not there is an available forum. So where a person comes
10 and challenges an order of service out and they say, actually,
11 there is an alternative forum, they have the burden to show
12 there is an alternative forum and that was Unwired Planet and
13 Arnold LJ in Tesla, but he took that from Unwired Planet.
14 Then, we have the burden to show, if it an alternative
15 forum that is available, to show that it is clearly, or show
16 that the English court is clearly or distinctly more
17 appropriate.
18 When you are looking at the Master's order, we have the
19 burden to show serious question to be tried, we have the
20 burden to show we have the better of the argument on the
21 gateways. On forum conveniens, if it is contested, they must
22 show you that there is an available forum and then we, if they
23 show you that, must show that, none the less, England is
24 clearly or distinctly more appropriate. We say all of that is
25 done as of the date of the order, so you do not take into

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1 LYKIARDOPOULOS KC
2 account their undertakings and commitment on consent.
3 MR. JUSTICE MEADE: Right. So the difference between service in
4 and service out is, there is a difference on timing as to
5 alternative forum?
6 MR. LYKIARDOPOULOS: There is. Where the two can come together is
7 where you have a situation as is this case and is similar to
8 what happened in the Lubbe case, in South Africa, is where
9 there has been good service, whether that is service in or
10 service out. So then you are in a situation that the Master's
11 order was correctly made in September 2025 and/or we correctly
12 served in under 63.14, so there has been good service. None
13 the less they wish to say that there should be a case
14 management stay or a forum conveniens stay or non conveniens
15 stay.
16 That is something which does arise in this case, they
17 wish to do that. They are not precluded from doing that, but
18 there now one is looking at it in circumstances where there
19 has been valid service. So we say that is done as of today's
20 date, but they have the burden because they are the ones now
21 saying, just as with service in, they are the ones who must
22 come and say, "Well, there has been valid service but we say
23 that there is an alternative available forum and we say that
24 that forum, or more than one forum, is clearly or distinctly
25 more appropriate than the English court".

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1 LYKIARDOPOULOS KC
2 MR. JUSTICE MEADE: Right. That is a forum non conveniens stay
3 supervening either of the methods of service, you mean?
4 MR. LYKIARDOPOULOS: It does not supervene, my Lord. What it does
5 is, accepting that there has been service within, I mean, take
6 Lubbe, there was service within the UK and there is no doubt
7 about that because the UK company was served. There was then
8 an application for a forum non conveniens stay, potentially
9 also a case management one, because it was said that whilst
10 there is good service in England, the appropriate forum is
11 abroad. That is what happened; the English case was stayed to
12 go to South Africa.
13 MR. JUSTICE MEADE: Right.
14 MR. LYKIARDOPOULOS: Therefore, we say if we are right in 63.14,
15 or the Master was right on good service out in September 2025,
16 then there has been good service in the UK or in England and
17 Wales. The question still arises or can arise as to whether
18 or not there should be a forum non conveniens stay in favour
19 of another forum and that is considered today, as they are now
20 saying it, that they have the burden.
21 MR. JUSTICE MEADE: Of showing that there is?
22 MR. LYKIARDOPOULOS: Both an available forum and that it is
23 clearly or distinctly more ----
24 MR. JUSTICE MEADE: You both need to write this down and I need to
25 know what the differences are here on the law. You really do.

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1 LYKIARDOPOULOS KC
2 MR. LYKIARDOPOULOS: The nub of it really is that where you take
3 in, whenever you are taking their undertakings or consent,
4 commitment, whatever you want to call it, foreign
5 jurisdictions into account, we say that is a circumstance
6 where they have the burden.
7 MR. JUSTICE MEADE: Right.
8 MR. LYKIARDOPOULOS: Their burden is not only to show that those
9 places are available as fora, but also that they are clearly
10 or distinctly more appropriate than England. The only
11 circumstance where we have the burden to show that England is
12 clearly or distinctly more appropriate is one where you do not
13 have either the undertaking or their commitment or consents in
14 play.
15 MR. JUSTICE MEADE: Right. I do want this written down in a sort
16 of flowchart or simple propositions and which ones are and are
17 not agreed, I really must have that, but that is forum. What
18 about characterisation of the dispute?
19 MR. LYKIARDOPOULOS: The characterisation of the dispute will
20 flow, it only arises strictly on The Spiliada, comes in on the
21 forum conveniens approach. It is not normally done in terms
22 of gateways and where it arises in The Spiliada is where you
23 are looking then at the question of whether England is clearly
24 or distinctly or another place is clearly or distinctly the
25 available forum. That is where the issue has arisen as to how

