IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE COURT OF APPEAL OF ENGLAND AND WALES
(CIVIL DIVISION)

B E T W E E N:

(1) TESLA, INC.
(2) TESLA MOTORS LIMITED **Appellants/Claimants**

and

(1) INTERDIGITAL PATENT HOLDINGS, INC.
(2) INTERDIGITAL HOLDINGS, INC.
(3) AVANCI, LLC **Respondents/Defendants**

ACT | THE APP ASSOCIATION'S RULE 24 APPLICATION

FOR PERMISSION TO INTERVENE

A - Introduction

1. ACT | The App Association ('**ACT**') applies under Rule 24 of the Supreme Court Rules 2024 for permission to intervene in writing in relation to the Appellants' Ground 1 in UKSC 2025/0058 *Tesla Inc and Anr v. InterDigital Patent Holdings Inc and Ors*.

2. ACT is a not-for-profit trade association representing micro, small, and medium-sized enterprise technology developers (collectively '**MSMEs**') globally, including over 70 in the UK. Its members are entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with markets across every industry.

3. This submission is in support of ACT's application:

   3.1. **Section B** addresses ACT's interest in this appeal and the prejudice it would suffer if permission to intervene is not given.

   3.2. **Section C** gives a summary of the submissions to be advanced if permission is given, including why those submissions will be useful to the Court, giving it

significant assistance over and above the assistance it can expect to receive from the parties.

B - ACT's Interest

4. ACT has already demonstrated its interest in this appeal by way of its Rule 16 submission at the permission to appeal stage, making it a party who, in particular, may make an application to intervene under Rule 24(1)(c).

5. ACT works with and for its members to promote a policy environment that rewards and inspires innovation while providing resources that help its members raise capital, create jobs, and continue to build innovative technology. Many of ACT's members invent, develop, and sell internet of things ('**IoT**') devices across multiple sectors of the economy.

6. The IoT refers to a network of connected devices that use sensors to collect and process data, and which can share this data directly with other IoT devices without the need for human interaction.[1] For instance, at a consumer level, IoT devices include home systems that monitor whether a room is occupied and adjust the temperature or lighting settings accordingly, medical wearable devices that monitor vital signs such as blood glucose levels and send any relevant data to medical professionals, and 'smart' speakers which react to voice commands and can be used to control other IoT devices, such as lights, TVs, and phones.[2] In industry, IoT-enabled machines can monitor performance and reduce downtime by predicting maintenance needs. It is predicted that there will be more than 50 billion connected IoT devices globally by 2030.[3] Overall, the IoT increases

[1] p.8 "*Guidance for consumer Internet of Things products and services"*, Information Commissioner's Office, 20 June 2025, available at: https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/online-tracking/guidance-for-consumer-internet-of-things-products-and-services/about-this-guidance/#IoT. See also p.2, "*Regulating the Internet of Things*" House of Commons Library, 2 October 2019, available at: https://researchbriefings.files.parliament.uk/documents/CDP-2019-0221/CDP-2019-0221.pdf.

[2] p.2 "*Cyber Security of Consumer Devices*", Parliamentary Office of Science & Technology, Number 593, February 2019, available at: https://researchbriefings.files.parliament.uk/documents/POST-PN-0593/POST-PN-0593.pdf.

[3] p.60 "*The App Economy in Europe"*, Deloitte France, August 2022, available at: https://actonline.org/wp-content/uploads/220912_ACT-App-EU-Report.pdf.

efficiency by automating decision making and integrating an increasing number of devices.

7. The IoT ecosystem is expected to generate £10.53 billion for the global economy by 2030, and the 'app economy', the ecosystem which ACT represents, is valued at more than £4.48 trillion globally. In the UK, the app economy generated £74.8 billion in revenue in 2021 (approximately 1.5 per cent of the UK's GDP that year in terms of value added)[4] and is responsible for more than 400,000 jobs, contributing significantly to economic growth, technological diversity, and job creation within the UK and globally.

