

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

and

ACT | THE APP ASSOCIATION Intervener

ACT | THE APP ASSOCIATION'S SUBMISSIONS

A - Introduction

1. ACT | The App Association ('ACT') has been granted permission under Rule 24 of the Supreme Court Rules 2024 to intervene in writing in relation to the Appellants' Ground 1 in UKSC/2025/0058 *Tesla Inc and Anor 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 is ACT's written submission:
 - 3.1. **Section B** addresses ACT's interest in this appeal.
 - 3.2. **Section C** contains ACT's submissions on Ground 1.

B - ACT's Interest

4. ACT has demonstrated its interest in this appeal and in particular Ground 1 from the beginning of the process by way of its Rule 16 submission of 6 May 2025, supporting Tesla's application for permission to appeal.
5. ACT works with 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 moniker "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, IoT increases efficiency by automating decision making and integrating an increasing number of devices.

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.

7. The ‘UK app economy,’ the ecosystem which ACT represents, generated £75.1 billion in revenue in 2021 (approximately 1.5 per cent of 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. The IoT market, a subset of the app economy, is expected to generate between £4.1 trillion and £9.5 trillion for the global economy by 2030.⁵
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, and the primary drivers of growth in IoT market output, 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’)⁶ 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

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

⁵ Figures originally in USD (USD 5.5 trillion to USD 12.6 trillion) and converted to Sterling. See p. 10, European Commission Impact Assessment Report No. SWD(2023) 124, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023SC0124>.

⁶ Varying technical standards setting organisations (SSOs) (for example the European Telecommunications Standards Institute (ETSI)) use the term “fair, reasonable and non-discriminatory” or FRAND, while other standards setting organisations (for example the International Telecommunications Union (ITU)) use just “reasonable and non-discriminatory” or RAND. Throughout this brief we use FRAND to cover both terms, except when a specific variation is used in quoted text.

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.

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.⁷ Whilst the instant case is in the context of the Avanci 5G Vehicle platform, this appeal will set legal principles which will likely 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

⁷ See e.g. the judgment below at [229].

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 either not negotiating bilaterally with MSMEs or making it economically unviable for MSMEs 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, this 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 to 14 above, making this an issue of great importance for ACT.
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 voices heard before the Court. 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 – Submissions

17. ACT's written submissions are in relation to Ground 1 — whether pool licences are arguably required to be FRAND. ACT believes that as a matter of law, as well as practical commercial reality and fairness, SEP holders cannot avoid their FRAND obligations when 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.
18. ACT's submissions 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, because in determining Ground 1, as this Court made clear in *Unwired Planet v. Huawei* [2020] UKSC 37 ('UPSC') at [62], '*in framing its IPR Policy ETSI intended that parties and courts should look to and draw on commercial practice*

in the real world'. In relation to pools, the 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 a) the only economically practical way many implementers, and in particular MSMEs in the IoT field, can obtain licences to standardised technology and b) held out to be and relied upon as being FRAND by both the pools themselves and the companies that contribute SEPs to them.

19. In addition, ACT wishes to emphasise that there are standardised technologies other than cellular ones promulgated by ETSI. Any decision in this case is likely to be relevant to those other standards as well. In addition, the wording of the FRAND commitments of those other standards do not suggest that SEP owners have no obligation to license on FRAND terms when licensing through pools.

Commercial Practice

20. The importance of standardised technology to the development of IoT and the important role MSMEs are playing in the development of the UK's IoT sector has been recognised by the UK government in the Intellectual Property Office's ('IPO') recent SEP consultation:⁸

'Domestically, the numbers of UK businesses in the Internet of Things sector has more than doubled in the last decade, the majority of whom are SMEs. This is a trend that is set to continue. Emerging industries that rely on technical standards are expected to grow at a faster rate than the UK economy as a whole. This growth will continue to be driven by high demand for interconnected devices, including smart home technologies in the UK consumer market'. [Emphasis added].

21. However, as the IPO has also recognised in its separate study of IP awareness amongst MSMEs, *'many businesses do not have a broad understanding of IP beyond topline terminology (i.e. the term intellectual property itself)'* and in relation to the use of IP *'they*

⁸ p.8 "Standard Essential Patents Consultation", UK Intellectual Property Office, July 2025, available at: <https://www.gov.uk/government/consultations/consultation-on-standard-essential-patents-seps>.