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1 LYKIARDOPOULOS KC
2 you characterise the dispute to do that and in both service
3 in/service out, and before you, that is going to be done as of
4 the date of today, but of course with the burden being on
5 them. To the extent ----
6 MR. JUSTICE MEADE: This is really very hard to pin down, I have
7 to say. I got the impression that, one of the reasons the
8 undertakings are offered is to improve InterDigital's position
9 on whether there is a patent case or a contract case. No,
10 maybe not.
11 MR. LYKIARDOPOULOS: It depends which undertakings. There is the
12 undertaking not to sue.
13 MR. JUSTICE MEADE: Yes.
14 MR. LYKIARDOPOULOS: And then there is, I do not know if it is an
15 undertaking but what is being done at the moment about their
16 consent to jurisdiction, to foreign jurisdictions.
17 MR. JUSTICE MEADE: Right.
18 MR. LYKIARDOPOULOS: There are two. The undertaking not to sue
19 they say takes the patent issues out of it, if I put it that
20 way.
21 MR. JUSTICE MEADE: Yes, exactly.
22 MR. LYKIARDOPOULOS: We say they do not.
23 MR. JUSTICE MEADE: That is why I am asking this question because
24 at the point where you purported to serve in under 63.14, you
25 could say this is a patent dispute and we need a licence

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1 LYKIARDOPOULOS KC
2 because, we want a licence because we want our liability
3 determined, non-liability determined and InterDigital's answer
4 is there is not any because we have swept all of that away,
5 but that came later.
6 MR. LYKIARDOPOULOS: That did.
7 MR. JUSTICE MEADE: Yes.
8 MR. LYKIARDOPOULOS: Therefore, we say that that would be valid
9 service in. There may be an issue, then, on forum conveniens,
10 whether you take into account on that ----
11 MR. JUSTICE MEADE: There may be. What facts do I take into
12 account in deciding whether it is a 63.14 situation or not?
13 Do I take into account things that have happened subsequently,
14 i.e. the undertakings?
15 MR. LYKIARDOPOULOS: I understand, my Lord. What I will do,
16 my Lord, when we come to write out the decision tree, we say
17 that we would have a valid service in under 63.14. There may
18 be questions then, and my learned friends accept this, on
19 them, where you look at forum conveniens issues, but I see
20 your point is what happens if you divide those out and so how
21 much do you take into account their later action s for 63.14,
22 for instance?
23 MR. JUSTICE MEADE: Yes. They say it is nakedly contractual, but
24 I think part of the reason it is nakedly contractual is
25 because they have headed off any fear of your being hit with

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1 LYKIARDOPOULOS KC
2 any patent relief ever.
3 MR. LYKIARDOPOULOS: Understood.
4 MR. JUSTICE MEADE: Anyway, have a think about it.
5 MR. LYKIARDOPOULOS: I will have a think about that.
6 MR. JUSTICE MEADE: Everybody here will know what I am like. I
7 want a checklist of what I am deciding and preferably a
8 checklist of what I am not deciding.
9 MR. LYKIARDOPOULOS: Actually, the points you just raised there
10 raise, some of the difficulties here, some of the wrinkles
11 where things have changed or moved as we are at the moment, a
12 slightly moving feast. I hear what my Lord says and we will
13 of course do a checklist. My learned friend says we will try
14 and agree one; whether we can or not, I hope we can.
15 MR. JUSTICE MEADE: As long as they are short, I can put them next
16 to each other. I am looking for what you say, what you each
17 say is the right decision tree and I will put them next to
18 each other. Otherwise, we will get into everybody putting
19 footnotes about why the other person's is wrong, so let us
20 have one each. As long as they are short enough, I will use
21 both.
22 MR. LYKIARDOPOULOS: Of course. My Lord, I was going to start, in
23 the rest of this afternoon, I will look at the issue of
24 characterisation of the claim. As I say, it arises primarily
25 on forum conveniens or conveniens stage of the analysis and

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1 LYKIARDOPOULOS KC
2 Altimo, but it is something that you will have to have in mind
3 throughout and plainly we want to look at what the claim is
4 when looking at the various issues that have arisen.
5 MR. JUSTICE MEADE: Yes.
6 MR. LYKIARDOPOULOS: The RAND licensing claims, well, my learned
7 friends have called some of them the contractual claims and
8 some the licensing claims. I will go and have a look at some
9 of them in a moment, but overall what we have over here are
10 claims that we accept are based on a contractual obligation
11 and the contractual obligation attaches as an encumbrance on
12 the specific property rights in the UK. That is the nature of
13 it, we say. You do get that, we have not looked at them yet,
14 but you do get that from the declarations to the ITU-T that
15 are given.
16 If you just take out bundle B.1, tab 3 and on page 23,
17 you have an example of the licensing declaration to the ITU-T.
18 I picked this one because this is the declaration that applies
19 to a number of the challenged patents which are listed at the
20 back. Actually, it is the EPA, the applications that are
21 listed. It can be checked later, but the reason I am going to
22 this is it gives you what the obligation is. You see that you
23 can tick or cross at 2 that you are prepared to grant licences
24 on a world-wide non-discriminatory basis and on reasonable
25 terms and conditions to make, use them etcetera. Then you

