



Neutral Citation Number: [2024] EWHC 2445 (Pat)

Case No: HP-2023-000025

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

Date: Tuesday, 24th September 2024

Before:

MR. JUSTICE MEADE
Hybrid via MS Teams

Between:

PANASONIC HOLDINGS CORPORATION
(a company incorporated under the laws of Japan)
- and -

Claimant

(1) XIAOMI TECHNOLOGY UK LIMITED
(2) XIAOMI INC.
(a company incorporated under the laws of the
People's Republic of China)
(3) XIAOMI COMMUNICATIONS CO., LTD
(a company incorporated under the laws of the
People's Republic of China)
(4) XIAOMI HK LIMITED
(a company incorporated under the laws of Hong
Kong Special Administrative Region of the People's
Republic of China)
(collectively with the 1st to 3rd Defendants, "Xiaomi")
(5) GUANGDONG OPPO MOBILE
TELECOMMUNICATIONS CORP, LTD
(a company incorporated under the laws of the
People's Republic of China)
(6) OPPO MOBILE UK LTD
(7) UNUMPLUS LIMITED (collectively with the
5th and 6th Defendants, "OPPO")

Defendants

MS. SARAH ABRAM KC, MR. DAVID GREGORY and MR. EDWARD CRONAN
(instructed by **Bristows LLP**) for the **Claimant**

MR. JAMES SEGAN KC, MS. LIGIA OSEPCIU and MR. THOMAS LUNT (instructed
by **Kirkland & Ellis International LLP**) for the **Xiaomi Defendants**

MR. ANDREW LYKIARDOPOULOS KC and MR. WILLIAM DUNCAN (instructed by
Pinsent Masons LLP) for the **Oppo Defendants**

APPROVED JUDGMENT
ON PRE TRIAL REVIEW

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,
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MR. JUSTICE MEADE:

1. I now have to address the arguments over timetabling.
2. I personally find oral submissions, both in opening and closing, very useful and I tend to find that the balance of time allocation in trial timetables puts too much on the evidence and not enough on the submissions, even in the modern world. I also find it tends to lead to a lot of argument being put in the course of the evidence, but the consequence of that is I prefer to be generous in relation to opening submissions. I am going to do the following in relation to the timetable and I am going to say it now and then I will give the parties an opportunity to say if it causes a problem in some way concerning witness availability or the like.
3. As I have said already, the first day in court will be Thursday, 31st October and I am going to allow the whole of 31st October and 1st November for oral submissions. I strongly suspect that there will be further procedural discussions or arguments over confidentiality which will take place then and I do not want to cut down any side from what they want to say. The precise balance of that time can be adjusted nearer the time when I know if there are any housekeeping matters or any disputes about confidentiality. Although the difference is minor, I anticipate that it will not be fair or necessary for Xiaomi and Oppo each to have the same amount of time as Panasonic. So my expectation, if anything, will be that Panasonic's increases slightly from the half a day and Xiaomi and Oppo certainly will not be over the half a day that they have each allocated and may come slightly shorter when the collaboration between them that has been explained to me has become more concrete.
4. The fact evidence will then begin on Monday, 4th November and I note that the timetable for the second week runs on the Oppo/Xiaomi allocation, right up to the end of Friday, the 8th and on the Panasonic provides for half a day of non-sitting time on the afternoon of Friday, 8th November. I expect, I am going to provide that the evidence runs right to the end of Friday, 8th November.
5. I will allow the one day of cross-examination that has been sought for Panasonic's expert. I hope that is an area where it is possible that some shortening may take place, but I understand that it might not. We will make up the half a day that has been transferred from the afternoon of Friday, 1st November, into the second week of the trial in relation to the fact witnesses, either by some organic shortening, if that happens, or by expanding the court day slightly.
6. The timetable then picks up in the week of 11th November. In relation to closing submissions, my provision is as follows: writing closing submissions will start on Wednesday, 13th November and run through the 14th and the 15th and exchange will be at nine o'clock on Monday, 18th November. I will read until the middle of the day on Tuesday, 19th November, and we will start closing submissions at two o'clock on Tuesday, 19th November.
7. That leaves three and a half days for closings, if necessary, which I hope that it will not be. I will make a decision nearer the time, and in the light of the way the trial has unfolded, about whether a reply is appropriate, but on the specific matter of the closings duration, I think Ms. Abram is right that the balance would be wrong if each party had a day. With the overlap between the positions of Panasonic and Xiaomi, it