*are discouraged by financial limitations and lack of knowledge and expertise’.*⁹ The experience of ACT and its members is that this lack of knowledge and resource places MSMEs at a significant disadvantage when seeking to license SEPs on FRAND terms. This is especially so because the SEP licensing ecosystem is particularly niche and complex, with acknowledged issues concerning transparency of pricing and essentiality, as well as the exceptionally high cost of litigation.

22. These specific issues and their particular impact on MSMEs have also been recognised in the IPO’s SEP consultation (emphasis added to the quotes below):

*‘33. As licence rates are privately negotiated between businesses, pricing information is protected by non-disclosure agreements (NDAs). This lack of public information on pricing makes it difficult for licensees to establish if a rate offered by a SEP holder is FRAND or competitive. For example, **the IPO’s 2023 SME survey revealed that 83% of respondents involved in SEP licensing said they did not feel they had sufficient information on pricing. Information on pricing is important for licensees to plan their costs, construct business plans, and access finance from investors’.***

‘36. A lack of pricing transparency means that licensees can overpay for licences, and we have seen evidence emerging through litigation that licensing offers made by SEP holders have exceeded court adjudicated rates by 4-500 times. Further, not all licensees, and especially SMEs, can currently afford to challenge suspected supra-FRAND rates through litigation’.

*‘42. This lack of certainty on which SEPs are essential is compounded by difficulties involved in establishing essentiality. Only courts can provide a definitive ruling on essentiality, but litigation is a costly route. In the absence of third-party checks (e.g. independent checks arranged by a patent pool) licensees must turn to commercial providers. There are **some commercial SEPs mapping and landscaping services***

⁹ See “Key findings” under the Executive Summary of the UK Intellectual Property Office publication entitled “IP Awareness and understanding among UK SMEs”, available at: <https://www.gov.uk/government/publications/ip-awareness-and-understanding-among-uk-smes/ip-awareness-and-understanding-among-uk-smes#executive-summary>.

available. They provide information on essentiality of patents, but can be costly to access, especially for SMEs, and may not provide certainty’.

23. The consequence of these factors is that MSMEs are particularly vulnerable to exploitation and being forced into paying supra-FRAND royalties for standardised technologies. Again, this feature of the market in which MSMEs operates has been identified by the IPO in its SEP Consultation (emphasis added to the quotes below):

*‘45. Whilst there is evidence of UK SMEs being involved in smaller court cases or joined to cases involving larger and better resourced companies, **there is some concern that court costs are likely to be prohibitive to SMEs. For example, when asked to provide further detail on limitations to their company’s success in the current SEPs licensing framework, several SMEs said that smaller companies faced financial risk entering SEP licensing as they didn’t have the fees for litigation or to hire lawyers.** The government recognises there is a need for choice in resolving disputes, especially with complex SEP licenses. However, there are concerns that inefficient or lengthy dispute resolution may have a detrimental impact on businesses and innovation’.*

*‘53. On the other hand, **licensing frictions may persist and may be more seriously felt in markets with emerging technologies.** Transparency would increasingly be left to court determinations in high-profile SEPs cases. Potentially lengthy cases may disproportionately affect SMEs. **For example, we have seen some recent UK court determinations indicating that smaller businesses (which were not parties in the litigation) may agree to higher (‘supra-FRAND’) licence rates, potentially putting them at a competitive disadvantage in important technology fields. In addition, the cost of lengthy litigation may be beyond the reach of many SMEs.** The government therefore believes that we need to consider further actions to create the conditions for SMEs to grow and succeed in emerging technology markets’.*

24. The points described above also highlight why SEP pool licences have become an important, and in some cases, the *de facto* only means for MSMEs to obtain licences to the SEPs they require. As has been noted in a recent IAM article *‘patent pools too are*

playing a significant role’ in an IoT SEP licensing landscape where major licensors are seeking to expand their IoT licensing programs.¹⁰

