

Exhibit 16

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IN THE HIGH COURT OF JUSTICE Claim No. HP-2023-000036
 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

Friday, 8th December 2023

Before:
 MR. JUSTICE MEADE

BETWEEN:

(1) LENOVO GROUP LIMITED
 (2) LENOVO (UNITED STATES) INC.
 (3) LENOVO TECHNOLOGY (UNITED KINGDOM) LIMITED
 (4) MOTOROLA MOBILITY LLC
 (5) MOTOROLA MOBILITY UK LIMITED
 Claimants

- and -

(1) TELEFONAKTIEBOLAGET LM ERICSSON (publ)
 (2) ERICSSON LIMITED
 Defendants

(Transcript of the Stenograph Notes of
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MR. MICHAEL BLOCH KC, MR. JAMES SEGAN KC, MR. RAVI MEHTA and
 MR. FEMI ADEKOYA (instructed by Kirkland & Ellis International
 LLP) appeared for the Claimants.
 MISS. JOSEPHINE DAVIES (instructed by Taylor Wessing LLP and
 Pinsent Masons LLP) appeared for the Defendants.

 PROCEEDINGS

1 agreement where the agreement provides that the courts of
 2 England and Wales should have exclusive jurisdiction over
 3 those issues.

4 The parties were negotiating a cross-licence, and we say
 5 that a cross-licence is the obvious way in which reasonable
 6 parties in these circumstances would provide for patent peace.
 7 The cross-licence which is currently in place is global. A
 8 cross-licence covering the entirety of the patent portfolios
 9 is in line, we say, with standard industry practice, and in
 10 relation to that, whilst I will not take my Lord to it in the
 11 light of the limited time we have today, I refer to the first
 12 witness statement of Ms. Dagg, at paragraphs 72 and 73.

13 Notwithstanding those observations, which my Lord may
 14 think are pretty trite, Ericsson has commenced a welter of
 15 proceedings in the United States, South America and, we fear,
 16 elsewhere, and it has sought, in some cases it has obtained,
 17 ex parte injunctive relief, threatening to exclude Lenovo from
 18 some of its most important markets, at, of course, a
 19 particularly important time of year. The proceedings, of
 20 which Lenovo was aware at the time that we submitted our
 21 evidence, are summarised in the table in Dagg 1 at
 22 paragraph 62. In the proceedings in Colombia, it appears
 23 Ericsson has obtained ex parte interim relief against Lenovo's
 24 distributors, as well as Lenovo itself.

25 MR. JUSTICE MEADE: Yes.

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1 MR. JUSTICE MEADE: Yes, Mr. Bloch, good morning.
 2 MR. BLOCH: My Lord, may it please you. I appear with
 3 Mr. Segan KC, Mr. Mehta and Mr. Adekoya on behalf of the
 4 claimants. My learned friend Ms. Davies appears on behalf of
 5 the defendants. My Lord should have received two skeleton
 6 arguments and a supplemental skeleton argument ----
 7 MR. JUSTICE MEADE: Yes.
 8 MR. BLOCH: ---- together with a clutch of attachments to
 9 correspondence, including, most importantly perhaps,
 10 directions.
 11 MR. JUSTICE MEADE: Yes.
 12 MR. BLOCH: My Lord will see that at least as regards the later
 13 date that appears to be in play between the parties, there is
 14 an increasing degree of agreement as to what the appropriate
 15 directions would be.
 16 So, my Lord, this is an application for a listing of an
 17 application for urgent interim relief. The Lenovo parties and
 18 Ericsson parties (as I shall refer to them) own and practice
 19 patents which are, or at least are purported to be, standard
 20 essential patents, in relation to which the owners have
 21 undertaken to ETSI and other standard-setting organisations to
 22 grant FRAND licences. There is in fact a cross-licence in
 23 place covering some of the activities of Ericsson and Lenovo.
 24 The scope of that is the subject of a separate dispute which
 25 have been commenced in this country, in relation to an

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1 MR. BLOCH: And that is dealt with, in fact, in the evidence
 2 served on behalf of Ericsson, the evidence of Mr. Foster, his
 3 first witness statement at paragraph 41.