8. The IoT sector relies heavily on standardised technologies such as 4G, 5G, and Wi-Fi. Therefore, ACT's members are reliant on the seamless licensing and implementation of standard-essential patents ('**SEPs**'). As innovators in their own right, ACT's members utilise their direct expertise to create new products that leverage standardised technologies, frequently through the purchase of off-the-shelf modules.

9. The IoT market is fragmented, competitive, and cost sensitive, with many businesses earning relatively low margins. This means the ability of ACT's members to obtain licences to SEPs on fair, reasonable, and non-discriminatory ('**FRAND**') terms is of paramount importance to ensuring their businesses are viable and competitive. Their reliance on compliance with the FRAND commitment is therefore even more fundamental than most.

10. SEP pools/platforms (for brevity referred to hereafter as '**pools**') provide an important way for ACT's members to obtain licences. This is because MSMEs have minimal resources to engage in costly and time-consuming bilateral negotiations with individual SEP owners and/or to defend themselves against SEP assertions. It is also the experience of ACT's members that some SEP owners will in any event refuse to negotiate bilateral licences with individual MSMEs due to their small size. This leaves pools as the only realistic option to secure a licence to the SEPs needed.

[4] Ibid at p.4, figure originally in Euros (€86.5 billion) and converted to Sterling.

11. It is therefore critical to ACT and its members that such pool licences are available on FRAND terms and that the rates offered can be subject to the English court's scrutiny in the same way any other licence to a UK SEP would be. This is especially important in circumstances where, similar to the instant case, the patent pools in question hold themselves out as offering FRAND terms but will not negotiate on price.

12. Given this context, the judgment of the court below is of great concern for ACT and its members. A key underlying rationale of the majority's decision that there was no serious issue to be tried was a point of principle that SEP owners have no obligation to offer their SEPs for license on FRAND terms when licensing them through a patent pool.[5] Whilst the instant case is in the context of the Avanci 5G Vehicle platform, this appeal will set legal principles which will be applicable to all SEP pools irrespective of the identity of their administrator and the underlying standardised technology, including many other standards such as the IEEE-SA Wi-Fi standard and ITU-T audio/video codec standards, both of which are relevant to IoT and giving rise to an increasing number of disputes around the world.

13. Due to their limited resources, MSMEs are already particularly vulnerable to abusive SEP licensing practices of those seeking supra-FRAND royalties. As has been shown in judgments such as *Interdigital Technology Co. v. Lenovo Group Ltd* [2023] EWHC 1583 (Pat), for example at paragraph [609], MSMEs are already suffering from SEP licensing rates that are above what others are paying and what the English court has found to be FRAND. This is in large part because the costs of litigation would far outweigh the size of any royalty payments in issue.

14. The court below has now created a precedent which ACT believes further disadvantages MSMEs and potentially facilitates the very abuses which FRAND undertakings exist to prevent. If left undisturbed, the view of the majority below provides a template whereby SEP licensors can secure supra-FRAND rates from MSMEs with impunity: they simply need to only offer their SEPs through a pool at a non-negotiable rate which purports to be FRAND but cannot be reviewed by the courts, whilst not negotiating bilaterally with

[5] See e.g. the judgment below at [229].

MSMEs who do not have the resources to pursue such negotiations. This situation would further compound the unfair pressure frequently placed on MSMEs by the threat of litigation seeking injunctions in important markets.

15. In this appeal, the Court will address the important issue of whether SEP owners have no obligation to comply with their FRAND obligations when licensing their SEPs through a patent pool or platform, and relatedly, whether the English court has the jurisdiction to review whether a pool licence is FRAND (the Appellants' Ground 1). MSMEs are uniquely exposed to the ramifications of this appeal for the reasons given at paragraphs 8 – 14 above, making this an issue of great importance for ACT. In such circumstances, ACT respectfully believes it is right that it is permitted to make brief written submissions to the Court in relation to Ground 1.