25. Whilst a company of the size of Tesla may have the resources to undertake bilateral negotiations with multiple SEP holders, that is not the case for a MSME. Taking the example of the Sisvel Cellular IoT pool, which licenses LTE-M and NB-IOT¹¹ standardised cellular technologies and lists the pool as containing SEPs from 37 licensors, including large multinational corporates such as Ericsson, Panasonic, Sony, and Vodafone.¹² It is simply not feasible for most MSMEs to attempt that number of bilateral negotiations with any realistic expectation of achieving a FRAND rate.
26. Furthermore, in many instances licensors will not engage in such bilateral negotiations in any event, instead relying on the fact that a FRAND licence is available from a pool. Sisvel holds out its pools as adhering to FRAND,¹³ as is normal across the SEP pools relied upon by IoT MSMEs. The promise of pools that they are on FRAND terms, together with their publicly published rates and assertions to have assessed the essentiality of SEPs included in the pool, are all features that have the effect of pressing MSMEs towards to pool licences, because many such companies lack the resources and/or experience to evaluate what would be FRAND rates and which SEPs are essential. However, it should be noted that the administrators of some SEP pools are not entirely independent, because in some instances their pools also contain patents owned by them, as is the case with the Sisvel Cellular IoT pool, which contains patents owned by Sisvel.¹⁴

¹⁰ IAM (Intellectual Asset Management) is a leading UK provider of news, research and data analysis focusing on intellectual property as a business asset. See “*Ericsson reveals market-by-market IoT approach, new healthcare/agriculture deals*”, IAM, 13 February 2026, available at: <https://www.iam-media.com/article/ericsson-reveals-market-market-iot-approach-new-healthcareagriculture-deals>.

¹¹ Narrowband IoT (NB-IoT) is a 3GPP-standardised Low Power Wide Area (LPWA) cellular technology designed for connecting devices that need to send small amounts of data infrequently over long distances, often in challenging, deep-indoor locations. It enables, low-cost, 10+ year battery life, and high-density connectivity for smart meters, sensors, and asset trackers, using licensed spectrum to ensure security.

¹² See the list of patent owners involved in the Sisvel Cellular IoT programme at: <https://www.sisvel.com/licensing-programmes/iot/cellular-iot/#tab-patent-owners>.

¹³ See the “*How we work*” webpage of the Sisvel website at: <https://www.sisvel.com/about-us/how-we-work/>.

¹⁴ See above, footnote 12.

27. Another recent development in the industry is that MSMEs are now often channelled into entering SEP pool licences at the point of purchasing the standardised technology they wish to incorporate in their products. The Sisvel Cellular IoT pool again provides a good example of this. In 2024, 2025 and 2026, Sisvel began collaborations with the major module manufacturers Nordic Semiconductor, MoMagic and Quectel, respectively, through which those suppliers can now offer their IoT customers the Sisvel Cellular IoT Pool licence.¹⁵ Sisvel asserts that Quectel is *'the world's leading provider of end-to-end global IoT solutions'* and notes that *'Quectel's customers range from SMEs to multinationals and operate across the full range of IoT verticals including agriculture, healthcare, point of sales, smart cities and smart meters'*.¹⁶ Where the most significant suppliers of the necessary standardised technology are offering bundled pool licences at the point of sale, MSMEs have little option other than to accept.
28. ETSI cellular connectivity standards are not the only important standards to MSMEs in IoT. Other important standards include the IEEE-SA Wi-Fi standards, the ITU-T audio-visual codec standards,¹⁷ and Wireless Power Consortium's Qi wireless charging standard. As with cellular technology, there are SEP pools offering licences to these technologies. These pools also demonstrate another feature of why pool licences can be so important to MSMEs, which is the scope of coverage they provide. For example, the Access Advance HEVC pool (an audio-visual codec) is advertised as accounting for almost 79 per cent of all HEVC SEPs.¹⁸
29. 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 licences on FRAND terms only applies to bilateral negotiations. This is a principle that would be

¹⁵ See Sisvel press releases available at: <https://www.sisvel.com/news/nordic-and-sisvel-to-streamline-cellular-iot-sep-licensing/>; <https://www.sisvel.com/news/momagic-and-sisvel-sign-groundbreaking-iot-patent-deal/>; and <https://www.sisvel.com/news/quectel-agrees-cellular-iot-pool-deal-with-sisvel/>.

¹⁶ See above, footnote 15.

¹⁷ Audio-visual codecs are used to compress and decompress audio and video data. They are particularly used in streaming data over the internet and hence relevant for makers of devices such as TVs, computers, mobile phones and internet connected doorbells and security cameras.