would be wrong and would not give an equality of arms for them, in combination, to have twice as long as Panasonic. Nearer the time, when I see how matters have shaped-up, I will either extend Panasonic's time from one day or shorten Xiaomi and/or Oppo and/or grant Panasonic some appropriate degree of reply, but I will make that decision nearer the time. I expect that it may not be necessary to use the entire three and a half days that I have indicated for closing submissions, but if it is, then so be it and if we finish within the week, then I am sure that will be welcome on all sides.

8. In relation to written submissions, I am not going to set any page limits, not least because of the difficulty of trying to work out the calculus of how much each of Oppo and Xiaomi should have relative to Panasonic. However, I will say this: I find long and detailed written closing submissions very useful and I refer to them frequently when I am writing my judgments and I fully expect that the closing submissions in this case will be very long and detailed.
9. I do not find long and detailed written opening submissions nearly so useful. Indeed, I find them sometimes positively a hindrance and parties should be mindful of the fact that at the stage of reading the opening submissions, the judge or, specifically, I, am still finding their bearings.
10. I find much more useful and, I will say, much more effective, shorter written opening submissions. I have said this repeatedly in court and in talks that I have given outside court and it has been largely fruitless, except occasionally when I get a short written opening submission, which I always find useful and frequently find effective. The generic practice of giving me 80, 90, 100 pages of written openings in what I might call "vanilla" technical patent trials is generally not very helpful. So, I counsel all the parties, in their own interests as well as mine, to keep the written openings shorter and simpler and to have in mind also that simply laying out the territory and explaining things at a high level is very useful to the court in opening and need not be repeated in closing.
11. So I make no formal direction about opening submissions, in terms of page limits, but I give that guidance. I do expect that there are significant sections of Oppo and Xiaomi's written opening submissions where they are able to make entirely or almost entirely common cause and therefore require me only to read one text on those issues.

(For continuation of proceedings: please see separate transcript)

12. An issue has arisen about the Red licence, triggered by what appeared to be a small disagreement about one sub-sub-issue of the list of issues for trial, but in fact it is quite an important issue, which is that as revealed in Xiaomi's evidence, served at the very back end of last week, it is intended, primarily through the evidence of Mr. Meyer, to take the position that based on a particular disclosure document, the Red licence Mr. Meyer says is, contrary to his previous view, completely unreliable as a comparable and should be rejected all together.
13. A similar point with a broadly similar basis had already been made against the Yellow comparable in earlier rounds of evidence. This point has arisen very close to the PTR and there is no very detailed explanation and certainly no explanation in evidence as to why it has arisen at this late stage, but I am satisfied that it is a very important point. I rather suspect, without reaching any conclusion, that Xiaomi could have broken cover

earlier and told Panasonic that it intended to take this point, but it is not necessary to my practical decision about what to do whether that is so or not.

14. I am satisfied that the point is sufficiently important that it would be unjust not to let Panasonic respond and although the point feels of great importance and centrality by the very fact that it is being argued about at the PTR, it is just one point among many in the case and it should not be allowed to get entirely out of proportion. In litigation of this complexity, there is almost certain to be something that was being worked on very close to trial and I apprehend that whilst it is going to be tight to deal with this in time for trial, both sides will be able to, even if developments take place up until very close to the time for skeletons or even the start of the trial.
15. Ms. Abram tells me that it is not practically possible to respond to this matter any quicker than by putting in Panasonic's fact evidence by 30th September and expert evidence by 7th October. I accept her explanation that, for understandable reasons, Panasonic's relevant expert simply does not have any time to start on work until the beginning of next week anyway. I therefore will permit what Panasonic says, which is fact evidence 30th September, expert evidence 7th October. It goes without saying that the permission I am giving is strictly to deal with these points and nothing else.