16. Individual MSMEs generally cannot afford expensive litigation and having the opportunity to make written submissions in this appeal is one of the few opportunities where they will have their voice heard before the Court. The consequence of not allowing this application would be to deny them that voice in circumstances where for many MSMEs, the outcome of this appeal could create an existential threat to the viability of their businesses, which already can struggle to attract investment due to the uncertainties surrounding securing SEP licences on FRAND terms. Ultimately, this in turn will harm innovation and consumer choice in IoT.

C – Summary of Submissions

17. ACT believes that as a matter of law, as well as practical commercial reality and fairness, SEP holders cannot avoid their FRAND obligations by licensing through a pool. Similarly, the English court must be able to scrutinise whether any pool licence which purports to be FRAND is in fact FRAND. ACT therefore seeks permission to make written submissions in relation to Ground 1 — whether pool licences are arguably required to be FRAND.

18. ACT has considered the Appellants' written case of 13 January 2026. The Appellants focus their arguments on why there is a serious issue to be tried in relation to the features specific to the Avanci 5G Vehicle platform and based on the relevant commercial practices for licensing cellular SEPs in the automotive industry. However, the majority

in the court below found there was no serious issue to be tried based on the principle that a SEP owner has no obligation to offer its SEPs for license on FRAND terms when licensing them through a patent pool and that the obligation to offer licenses on FRAND terms only applies to bilateral negotiations. This is a principle that would be applicable to standards and pools more generally. Whilst a company of the size of Tesla may have to resources to undertake bilateral negotiations with multiple SEP holders, that is not the case for a MSME, even assuming the SEP holder will entertain bilateral negotiations with them in the first place.

19. ACT believes its fund of knowledge and particular point of view will significantly assist the Court in the way commended by Lord Hoffman at paragraph 2 of his opinion in *E v. The Chief Constable of the Royal Ulster Constabulary (Northern Ireland Human Rights Commission intervening)* [2008] UKHL 66, [2009] 1 AC 536 by providing the Court with 'a more rounded picture than it would otherwise obtain'.

20. In summary, if permission to intervene is given, ACT's submissions will address why the majority in the court below was wrong in principle to find that a SEP owner has no obligation to license its SEPs on FRAND terms when utilising a patent pool, including because:

    20.1. As a matter of law, a SEP owner's FRAND obligation is not limited only to bilateral licensing or excluded from pool licensing; and

    20.2. In determining Ground 1 specifically and as a matter of policy more generally, relevant commercial practice dictates that pool licences must be open to the scrutiny of the English court just as any other licence which relates to UK patents declared to be SEPs, because pool licences are both held out to be and relied upon as being FRAND.

21. ACT's submissions will provide significant assistance to the Court over and above that which can be provided by the parties, because they come from a perspective that cannot be offered by the parties. This will be useful to the Court's deliberations on Ground 1 because ACT offers the view of MSMEs wishing to implement standardised technologies in the IoT. It is the perspective of small licensees, who are often reliant on patent pools

as the only practical way to access FRAND licences for a range of standards across a range of industries which now form part of the IoT ecosystem (such as healthcare and sustainability). This is a view outside that of big corporations like Tesla and gives experience beyond just mobile telecoms and automotives.

22. If granted permission, ACT intends to make a short and focussed written submission on Ground 1 only. As such it will create only a minimal additional burden for the parties and the Court in their preparations for the appeal. This written intervention is not expected to result in any delay or the need for the parties to incur any significant additional costs. As such, ACT believes what little additional burden would be created by allowing this proposed written intervention is not disproportionate to the assistance it will bring.

D - Conclusion

23. For all the reasons above ACT submits that its proposed intervention will provide the Court with significant assistance over and above the assistance it can expect to receive from the parties and respectfully asks the Court to allow the application.

THOMAS HINCHLIFFE KC

KIRKLAND & ELLIS INTERNATIONAL LLP

12 FEBRUARY 2026