¹⁸ "HEVC Worldwide Essential Patents Landscape", Access Advance, January 2026, available at: <https://accessadvance.com/hevc-worldwide-patent-landscape/>.

applicable to standards and pools more generally. However, as can be seen from the points above such an approach would be detrimental to MSMEs operating in the IoT space, where commercial practice is such that pools can be either the only, or the only practical and economically viable, available means to obtain licences to SEPs. In such circumstances these pools must be open to the scrutiny of the English court just as any other licence which relates to UK patents declared to be SEPs, in particular because such pool licences are both held out to be and relied upon as being FRAND.

Relevant FRAND Commitments

30. ACT has considered the Appellants' written case of 13 January 2026, and in particular paragraphs 18 to 49, which address why the majority in the Court below fell into error by concluding that a SEP owner has no obligation to offer its SEPs for license on FRAND terms when licensing them through a patent pool. ACT agrees with the Appellants' analysis and does not seek to repeat it here.
31. However, ACT does wish to make the following complementary points. The decision of the majority below has fixed a principle that is not limited to the Avanci 5G Vehicle pool and is applicable to standards and pools more generally. The same points on the commercial reality for MSMEs in the IoT space apply to those other standardised technologies. As such, the decision of the Court on this appeal will therefore have consequences beyond just the Avanci 5G Vehicle pool. Additionally, ACT's position on Ground 1 is reinforced by consideration of the wording of the other FRAND¹⁹ commitments to other standardised technology relevant to the IoT. There is nothing in these FRAND commitments that indicates that the obligation to license in FRAND terms does not apply when licensing via pools. It would be surprising if the ETSI FRAND commitment was an outlier.
32. Cellular connectivity is important to IoT. Therefore, the points made by the Appellants in relation to 5G, are equally applicable to the ETSI cellular standards most relevant to IoT (such as 2G, 3G, 4G, and LTE-M) because they are subject to exactly the same

¹⁹ As noted above, whilst ETSI uses the term "fair, reasonable and non-discriminatory" or FRAND, other standards setting organisations (for example the ITU) use just "reasonable and non-discriminatory" or RAND. We use FRAND to cover both terms.

FRAND obligation. The points relating to the nature of Avanci’s pools are also salient because Avanci administers a number of IoT SEP pools, such as Avanci Aftermarket,²⁰ Avanci Smart Meter²¹ and Avanci EV Charger.²²

33. There are also other standardised technologies that are relevant to IoT and are also subject to FRAND obligations, for example Wi-Fi, HEVC and Qi. These standards have been set by standard-setting organisations different to ETSI, and their accompanying FRAND commitments are not under French law.

34. Mellor J considered the International Telecommunication Union (ITU) HEVC audio-video codec standard in his recent decision in *Acer and Ors v Nokia* [2025] EWHC 3331 (Pat). Having done so he concluded that the ITU RAND²³ obligation could be considered the same as the ETSI obligation (see paragraphs [45]i) and [111] of the *Acer* judgment):

‘...it is a contract for the benefit of third party beneficiaries which requires Nokia to make RAND offers which are capable of acceptance and, when accepted, require Nokia to enter into the resulting RAND licence. In effect, it is an obligation to grant RAND licences with the same meaning as ETSI FRAND’.

35. The language of the ITU FRAND commitment, which similar to the ETSI FRAND commitment, lacks any language carving-out pool licences from the FRAND obligation. The ITU FRAND obligation was summarised in the *Acer* decision at [88] – [90], and ACT’s position is that there is no language excluding pool licences demonstrating that pool licenses were not meant to be excluded from the FRAND commitment:

88. The relevant text from the Licensing Declarations at [B3/6-9], which are identical in all material respects, is as follows (emphasis added):

²⁰ <https://www.avanci.com/vehicle/aftermarket/>.

²¹ <https://www.avanci.com/iot/smart-meter/>.

²² <https://www.avanci.com/iot/evcharger/>.

²³ REMINDER: Varying technical standards setting organisations (SSOs) (for example the European Telecommunications Standards Institute (ETSI)) use the term “fair, reasonable and non-discriminatory” or FRAND, while other standards setting organisations (for example the International Telecommunications Union (ITU)) use just “reasonable and non-discriminatory” or RAND. Throughout this brief we use FRAND to cover both terms, except when a specific variation is used in quoted text.