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1 LYKIARDOPOULOS KC
2 also, like ETSI, can put a cross if your willingness to
3 license is conditional on reciprocity. There are a number of
4 ways it can be listed, but you see here InterDigital listed a
5 number of patents to which this applied.
6 Then I was also going to draw your attention to the
7 bottom of page 23, where it explains what happens on
8 assignment or transfer. That is relevant in this case because
9 of the Thomson transfer, but it is also relevant to
10 understanding what sort of obligation this is. They say that
11 the licensing declarations shall be interpreted as
12 encumbrances -- that is under patent rights -- that bind all
13 successors-in-interest as to the transferred patents. They
14 say that if that is not necessarily applicable in all
15 jurisdictions and all laws, then the patentee, if assigning a
16 patent, must make sure that is done.
17 MR. JUSTICE MEADE: Yes.
18 MR. LYKIARDOPOULOS: Therefore, these are, although it is a
19 contractual obligation, it is one that is directed to and
20 arises as an encumbrance on specific patent rights. We say
21 the specific patent rights in the current claim are the UK
22 challenged patents. You find our claim in, obviously, tab 2
23 of the same bundle and you will see a definition of the
24 challenged patents on page 2, 1(b), four of them there.
25 MR. JUSTICE MEADE: Yes.

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1 LYKIARDOPOULOS KC
2 MR. LYKIARDOPOULOS: We say that we have a claim of right to a
3 RAND licence under those patents. That is pleaded, you can
4 pick that up on paragraphs 92 and 93, on page 31, where it is
5 pleaded that we are a beneficiary of both InterDigital and
6 Thomson RAND commitments. You will have picked up that a
7 number of this patents were transferred from Thomson and we
8 are entitled to be offered and granted a licence on RAND terms
9 to the challenged patents.
10 MR. JUSTICE MEADE: Yes.
11 MR. LYKIARDOPOULOS: That is the claim, and then the scope, which
12 is that we say it would extend to a broader section of
13 patents. We then, at 93, say the court can enforce that
14 commitment and also we have, at 93(b), the specific
15 performance plea.
16 The claim we say is a claim to the UK challenged
17 patents. They are exemplars of the UK portfolio, we accept
18 that, and we see that pleaded in paragraph 83, on page 28, so
19 just a bit further back. This is a section which my learned
20 friend took you to paragraph 86, but you do have to start a
21 bit further back, you see the heading is, it starts at 79
22 actually: "Declarations of Non-Infringement with respect to
23 the Challenged Patents", you see that on page 27.
24 What happens, what this pleading does is it starts by
25 explaining what Amazon does or intends to do in the UK, with

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1 LYKIARDOPOULOS KC
2 encoding and decoding and the like -- "Proposed Acts". We
3 then seek declarations of non-infringement with respect to
4 products and we have defined the products in one of the
5 schedules.
6 Then, at 83, we explain it is reasonable for us to take
7 the view that InterDigital consider that the challenged
8 patents are valid, essential and infringed and that we need a
9 licence, so it is not just a question of injunctions. We have
10 raised the question and right that we think we need a licence
11 and it is reasonable to think that. We say it is a reasonable
12 inference that there are other valid and essential patents in
13 the UK which are also said to be infringed and the size of
14 their portfolio here means it is impractical for us to
15 challenge everyone.
16 MR. JUSTICE MEADE: Okay.
17 MR. LYKIARDOPOULOS: So we say a reasonable thing to do is to
18 undertake to take a licence on all of them and then move
19 forward with a claim such as this.
20 I take you to that, 83, to show it is not just a
21 question of injunction; it is a question of infringement and
22 that we are concerned that we do infringe and are said to
23 infringe and therefore we wish to have a licence.
24 MR. JUSTICE MEADE: Yes.
25 MR. LYKIARDOPOULOS: Then we do, at 84, that we are a beneficiary

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1 LYKIARDOPOULOS KC
2 of the commitment and therefore are entitled to that licence
3 to the challenged patents. Therefore, accordingly, we claim
4 relief to declare the terms of that licence and ensure it is
5 available. That is all of the licence claims down to 85.
6 Then at 86, we pleaded terms also to the fact that we
7 will rely also on that entitlement and the entitlement of a
8 licence as a defence to any injunctive relief. I will come to
9 it in a moment, but that is what my learned friend says they
10 have tried to take off the table. We say that it was,
11 actually, pending this trial, ought to be off the table anyway
12 based on our undertaking to take the licence.
13 Also, it must be remembered, if this action is permitted
14 to proceed and the licence is determined by this court and
15 InterDigital do not give it, at the very least, we will have
16 avoided injunctive relief in this country until such time as
17 they do and the case-law is pretty strong on that from Unwired
18 Planet onwards. That is not dependent on undertakings or
19 anything else. But, what we will also have gained is an
20 understanding of what need to do and what we need to pay to
21 work the technology in the UK. That is important both for the
22 next five years and for renewals.
23 When I come to the undertaking, you will see that
24 infringement has not been taken off the table. They do not
25 say, "You do not infringe our patents". In fact quite the