4 Lenovo believes that such aggressive practices are
 5 contrary to any sensible interim FRAND regime. It appears to
 6 be common ground that a FRAND licence may be determined in
 7 some forum in due course. However, if Ericsson cannot be
 8 diverted from its current course, Lenovo's business may suffer
 9 huge damage, and its directors may be exposed to criminal
 10 liability. If Ericsson cannot be diverted from its current
 11 course, Lenovo could be forced to negotiate a global licence
 12 under duress, and the determination, either in a court or
 13 another forum, of what the FRAND terms between the parties
 14 should be, will be something we never reach.

15 My Lord, so far as the application is concerned, which
 16 is in the applications bundle at tab 1, there are two main
 17 parts: first, as one sees in the box on page 3, Lenovo are
 18 seeking a ruling from the court of how those who have given
 19 undertakings to grant FRAND licences may be expected to deal
 20 with one another, whilst the terms of a final licence are
 21 being resolved; and, secondly, Lenovo is seeking an order to
 22 expedite the determination of the terms of that final licence.

23 MR. JUSTICE MEADE: Yes.
 24 MR. BLOCH: My Lord, I must acknowledge that there is no
 25 established jurisprudence as to what the interim FRAND regime

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1 Carolina. Lenovo's US headquarters is in North Carolina, not
 2 Ericsson.
 3 MR. JUSTICE MEADE: My brain supplied the right words.
 4 MS. DAVIES: It is certainly what my brain was supplying but my
 5 mouth did not quite participate.
 6 MR. JUSTICE MEADE: It is one those ones!
 7 MS. DAVIES: The final merits point is what my learned friend is
 8 trying to do does in fact not have a flavour of an anti-suit
 9 injunction, it has a very strong smell of it.
 10 MR. JUSTICE MEADE: I agree with that. Do not worry about that.
 11 It is a sort of advisory anti-suit.
 12 MS. DAVIES: Indeed, my Lord.
 13 MR. JUSTICE MEADE: It is a decision by the UK court about how
 14 things ought to be to go and tell the Brazilian court how the
 15 UK court thinks things ought to be, when the Brazilian court
 16 could have an opinion about how things ought to be.
 17 MS. DAVIES: Indeed, my Lord, and that does raised an obvious
 18 comity concern.
 19 MR. JUSTICE MEADE: It retreats from the comity issue by making
 20 it -- anyway, there we are.
 21 MS. DAVIES: Yes.
 22 MR. JUSTICE MEADE: But while we are on the merits, this very
 23 situation has come up, this is the third case it has come up
 24 in. I think there was one in court yesterday. It came up in
 25 the Panasonic one. Here we are again. I appreciate your

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1 clients say that 10 years have rolled by with no payment and
 2 that precipitated the litigation, but now that the parties are
 3 so much closer to getting a FRAND determination in a court,
 4 although they cannot agree which one, what is the purpose of
 5 infringement actions round the world? Once you get to a
 6 timetable to a FRAND determination that both parties are
 7 committed to in London or North Carolina, what is the
 8 legitimate purpose of getting them off the market in Brazil?
 9 That is the real merits question that is knocking around here,
 10 I think.
 11 MS. DAVIES: My Lord, this is not the moment for me to address
 12 that. As your Lordship will be aware, there are parallel
 13 proceedings in which hearings are likely to be taking place,
 14 potentially now, potentially next week, and one can have one's
 15 words somewhat taken out of context.
 16 MR. JUSTICE MEADE: No, but it is the real point. I am not sure
 17 whether it is true or not on the facts, but I can understand
 18 your clients' presentation of "we were frustrated that
 19 10 years have gone by, we had to bring litigation,
 20 infringement litigation is one of the few tools available; we
 21 had to do it", but now, Mr. Bloch's clients are saying "we
 22 will take a licence", you are saying you will give a licence,
 23 you are both agreeing that some court can determine the rate.
 24 What is the utility of the infringement litigation, other than
 25 pressure? It really is a live question at this hearing.