‘The Patent Holder is prepared to grant a license to an unrestricted number of applicants on a worldwide, non-discriminatory basis, and on reasonable terms and conditions to make, use and sell implementations of the above document’.

89. In those Licensing Declarations, the box is ticked stating that the Patent Holder’s willingness to license is conditioned on ‘reciprocity for the above document’; with reciprocity being defined as meaning that (emphasis added):

‘the Patent Holder shall only be required to license any prospective licensee if such prospective licensee will commit to license its essential patent(s) or essential patent claim(s) for implementation of the same above document free of charge or under reasonable terms and conditions’.

90. The Declarations also include notes about assignment/transfer of Patent rights. The notes explain that the Declarations ‘shall be interpreted as encumbrances that bind all successors-in-interest as to the transferred Patents’.

36. In addition to the ITU, the FRAND commitments set by other standard setting bodies for SEPs relevant to IoT, also do not contain any express carve out for pool licensing.

36.1. The IEEE-SA FRAND commitment for Wi-Fi (under New York Law) provides that:²⁴

‘The licensing assurance shall be either:

...

b. A statement that the Submitter will make available a license for Essential Patent Claims to an unrestricted number of Applicants on a worldwide basis without compensation or under Reasonable Rates, with other reasonable terms and conditions that are demonstrably free of any unfair discrimination to make, have made, use, sell, offer to sell, or import any Compliant Implementation that practices the Essential Patent Claims for use in conforming with the IEEE Standard. An Accepted LOA that contains such a statement signifies that

²⁴ Clause 6.2 of the IEEE-SA Standards Board Bylaws available at: https://standards.ieee.org/wp-content/uploads/import/documents/other/sb_bylaws.pdf.

reasonable terms and conditions, including without compensation or under Reasonable Rates, are sufficient compensation for a license to use those Essential Patent Claims and precludes seeking, or seeking to enforce, a Prohibitive Order except as provided in this policy’.

36.2. Likewise, the Wireless Power Consortium commitment for Qi (also under New York law) provides:²⁵

‘Each Member undertakes to grant or cause the grant, on its own behalf and on behalf of its Affiliated Entities and, subject to faithful performance of license terms, non-exclusive, non-transferable, non-sublicenseable, world-wide licenses:

(a) on RAND Terms under its Necessary Claims to make, use, sell, offer to sell, import and otherwise dispose of Compliant Transmitters,

(b) on RAND Terms under its Necessary Claims to make, use, sell, offer to sell, import and otherwise dispose of Compliant Other Receivers, and

(c) on [Royalty Free] Terms under its Necessary Claims solely to make, use, sell, offer to sell, import and otherwise dispose of Compliant Low Power Receivers’.

37. Finally, similar to the position with ETSI, none of the standard setting organisations responsible for the abovementioned FRAND obligations have mandated how FRAND licensing disputes should be resolved. As this Court recognised in *UPSC* at [90]:

*‘...it is the result of the policies of the SSOs which various industries have established, which limit the national rights of a SEP owner if an implementer agrees to take a FRAND licence. **Those policies**, which either expressly or by implication provide for the possibility of FRAND worldwide licences when a SEP owner has a sufficiently large and geographically diverse portfolio and the implementer is active globally, **do not***

²⁵ Clause 1.3 of the WPC IPR Policy available at:
<https://www.wirelesspowerconsortium.com/media/jwgnnuf5/20200624-wpc-inc-ipr-policy.pdf>.

provide for any international tribunal or forum to determine the terms of such licences. Absent such a tribunal it falls to national courts, before which the infringement of a national patent is asserted, to determine the terms of a FRAND licence’. [Emphasis added].

38. This means that the courts, including the English court, are the only option for dispute resolution where the parties cannot resolve their differences on FRAND licensing. Without the courts, there is no means by which the FRAND commitment can be enforced or compliance of that obligation assessed. ACT invites this Court to confirm that it does not matter whether the SEPs in question are being licensed bilaterally or through a pool, they remain FRAND encumbered and as such the English court has jurisdiction to determine whether a pool licence is FRAND.

D - Conclusion

39. For all the reasons above ACT respectfully asks the Court to allow Ground 1 of Tesla’s appeal.

THOMAS HINCHLIFFE KC

KIRKLAND & ELLIS INTERNATIONAL LLP

23 MARCH 2026