

# UK High Court Issues Interim RAND License Declaration in *Acer, Hisense & ASUS v. Nokia*: Reinforcing the English Courts' Role in Global SEP Disputes

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In a significant decision for global standard essential patent (“SEP”) licensing disputes, the English High Court has granted an interim reasonable and non-discriminatory (“RAND”) license declaration against Nokia Technologies Oy (“Nokia”) in implementer-led proceedings brought by Acer, Hisense, and ASUS.<sup>1</sup> The Court held that Nokia’s commitments to the International Telecommunication Union Telecommunication Standardization Sector (“ITU-T”) require it to make RAND license offers capable of acceptance, rejected Nokia’s contention that arbitration offers discharged its RAND obligations, and confirmed the English courts’ jurisdiction to grant interim license relief pending a final global RAND determination.

The ruling—handed down by Mr. Justice Mellor—adds further momentum to the English courts’ central role in resolving global SEP disputes and underscores the growing divergence between the UK approach and that of German and UPC courts on interim licensing and comity.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or to the Cleary authors below.

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<sup>1</sup> *Acer, Hisense & ASUS v. Nokia Technologies Oy* [2025] EWHC 3331 (Pat).  
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**I. Background.** The proceedings arise from implementer-led actions by Acer, Hisense, and ASUS seeking a determination of global RAND terms for Nokia’s SEP portfolios declared essential to the H.264/AVC and H.265/HEVC video-coding standards under the ITU-T framework.<sup>2</sup> As in prior English RAND cases, the implementers undertook to accept whatever RAND terms the Court ultimately determines and sought interim license declarations to govern payments pending final resolution.<sup>3</sup>

Nokia contested jurisdiction and interim relief, arguing, among other things, that: (i) the English courts lack authority to determine global RAND terms absent consent;<sup>4</sup> (ii) Nokia’s offers of arbitration constituted RAND offers sufficient to discharge its obligations;<sup>5</sup> and (iii) the ITU-T RAND commitment imposes only a duty to negotiate in good faith, not an obligation to make or grant a RAND license.<sup>6</sup>

**II. The Court’s Key Holdings.** The Court made four key findings:

a) *ITU-T RAND Commitments Require Offers Capable of Acceptance.* Applying Swiss law to interpret the ITU-T declarations, the Court rejected Nokia’s position that its obligation was limited to negotiating in good-faith.<sup>7</sup> The Court held that the commitment to be “prepared to grant” licenses on RAND terms requires SEP holders to make RAND offers capable of acceptance, and—if accepted—to enter into a license.<sup>8</sup> The Court emphasized that the commitment operates as an encumbrance on the

patent right itself, binding successors in title, rather than merely as a personal duty to negotiate.<sup>9</sup>

b) *Arbitration Offers Do Not Discharge RAND Obligations Absent Consent.* The Court rejected Nokia’s argument that its “adjustable arbitration” offers satisfied its RAND obligations.<sup>10</sup> An offer to arbitrate, the Court held, is not itself an offer of a RAND license capable of acceptance.<sup>11</sup> Arbitration remains a consensual dispute-resolution mechanism; absent an agreement to arbitrate, an SEP holder cannot compel implementers to abandon court proceedings by offering arbitration alone.<sup>12</sup> The Court further observed that if Nokia’s arbitration offers were deemed RAND, the implementers’ undertakings to accept court-determined RAND terms would likewise establish their willingness—undercutting Nokia’s unwilling-licensee theory.<sup>13</sup>

c) *Interim License Declarations.* Having rejected Nokia’s jurisdictional challenge, the Court granted interim license declarations pending the final RAND determination.<sup>14</sup> Justice Mellor fixed interim royalty terms at \$0.365 per device by adopting a midpoint between Nokia’s proposed rate (\$0.69 per device) and the Acer and ASUS Claimants’ proposed rate (\$0.03 per device).<sup>15</sup> Interestingly, the Court ordered that \$0.03 per device of the interim license payment—matching the Acer and ASUS Claimants’ own offer—would be non-refundable.<sup>16</sup> In effect, the Court required payment equivalent to the implementers’ counteroffers as the price of interim relief. While this resembles the deposit mechanisms sometimes

<sup>2</sup> *Id.* ¶¶ 4–9.

<sup>3</sup> *Id.* ¶¶ 8–9.

<sup>4</sup> *Id.* ¶¶ 10–16.

<sup>5</sup> *Id.* ¶¶ 23–28.

<sup>6</sup> *Id.* ¶¶ 45–46, 69–80.

<sup>7</sup> *Id.* ¶¶ 45, 111.

<sup>8</sup> *Id.* ¶¶ 88–125.

<sup>9</sup> *Id.* ¶¶ 90–95.

<sup>10</sup> *Id.* ¶¶ 23–31.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* ¶¶ 34–37.

<sup>13</sup> *Id.* ¶¶ 31–34.

<sup>14</sup> *Id.* ¶ 455.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

required by German courts (including before Judge Schoen), the distinction is critical: in the UK, payment secures an interim license and continued market access, whereas in Germany an implementer may still face injunctive relief notwithstanding payment. The Court concluded that interim relief served a useful purpose by preventing hold-up or hold-out while the global RAND case proceeds: “The implementer is demonstrating their willingness to pay for the licence, once the terms can be agreed or resolved, and so, in the meantime the SEP holder ought not be able to take the implementer’s products off the market by means of an injunction.”<sup>17</sup>

d) *Comity Does Not Bar Interim Relief*. The Court squarely addressed comity concerns, finding that interim license declarations “do not interfere in any foreign proceedings, so there is no comity issue. However, the reaction of the UPC in *Amazon v InterDigital*, in the form of the ASI, unfortunately directly interfered in the UK proceedings, preventing Amazon from pursuing their legitimate claim to interim declaratory relief.”<sup>18</sup> The Court cautioned that absent greater alignment—particularly recognition of contractual license defenses—there remains a material risk of inter-jurisdictional conflict.<sup>19</sup>

### III. Practical Implications.

a) *For SEP Holders*. The decision reinforces that, at least in the UK, RAND commitments—whether under ETSI or ITU-T—are enforceable obligations to make license offers capable of acceptance. Offers to arbitrate, standing alone, are unlikely to shield SEP holders from interim relief or from court-determined global RAND rates.

b) *For Implementers*. Implementer-led actions in England remain a powerful tool, particularly where SEP holders pursue parallel injunctive strategies abroad. Undertakings to accept court-determined RAND terms continue to be central to establishing willingness and unlocking interim license relief.

c) *For Global Strategy*. The decision deepens the divergence between the UK and continental European approaches to interim licensing, increasing the strategic complexity of multi-forum SEP disputes. Parties should expect continued friction—particularly where UPC or German courts are asked to assess willingness or grant injunctive relief while English RAND proceedings are pending.

**IV. Looking Ahead.** Nokia has indicated its intention to appeal, potentially up to the UK Supreme Court.<sup>20</sup> In the meantime, the judgment further entrenches the English courts as a preferred forum for global RAND determinations and interim licensing relief—particularly for video-codec SEPs governed by ITU-T commitments.

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<sup>17</sup> *Id.* ¶ 441.

<sup>18</sup> *Id.* ¶ 435; *see also id.* ¶¶ 433–441.

<sup>19</sup> *Id.* ¶¶ 436–438.

<sup>20</sup> *Id.* ¶ 447.