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1 I am not asking you to contextualise it to any particular case
 2 next week, but just tell me what the purpose is. Why do you
 3 not just agree that for example, if they come to North
 4 Carolina, you will not need injunctions in Brazil? What is
 5 wrong with that?
 6 MS. DAVIES: My Lord, the question of what Lenovo does and whether
 7 it comes to North Carolina is obviously central to that.
 8 Mr. Bloch ----
 9 MR. JUSTICE MEADE: But if they do?
 10 MS. DAVIES: If they offer an appropriate undertaking. I may have
 11 misheard what Mr. Bloch said, because I actually heard him to
 12 say that his clients would undertake to take licensed terms
 13 set by any court, which would obviously include North
 14 Carolina, but I am not sure that was entirely what he meant.
 15 However, in the event that Mr. Bloch's clients offer an
 16 appropriate undertaking, we need to look at the wording of
 17 that, and then obviously that leads to a reconsideration of
 18 other aspects of strategy. But unless and until an
 19 undertaking is offered in appropriate terms, one should not
 20 leap ahead.
 21 MR. JUSTICE MEADE: No, I understand that. My firm understanding
 22 about the US position is that whilst it has not been tested to
 23 the highest appellate level, it is generally understood that
 24 the US courts will set global FRAND if the parties agree to
 25 it.

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1 MS. DAVIES: Yes.
 2 MR. JUSTICE MEADE: So that is an option. Whereas the UK court
 3 will do it, even if the parties do not agree, but the only way
 4 of actually making it happen is either the FRAND injunction or
 5 an undertaking by the parties.
 6 MS. DAVIES: Yes, my Lord. If I might just show your Lordship a
 7 point in Judge Michel's evidence, because it was being said
 8 that it is carefully worded.
 9 MR. JUSTICE MEADE: I am sure it was.
 10 MS. DAVIES: Not carefully worded ----
 11 MR. JUSTICE MEADE: Not in a bad way.
 12 MS. DAVIES: --- in the way my learned friend suggested, and, of
 13 course, this is evidence that was only served on 5th December,
 14 and to the extent there is a query we will be putting in
 15 further evidence to clarify the position. If your Lordship
 16 could just turn through really to the final page of that
 17 report, the summary, so paragraph 8.1.
 18 Subparagraph 8.1(b): "Courts in the United States do
 19 not compel parties to enter contracts absent agreement of both
 20 parties." That is true of this court as well. A FRAND rate
 21 is set and then it is up to them, take it or leave it. The
 22 next sentence, "... adjudicate claims and grant relief.
 23 Accordingly, Lenovo can choose whether to agree to accept
 24 whatever offer the EDNC ruling determines is F/RAND (including
 25 Ericsson's original offer) ..." My Lord, the point there is

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1 that indicates what the judge is talking about is not a
 2 confined first limb of our undertaking but contemplating that
 3 the Eastern District of North Carolina might determine a FRAND
 4 rate either in accordance with what my clients ask for or in
 5 accordance with my clients' alternative relief, so that is the
 6 second limb of the undertaking, with its request that the
 7 court set the rate. We will develop this in the jurisdiction
 8 challenge, so I do not want to get ahead of ourselves, but the
 9 position is that the Eastern District of North Carolina ---
 10 MR. JUSTICE MEADE: That gels with what my firm understanding is,
 11 which is at least if the parties agree the US courts will set
 12 a rate and not limit themselves to was it FRAND or was it not,
 13 the binary question.
 14 MS. DAVIES: Yes, so the Eastern District of North Carolina is a
 15 perfectly available forum for determination of the critical
 16 issue between the parties.
 17 The other question your Lordship very fairly put and it
 18 is one we floated in our skeleton, why not ask the Brazilian
 19 court to put in place a protective regime? We did not say why
 20 not ask the Eastern District of North Carolina, but why not?
 21 MR. JUSTICE MEADE: Sorry to interrupt you again, but the reason
 22 that the Eastern District of North Carolina came to mind is
 23 because in Microsoft v Motorola, I am pretty sure it was
 24 Judge Robart, did exactly that, in quite a famous situation at
 25 the time and he restrained German infringement proceedings.