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1 LYKIARDOPOULOS KC
2 opposite, they say, "We will not apply for injunctions over"
3 -- and there are differing periods of time -- "either five
4 years or now or until other actions have concluded and we will
5 not seek damages", they say, "for that period". But as I will
6 show you, they specifically reserve the right to use the UK
7 portfolio in that period for the purposes of calculating
8 royalties and obtaining royalties. We say, therefore, this is
9 not an undertaking that takes infringement off the table and
10 we get the next five years for free. We do not.
11 So, it remains a situation where we are on the hook,
12 potentially, for infringement in the next five years, in what
13 we must pay in terms of royalties. We know, as this court has
14 said on numerous occasions, that damages and royalties are not
15 the same thing and, moreover, what a party should be doing in
16 our position is, for instance, making offers, settling or
17 putting money aside for the liability. All that is still on
18 the table, which is why we say it is not good enough simply to
19 point to the injunction, which is all they are pointing to,
20 and say the matter has gone away, it is no longer a matter
21 about patents.
22 That takes me to 86 and I have given my submissions on
23 that and my learned friend took you to 86. It is also
24 important to see that it is not as benign as infringement not
25 being even raised by my learned friend, which is something

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1 LYKIARDOPOULOS KC
2 that you may have got the impression from him, because if you
3 look at B.1, tab 32, this starts at the beginning of that tab,
4 this is their defence, the first defendant's defence, on the
5 technical issues. If you go to page 8, at paragraph 24, they
6 deny that we are entitled to a declaration of non-infringement
7 in the products and they have made a positive denial there.
8 Then, without prejudice to that, they then say in relation to
9 EP 684, they say the claims are standard essential. They read
10 on to decoder requirements of the standard, and if Decoder
11 type 1 and 2 products are products that comply with the
12 standard, they infringe.
13 So, it is not a case where they have stepped back from
14 infringement and so there is no issue there. What they have
15 stepped back from is saying, "We will not try and injunct
16 those products. If this action is stayed. We will not
17 injunct those products", but that does not remove infringement
18 from the table, as I have explained.
19 MR. JUSTICE MEADE: Right.
20 MR. LYKIARDOPOULOS: The terms and scope of the licence we say we
21 are entitled to, that is encapsulated in ----
22 MR. JUSTICE MEADE: Just before you move on from the pleadings,
23 just tell me what 87 does on top of 86?
24 MR. LYKIARDOPOULOS: 87, so that is "specific performance"?
25 MR. JUSTICE MEADE: Yes.

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1 LYKIARDOPOULOS KC
2 MR. LYKIARDOPOULOS: 86 says you cannot have -- we would rely
3 on -- there are alternatives, are they not?
4 MR. JUSTICE MEADE: I do not know. My name is not on it!
5 (Laughter) I do not know if yours is. That is a funny thing.
6 Your pleadings are all done by Hogan Lovells in-house. Tell
7 me what 87 does.
8 MR. LYKIARDOPOULOS: 87 is -- I own this pleading, actually. I
9 will stand up, any faults in it are very much mine.
10 MR. JUSTICE MEADE: Okay, all right.
11 MR. LYKIARDOPOULOS: All the good stuff is not. My Lord, 86 is
12 saying we are going to rely on the entitlement in order to
13 avoid any injunction.
14 MR. JUSTICE MEADE: Right. That is something you are entitled to.
15 MR. LYKIARDOPOULOS: That is entitlement to a RAND licence ----
16 MR. JUSTICE MEADE: The defence to injunction.
17 MR. LYKIARDOPOULOS: ---- as a defence to injunction. Obviously,
18 and then 87 is if you order specific performance, then we will
19 actually have a licence itself and then we will obviously rely
20 on that as our defence. It is really, you are right in this
21 sense, my Lord, you can read those as saying, "Why do you need
22 the specific performance because you have 86?" The
23 alternative is to say, if we say this should be specifically
24 performed, in which case we get a licence, in which case we
25 cannot be -- in which case we not only cannot be injuncted,

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1 LYKIARDOPOULOS KC
2 but we also have a full licence and all the things that gives
3 us. 86 is saying if I do not get that and you are not
4 ordering specific performance, we still say that we ought not
5 to be injuncted.
6 MR. JUSTICE MEADE: All right.
7 MR. LYKIARDOPOULOS: 86, of course, you have to remember also
8 deals with the competition law position, which I was going to
9 come on to. Of course, under the competition law position,
10 particularly the Chapter II, that arises where, for instance,
11 if the court here says that there is not a requirement or any
12 other reason under ITU-T to grant licences under Encoding
13 SEPs. There is a particular issue in this case because we say
14 that where you have a situation where decoding SEPs are
15 standardised and a licence must be given on RAND terms, and
16 yet you have gateways to that, in our case we say there are
17 such things as encoding patents which are necessarily
18 infringed in order to encode a bitstream to be decoded in a
19 standardised way, which is an unusual feature of these
20 particular cases; we say if we are wrong that the
21 ITU-T Declaration or practice in the industry does not mean
22 that we get that covered in the RAND licence, that raises
23 competition law issues because that is, we say, a dominant
24 position that can be abused by excessive pricing.
25 In the end, basically the effect on the market in the

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1 LYKIARDOPOULOS KC
2 United Kingdom is the use of encoding claims to charge what
3 you like to prevent use of the standardised technology,
4 whereas in the encoding claims have been found not to be
5 covered. I will come on and show you that in a moment. This
6 is a case where the competition aspect has real bite because
7 of the nature of the technology and the arguments being run,
8 but that also would be why 86 was different to 87.
9 MR. JUSTICE MEADE: Okay.
10 MR. LYKIARDOPOULOS: Before I got on to the competition law part,
11 which is in a separate annex, I was also going to show you the
12 prayer for relief and that, my Lord knows, is on page 33 of
13 the bundle.
14 MR. JUSTICE MEADE: Yes.
15 MR. LYKIARDOPOULOS: My learned friend submitted today that claims
16 1-3, 5 and 6 are independent of the existence of any UK
17 patent, this is part of his case that these are just straight
18 contractual. We do not agree that that is a fair way to read
19 this at all.
20 Claims 1 and 2, he is right that the words are not
21 limited to the challenged patents, but I have shown you the
22 reason 1 and 2 are there and I have shown you the plea behind
23 them, goes to the fact we say we have a claim of right under
24 the challenged patents because we are a beneficiary under the
25 RAND commitment and what we say the RAND commitment means.

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1 LYKIARDOPOULOS KC
2 Then in 3, that is then entirely limited to the
3 challenged patents, a declaration that we are entitled in
4 light of 1 and 2, that we are entitled to be granted a licence
5 to the challenged patents on RAND terms and a declaration in 4
6 of the licence terms to the challenged patents that are RAND.
7 MR. JUSTICE MEADE: Yes.
8 MR. LYKIARDOPOULOS: Then, 5 is the order that they offer a RAND
9 licence as declared by the court. That does not say the
10 words "challenged patents", but we say, fairly read, that is
11 clearly talking about the licence that had just been referred
12 to in 4 and 3 above, so that is the licence to the challenged
13 patents.
14 Then, 6 is a declaration if we do not get an order for
15 specific performance and they do not offer it. 7, we have not
16 had to spend too much time on that because that is all about
17 Thomson. In writing, my learned friends have a point about
18 (7a), which my learned friend, I do not think, dealt with on
19 his feet, but I will come to that at the end. That is just
20 about, they say, in light of their undertakings -- oh no, in
21 light of what they have said, they say (7a) does not arise as
22 a serious question to be tried, because they say they accept
23 that they are obliged to do anything that was transferred over
24 to them by Thomson. We do not agree it is as simple as that,
25 but I will come to that.

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1 LYKIARDOPOULOS KC
2 MR. JUSTICE MEADE: Just tell me now.
3 MR. LYKIARDOPOULOS: I think the issue is, the problem is what was
4 transferred. It is one thing to say, "Everything that was
5 transferred, we will stand by", but the question still arises,
6 "What was transferred?"
7 MR. JUSTICE MEADE: I think that is clarified in their skeleton,
8 if it was not before. They are not saying that InterDigital
9 has any lesser obligation than Thomson did. They said that in
10 their skeleton.
11 MR. LYKIARDOPOULOS: I will check again.
12 MR. JUSTICE MEADE: I am sure that is right. That is right, is it
13 not, Mr. Bloch? It may have been unclear up to their
14 skeleton, but I do not think it makes any difference to the
15 overall determination of the hearing before me.
16 MR. LYKIARDOPOULOS: I do not think it does.
17 MR. JUSTICE MEADE: I think it is just one less thing for me to
18 decide.
19 MR. LYKIARDOPOULOS: Understood. What I will do is look at that
20 again overnight.
21 MR. JUSTICE MEADE: Mr. Bloch confirms, look at the way it is
22 written, but that is my clear understanding.
23 MR. LYKIARDOPOULOS: I understand.
24 MR. JUSTICE MEADE: You were concerned that they would say, "We
25 wash such RAND obligations as there were off by transferring

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2 the patents" and you were going to say if that was what they
3 were trying to do, then that was contrary to competition law.
4 But they are just not doing any of that. They are just saying
5 whatever the RAND obligations were, and they do not agree with
6 you what they were, but whatever they were, they were
7 transferred. I am pretty sure that is what they are saying.
8 MR. LYKIARDOPOULOS: I was going to deal with that at the end of
9 my submission ----
10 MR. JUSTICE MEADE: Anyway, have a check, because I think that has
11 gone, at least.
12 MR. LYKIARDOPOULOS: Then, I think the other one is the
13 competition law which is in 12, recital 12. My learned friend
14 did not take you to that because we can do it very briefly.
15 You will find that in Schedule 6, which is in tab 4 of this
16 bundle.
17 MR. JUSTICE MEADE: Yes.
18 MR. LYKIARDOPOULOS: The points to be aware of is you will see,
19 paragraph 5 defines what the "relevant markets" are and you
20 see that it is the UK, challenged patents are the UK patents.
21 So the focus is on the UK patents. Then if you turn over, at
22 paragraph 10, you have the definition of the "technology
23 markets" and it is alleged that there is a SEP-relevant
24 product market for each of the Codec SEPs, including the UK
25 Codec SEPs. The geographic scope is the UK.