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1 MS. DAVIES: And Mr. Bloch does not have any evidence one way or
 2 the other about what could be done. He seeks, it would seem
 3 is in his submissions, to push the burden onto my client, but
 4 in this situation we suggest that they should be explaining to
 5 the court why they cannot do this in one of the fora already
 6 seised with the dispute between the parties. That is
 7 important, because the jurisdiction, the jurisdiction
 8 described in former Judge Michel's report, is one for
 9 determining contractual disputes. The meaning of the ETSI
 10 undertakings, whether there should be an interim regime of
 11 some sort, is clearly, and on Mr. Bloch's submissions,
 12 something which floats a contractual interpretation. On the
 13 face of things I submit to the court there is no reason why
 14 the court cannot, but of course I do not have expert evidence
 15 for you today.
 16 MR. JUSTICE MEADE: Okay.
 17 MS. DAVIES: So those are my points on the merits flowing from the
 18 overarching points. There is then, and your Lordship already
 19 has this point, the third overarching point about really the
 20 nature of the relief that is being sought. It is a final
 21 declaration. It will not be revisited. It is potentially
 22 significantly hypothetical, but with those preliminary points
 23 can I turn to the main issues. So we submit it is important
 24 to hold on to the correct analysis. The first area is
 25 procedural regularity, and the second area is case management,

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1 what should your Lordship do with the applications that are
 2 before your Lordship for case management.
 3 Procedural regularity. I am not sure whether Mr. Bloch
 4 is really pushing for the resolution of his application before
 5 the court has decided at all whether it has jurisdiction. We
 6 say that is completely irregular. As the stepping stones to
 7 that, the particulars of claim should be amended, there should
 8 be evidence in support of an application to strike out.
 9 MR. JUSTICE MEADE: I think the 11th January date that was floated
 10 is impractical for the reasons that I -- it just is
 11 impractical for the court, for timing, for getting ready. It
 12 is just too soon and there is not time. So we are talking
 13 about February and we are talking about either a combined
 14 hearing, which is what Mr. Bloch is contending for, or a
 15 phased arrangement, which is what you are contending for, with
 16 jurisdiction, but not the willingness application in February.
 17 MS. DAVIES: I proceed therefore on the basis that there will be
 18 procedural irregularity before this goes a great deal further.
 19 I think the claimants have offered ---
 20 MR. JUSTICE MEADE: At least to the extent that it is not now a
 21 scenario that is going to arise that the court is asked to do
 22 the willingness application and grant relief without
 23 determining jurisdiction.
 24 MS. DAVIES: Yes, my Lord, and without there being a draft
 25 amendment to the particulars of claim and without there being

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1 a witness statement.
 2 MR. JUSTICE MEADE: Yes. You have agreed it but it seems to me
 3 obvious it needs to be in the particulars of claim.
 4 MS. DAVIES: That is an agreed part of paragraph 1 of the order
 5 with the coloured bits. Then that turns us to the main
 6 issues. My Lord, the jurisdiction challenge should be heard
 7 first and separately. It is not just a jurisdiction
 8 challenge, there are also strike out applications being made
 9 by the second defendant, and then stay is sought in the
 10 alternative on a case management ground. That should be heard
 11 first. Now, we say this for two reasons: the reasons of
 12 principle and the reason of practicality. The two reasons
 13 both tie into one another. As a matter of principle, it is
 14 wrong to require an overseas defendant who has not yet been
 15 made subject to the court's jurisdiction to take substantive
 16 steps in relation to preparation for a substantive
 17 application.
 18 My learned friend has said, "Ah, but the Patents Court
 19 proceeds in draft all the time it has been done". The
 20 examples of the cases which my learned friend puts forward do
 21 not really support what he would like this court to do. So
 22 these are in Ms. Dagg's statement at paragraph 19. I do not
 23 have a full authority bundle, but your Lordship is probably
 24 familiar with most of these cases in any event.
 25 MR. JUSTICE MEADE: Yes, I am.

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1 that is actually being sought.

2 So there is an in principle problem, but there is also a

3 significant practical problem which flows from the nature of

4 the relief that is going to be sought at the willingness

5 application. My learned friend seems to think it will add

6 just one day to what is already a novel and complex

7 jurisdiction challenge. We disagree with that. Your Lordship

8 has anticipated that we will be saying there are a lot of

9 factual and evidential points that will need to be put in.

10 These are big and important points.

11 If I could begin by showing your Lordship the

12 declarations that are actually being sought. That is at tab 2

13 of the bundle. The declarations being sought appear at page

14 9. "IT IS DECLARED THAT:

15 "1. A willing licensor in the circumstances of the

16 Defendants, and a willing licensee in the circumstances of the

17 Claimants", so that already invites a factual inquiry as to

18 their circumstances, and then there are the declarations set

19 out about what they would do.