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2 My Lord may have seen that the way that we define Codec
3 SEPs in the pleading includes what we call essential encoding
4 patents.
5 MR. JUSTICE MEADE: Yes. You are going to do the same thing, a
6 list of what these all mean.
7 MR. LYKIARDOPOULOS: What they mean. You will see that ----
8 MR. JUSTICE MEADE: You are going to give me a list.
9 MR. LYKIARDOPOULOS: Okay. I am indeed. (Laughter)
10 MR. JUSTICE MEADE: Thank you.
11 MR. LYKIARDOPOULOS: Then we have also, there you see also 11,
12 about the fact there is a "Relevant Device Market" and a
13 "Relevant Streaming Market".
14 Then for this Chapter II case, it really picks up, I
15 think we need to pick it up from paragraph 19, where it is
16 said that they are dominant in the relevant technology market
17 from their Codec SEPs, and that by reason of that dominant
18 position, they have special responsibility not to prevent or
19 distort competition on the upstream or downstream markets.
20 Part of that involves the concerns of refusing to license the
21 Codec SEPs and offering them at discriminatory or excessive
22 unfair royalties.
23 As I explained to you earlier, the real issue here,
24 comes down again to this is if encoding claims are not
25 included in the ITU-T framework, we say they certainly ought

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1 LYKIARDOPOULOS KC
2 to be and are included in a competition law framework because
3 of the nature of the rights.
4 MR. JUSTICE MEADE: Okay. Yes.
5 MR. LYKIARDOPOULOS: Then we see at 23 that the conduct may affect
6 trade within the UK and it is pleaded and my Lord can read
7 there about the business in the UK and the effect in the UK.
8 MR. JUSTICE MEADE: Right. Yes. Just leaping ahead a little bit,
9 you say this is characterised as a dispute about UK patents.
10 You have two routes to license/defence. One is ITU and the
11 other one is competition law. If you are right about -- if we
12 are then looking at alternative forum, you say you cannot
13 apply Swiss or US competition law to that, it is not a Harrods
14 situation, it is just a question of whether there is a
15 threatened breach of competition law applying to UK patents
16 has to be the competition law that geographically covers. So
17 that is where this -- I am not saying this is right or wrong,
18 but that is where this issue segues across to the alternative
19 forum.
20 MR. LYKIARDOPOULOS: That is right.
21 MR. JUSTICE MEADE: Okay.
22 MR. LYKIARDOPOULOS: In relation to the non-competition issues, as
23 my Lord rightly says, we do not accept that a proper
24 characterisation of this is simply a global contract dispute
25 under Swiss law. We say that it is a claim of right to

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1 LYKIARDOPOULOS KC
2 enforce a contractual obligation that binds as an encumbrance
3 on UK property rights and we are enforcing that.
4 MR. JUSTICE MEADE: Right. Okay.
5 MR. LYKIARDOPOULOS: So, we say, just to remove the ----
6 MR. JUSTICE MEADE: Sorry, just to probe that a bit, you keep
7 saying "encumbrance", but I do not know how many it matters
8 whether it is an encumbrance or a defence. Because
9 encumbrance sounds a bit like land law, the contract
10 automatically -- the contractual obligation automatically runs
11 with the patents and that may or may not be right. In fact,
12 the ITU Declaration you took me to says that it may or may not
13 actually be an encumbrance, depending on local law. So just
14 why does it matter to your argument whether it is an
15 encumbrance or a defence?
16 MR. LYKIARDOPOULOS: It does not, save that depending on what you
17 mean by "defence". If the argument is it is merely there has
18 a defence to an injunction, we say it goes further than that.
19 I think the point I would say is discussed -- it is not in the
20 bundles, but it was discussed by Arnold LJ in the Panasonic
21 case, where he explained how the RAND encumbrance or
22 obligation changed the nature, if you like, of the right in
23 the sense that an unencumbered patent right, a non-SEP, an
24 entirely non-SEP, the primary benefit for the patentee is its
25 right to keep its monopoly and get an injunction.

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1 LYKIARDOPOULOS KC
2 MR. JUSTICE MEADE: Right.
3 MR. LYKIARDOPOULOS: Whereas once you have a patent that has an
4 obligation attached to it, a RAND or FRAND obligation attached
5 to it, then the primary obligation is one of compensation for
6 using the technology and the injunction is there only to
7 obtain that compensation. There is a difference; it is not
8 just raised as a defence.
9 Where that matters, this case is a good example of that,
10 where you see that we say -- yes, I am right, that is Xiaomi
11 CA, paragraph 79. A good example of that is the current case,
12 where we say there remains an infringement issue in the UK,
13 there remains an issue of what we have to pay, both the next
14 five years and going forward and what a licence would cover in
15 the UK and an issue for us as to what sort of money we might
16 have to be putting aside and what sort of offers we have to
17 make in order to meet our RAND commitments as implementers.
18 MR. JUSTICE MEADE: Okay.
19 MR. LYKIARDOPOULOS: So, we say, I am not balking too much about
20 defence, other than sometimes a defence is linked by people to
21 be just about injunctions and we say that is not quite right.
22 MR. JUSTICE MEADE: Okay.
23 MR. LYKIARDOPOULOS: So, my Lord, we say that what they do is they
24 broaden out the claim, characterising it, to ignore anything
25 about the UK or about any patent rights at all and they just

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1 LYKIARDOPOULOS KC
2 call it a global contractual dispute, a licensing dispute, so
3 there must be some global patents in there somewhere. We say
4 that is not a fair characterisation of the claim that we are
5 making.
6 MR. JUSTICE MEADE: Right.
7 MR. LYKIARDOPOULOS: Finally, before I leave that, you will have
8 well in mind, and I think there is no dispute, that this is
9 also, at times it was referred, words like "tenuous link to
10 the UK" were used and the like in the skeleton. Both parties
11 have substantial businesses here and Mr. Brown's evidence is
12 that the UK company is directly involved in developing,
13 producing content for Prime Video and indeed it is the
14 administrator of subscribers for a lot of European countries
15 here. My learned friends, in their recent evidence, accept
16 that, in 2024, about £780 million-worth was generated.
17 MR. JUSTICE MEADE: Yes, there is a note to that effect ----
18 MR. LYKIARDOPOULOS: When considering the issues, some of these
19 cases, people refer to there being some sort of tenuous link
20 to the UK. We do not accept that. This is an important
21 jurisdiction for Amazon. It is an important jurisdiction in
22 Europe for streaming and Prime Video, which is what an awful
23 lot of this dispute is about and, on any view, £780 million a
24 year, even if that is right, that is an estimate from
25 Mr. Vary, but is a very substantial sum, particularly over the

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1 LYKIARDOPOULOS KC
2 period of time of licensing.
3 Turning then to the approach and the legal framework and
4 I will come back to you tomorrow on the points about burden
5 that we were discussing a moment ago, but on most of the legal
6 framework, we have set some of the cases out in paragraph 10
7 of our skeleton and there does not appear to be that much
8 dispute. But, as I say, I will need to come back to you on
9 the question of how the burden shifts.
10 There is a point that runs through my learned friend's
11 submissions on consent and giving consent to a forum. This is
12 where my learned friend referred to the House of Lords in the
13 Lubbe South African case, where a defendant who had been
14 served in the UK, later made forum available which would not
15 otherwise have been available. We say one cannot take that
16 too far and it is not a simple way, if I put it this way, of
17 forum shopping: pick a forum you like and consent to it. You
18 see that from what Lord Hope said in Lubbe and if we just look
19 at that, JA.2, tab 19.
20 MR. JUSTICE MEADE: Right.
21 MR. LYKIARDOPOULOS: As often with any cases, it is good to have
22 some idea of the background and my Lord appears to have that
23 from the exchange with my learned friend, but this was a
24 number of plaintiffs, all of whom were South African citizens,
25 bringing a claim about asbestos-related products here in the

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1 LYKIARDOPOULOS KC
2 UK. You can get it from the headnote, but the defendant had
3 ceased to trade in South Africa but all the damage and
4 everything that had happened and all the plaintiffs were in
5 South Africa and the defendant had ceased trading there and
6 also had no subsidiaries there. It was the defendant who
7 later submitted to that jurisdiction. Therefore, everything
8 pointed to South Africa, other than the fact the defendant no
9 longer traded or had subsidiaries there.
10 You get more of a feel for that, actually, on page 8 of
11 the bundle, in Lord Bingham's speech, about G, where he refers
12 back to the Court of Appeal where Pill LJ has described the
13 factors pointing towards South Africa as "overwhelming". So
14 the question really came as to whether because they had
15 consented after service, whether that could be taken into
16 account and that is where my learned friend ----
17 MR. JUSTICE MEADE: This one is so confusing because of the first
18 Court of Appeal and the second Court of Appeal. The second
19 Court of Appeal found the connection with South Africa was
20 overwhelming and the plaintiff's appeal against the decision
21 of the second Court of Appeal was allowed because ----
22 MR. LYKIARDOPOULOS: I was going to take you to where we can pick
23 it up from Lord Hope, which may answer your question, we is on
24 the available forum, on page 19.
25 MR. JUSTICE MEADE: Yes.