20 Moving down to (b) (iv), "A reasonable sum will be set

21 aside by the Claimants", and continuing.

22 Turning over, the second part of the order being sought,

23 "The Claimants' proposed payment into Court of the sum set out

24 in [the witness statement] ... satisfies the Claimants'

25 obligation in its Willingness Undertaking." Again, that is

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1 not a hypothetical; that is a fact-based piece of relief being

2 sought. Indeed, if that relief is not part of their

3 willingness application, their willingness application really

4 becomes a purely academic exercise, which while it might be

5 very interesting for this court to consider is not an

6 appropriate use of the jurisdiction to grant declaratory

7 relief.

8 In terms of the evidential issues that we say this all

9 raises, proof of facts. So the circumstances of each party

10 will need to be addressed. Your Lordship very rightly said

11 that criticisms are made of my client. My client will want to

12 answer those. There may well be other things in the factual

13 circumstances which mean that this is not the appropriate

14 conduct for a willing licensee or licensor in these

15 circumstances. This is going to be a final declaration being

16 made by the court, which presumably means that any factual

17 findings made en route to that could potentially give rise to

18 you issue estoppel or other forms of res judicata, so it will

19 need to be on full and proper evidence to avoid later

20 prejudice to any part of the hearing. That may very well mean

21 witness evidence being tested by cross-examination in the

22 usual way, where there is a dispute of fact to be resolved on

23 a final basis, and this is very, very different -- I will take

24 your Lordship back to it -- from the merit arguments that

25 might arise on jurisdiction challenges which are significantly

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1 more constrained.

2 MR. JUSTICE MEADE: In what sense do you mean?

3 MS. DAVIES: The test on jurisdiction challenge is to show that

4 the case essentially just about gets over a threshold for

5 merits or not.

6 MR. JUSTICE MEADE: Yes. Your clients can meet that. So you do

7 not have to put in any evidence to that, you can just come

8 along and criticise their evidence if you want to.

9 MS. DAVIES: Exactly so, my Lord. Indeed your Lordship will have

10 seen when looking at Mr. Foster's witness statement that in

11 relation to the FRAND declaration my client does not accept

12 they have sufficient merits, there are significant challenges

13 around the appropriate gateways and around the jurisdiction.

14 So it is a very different proposition, my client coming

15 along and trying to say they have not met the relatively low

16 threshold for jurisdiction for service out and a final

17 resolution of what actually happened and who was or was not

18 willing. So there is that.

19 The second area where evidence will be needed is the

20 reaction of local courts, because the grant of declaratory

21 relief is a discretionary remedy. Sorry, I do not have the

22 authority here, but if your Lordship has the White Book ---

23 MR. JUSTICE MEADE: I have not, actually. I know that sounds odd.

24 We have to bring our own one to court, and I forgot.

25 MS. DAVIES: I do apologise, my Lord.

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1 MR. JUSTICE MEADE: Tell me the point.

2 MS. DAVIES: The point is it is a discretionary remedy which means

3 the court will consider a wide range much facts. One of the

4 facts that can be considered is the potential for interference

5 of a foreign process. The authority for that is Bank of New

6 York Mellon v Essar. It is the judgment of Marcus Smith J.

7 It is from 2018 [EWHC] 3177 (Ch) and it is paragraph 21.

8 MR. JUSTICE MEADE: Okay, you want to put in evidence ---

9 MS. DAVIES: We want to put in evidence about that, because it

10 does go to whether the court should exercise its discretion

11 over a quasi/factual quasi hypothetical declaration claim. So

12 we will want to put in evidence of that. We will need to go

13 and talk to lawyers in the relevant jurisdictions in order to

14 get that evidence organised. Obviously the festive season is

15 going to be fast upon us around the world. The actual issue

16 of construction and interpretation of what the ETSI

17 undertakings mean, these are novel points. The jurisprudence

18 is nascent in this jurisdiction as to whether this sort of

19 interim regime should be in place for a willing licensor and a

20 willing licensee. That will require some thought, research,

21 legal argument, the ETSI Travaux will need to be examined and

22 there may be some limited French law evidence. It is one of

23 the things that will be needed to be looked into.

24 MR. JUSTICE MEADE: Yes.

25 MS. DAVIES: It is not ---