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2 MR. LYKIARDOPOULOS: Around, between F and G.
3 MR. JUSTICE MEADE: Right.
4 MR. LYKIARDOPOULOS: Where Lord Hope explains that the problem
5 arose because the asbestos mines that had been operated by the
6 defendant's subsidiaries were all closed and they were no
7 longer there. The question whether the South African courts
8 were available to the claimants was entirely dependent on the
9 fact that the defendant had no presence in South Africa and no
10 assets there. The validity of the defendant's undertakings
11 and that is agreeing to consent in South Africa is critical to
12 whether they are available and as we know, they found that
13 they were.
14 The point I wanted to bring your attention to is at 21H.
15 MR. JUSTICE MEADE: Yes, I looked at this bit; yes.
16 MR. LYKIARDOPOULOS: Yes: "I would have regarded the undertakings
17 which were offered by the defendant in this case as sufficient
18 to satisfy the requirement that the alternative forum in South
19 Africa was available because it had undertaken to submit to
20 the jurisdiction of the courts of that country. Nothing turns
21 on the time when the undertakings were given. It is sufficient
22 that they were before the judge ..." that is the point my
23 learned friends make, when: "... considering the question of
24 forum non conveniens."
25 Then the point that I draw attention to: "As for the

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1 LYKIARDOPOULOS KC
2 suggestion that the defendant was choosing its jurisdiction
3 and thus indulging in a kind of forum shopping, this overlooks
4 the fact that the issue as to forum non conveniens is for the
5 court itself to resolve. It is not a matter that is left to
6 the choice of the defender." So the court resolves the issue
7 by looking at the interests of all the parties and the ends of
8 justice and it does not do so from the point of view of the
9 defender only.
10 The point that the court was making, in my submission,
11 is that while submitting to jurisdiction can remove an issue
12 about whether or not a forum is available, you cannot take it
13 too far. So it may be the forum remains unavailable for
14 another reason, and then still the question has to be asked
15 whether or not that forum is clearly or distinctly more
16 appropriate to try the claims in the interests of justice and
17 all the parties than England.
18 Therefore, it is not an easy route for a defendant, but
19 a defendant can submit to jurisdiction to remove an issue
20 about availability. As I will come on to, we say the other
21 issues here remain very much in play. However, very much so,
22 you must keep an eye, and the House of Lords make it clear you
23 must keep an eye, that it is not a vehicle for forum shopping
24 by one party, so we say that is an important point in this
25 case and I will come to why in a moment.

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1 LYKIARDOPOULOS KC
2 MR. JUSTICE MEADE: Yes. The different Members of the House dealt
3 with different issues.
4 MR. LYKIARDOPOULOS: They did. There was a second claimant that
5 came in, yes, a number of them, actually, and therefore
6 different issues arose which, rather than summarise that now,
7 I do not want to summarise it now and get it wrong, so I will
8 come back to you on that, but basically there are two sets of
9 claimants and they came in at different times and slightly
10 different issues arose with them and that is why they are a
11 little bit more complicated.
12 MR. JUSTICE MEADE: Where was it going to end up getting tried?
13 MR. LYKIARDOPOULOS: South Africa. That is my understanding. I
14 just assumed it. My understanding was that it ended up ----
15 MR. JUSTICE MEADE: If you say so.
16 MR. LYKIARDOPOULOS: My Lord, rather than spend time on that now,
17 I will check that overnight.
18 MR. JUSTICE MEADE: Okay. All right.
19 MR. LYKIARDOPOULOS: My Lord, that then brings me to ----
20 MR. JUSTICE MEADE: The bottom line is they can make it available
21 by consenting in principle. It is possible, but then we still
22 have to do forum conveniens.
23 MR. LYKIARDOPOULOS: Yes, it is possible they can make it
24 available, but it does not necessarily mean it becomes
25 available, because there may be other reasons why it is not

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1 LYKIARDOPOULOS KC
2 available, for instance as we obliquely discussed in this
3 case, we know that the Delaware courts for instance have other
4 issues where it may not be available, for instance, where they
5 said there is no subject matter jurisdiction over foreign
6 rights or they have said that it is not something they would
7 do without consent.
8 So that, just consenting to the jurisdiction does not
9 necessarily, for instance, make Delaware available, hence the
10 discussions we have now been having today as to how far my
11 learned friend's clients wish to go on that. We say there can
12 be issues that simply saying, "I consent to jurisdiction" may
13 not be enough. Of course, on top of that, it does not affect
14 anyway the assessment on whether or not it is clearly or
15 distinctly more appropriate than the English court. It
16 affects it in the sense that it is put on the table, but it
17 does not affect it on whether or not it is the right thing to
18 do.
19 My Lord said stopping at 4.30, but I was going to start
20 a new topic which is going to take me longer than five minutes
21 and it is also about the undertakings not to sue, so it may be
22 better when we have a clearer position from my learned friend
23 as to what they might be.
24 MR. JUSTICE MEADE: Okay. All right.
25 MR. LYKIARDOPOULOS: With your permission ----

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1 LYKIARDOPOULOS KC
2 MR. JUSTICE MEADE: That is fine. I do not think we are actually
3 under too much time pressure because there has been a lot of
4 useful clarification today and some things have dropped away,
5 like, I strongly suspect, anyway, the Thomson point, but just
6 out of an abundance of caution we will start at 10.00 tomorrow
7 with the goal of finishing well within the day. Is that all
8 right?
9 MR. LYKIARDOPOULOS: That is absolutely fine.
10 MR. JUSTICE MEADE: All right.
11 (Adjourned till 10.00 a.m. tomorrow)
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