

Competing Global FRAND Determinations: UK and Chinese Courts Reach Divergent Conclusions in Samsung-ZTE Cellular SEP Dispute

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On May 1, 2026, the English High Court of Justice (Mr. Justice Meade) and the Chongqing Intermediate People's Court of the People's Republic of China each handed down global FRAND rate determinations in the parallel standard-essential patent (SEP) cross-license disputes between Samsung and ZTE. The two judgments reached materially different conclusions: the English court determined that a \$392 million lump sum from Samsung is FRAND for a five-year cross-license, while the Chongqing court accepted ZTE's \$731 million six-year offer as FRAND. The decisions mark the first occasion on which courts in two jurisdictions have issued global FRAND rate determinations in the same dispute.

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I. Background. The dispute concerns the renewal of the parties' expired 2021 cellular SEP cross-license. Samsung, the net licensee, commenced FRAND proceedings before the English High Court, undertaking to accept whatever rate the court determined. ZTE, the net licensor, commenced a parallel action in the Chongqing Intermediate People's Court, where it sought a determination that its proposed terms were FRAND. ZTE did not undertake to be bound by the English determination.

II. The English High Court Determination.

Mr. Justice Meade issued a detailed judgment concluding that a \$392 million lump sum is FRAND for a five-year cross-license to ZTE's portfolio.¹ The figure falls between Samsung's "not more than \$200 million" position and ZTE's \$731 million offer, but lies somewhat closer to Samsung's. Several aspects of the opinion warrant discussion.

a) *Choice of Comparable Licenses.* The selection of comparable licenses largely drove the rate analysis. Samsung urged the court to rely on its 2021 cross-license with ZTE and ZTE's 2020 cellular SEP license with Apple (together, the Big Two).² ZTE contended that those agreements had been concluded under conditions of "hold-out" and unusual ZTE weakness, and instead urged reliance on Samsung's 5G licenses with Ericsson, Nokia, and InterDigital (together, ENI).³ The UK court sided with Samsung, holding that the ENI licenses were "not usable as comparables at all."⁴ Justice Meade reasoned that the ENI licensors' portfolios were "so different" from ZTE's, even after adjusting for size, and that those licensors

possessed "very great expertise at out-licensing" as well as a greater "willingness and ability to litigate."⁵ The court inferred that Samsung had paid a substantial premium under those licenses "in substantial measure to avoid injunction risk and not just for the technology of the counterparties' patents."⁶ The court's reliance on the litigation posture and out-licensing sophistication of an SEP holder when assessing comparability is notable and likely to be influential in future English FRAND proceedings.

b) *Adjustments for Non-FRAND Factors in ZTE's Comparators.* Although the court adopted Samsung's preferred comparators, it did not adopt Samsung's preferred rate. Justice Meade found that the Big Two had themselves been "severely" affected by non-FRAND factors. The court observed that ZTE was, at the time, "severely beset by the U.S. sanctions," dependent on cash reserves following the collapse of its handset business, and lacked any out-licensing experience.⁷ ZTE "came to both sets of negotiations looking for quick deals" and was "a long way from being able to litigate its SEPs if it needed to do so."⁸ The court further found that the 2021 Samsung license reflected "minimal if any value" attributable to ZTE's 5G patents.⁹

Rejecting ZTE's call for a top-down cross-check, the UK court instead made bespoke adjustments to the rate implied by the ZTE-Apple license: a 12.5% upward adjustment to reflect ZTE's position as a first-time out-licensor, plus a further 5% upward adjustment to account for the depressed value attributed to ZTE's 5G portfolio—for a combined

¹ *Samsung Elec. Co. Ltd. v. ZTE Corp.*, [2026] EWHC 999 (Pat).

² *Id.* ¶ 10.

³ *Id.* ¶¶ 12, 31–37.

⁴ *Id.* ¶ 28.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* ¶¶ 179–184.

⁸ *Id.* ¶ 184.

⁹ *Id.* ¶ 232.

notional 21% increase.¹⁰ This two-step adjustment methodology, applied instead of a top-down cross-check, is noteworthy: it preserves comparable-license analysis as the primary FRAND framework while permitting some correction for apparent bargaining-power distortions.

c) *The Covenant-Not-to-Sue*. The 2021 cross-license included a one-year covenant not to sue (CNS) for 2024. Justice Meade found that the parties had negotiated the CNS as part of an integrated package in which Samsung paid an increased headline price in return for being released from potential liability during that period, and accordingly held that Samsung had been released from liability for 2024.¹¹

d) *Status of the Determination and the Chongqing Res Judicata Question*. Because the FRAND action was initiated by Samsung as net licensee and ZTE has not undertaken to be bound, the English ruling is strictly declaratory. Justice Meade also expressly addressed, but did not resolve, the question of whether the parallel Chongqing decision could give rise to res judicata in England, observing that “ZTE says that the Chongqing decision will give rise to a res judicata here, which Samsung disputes.”¹² That issue—whether and how a foreign global FRAND rate may be recognized or given preclusive effect by an English court—may prove to be one of the more consequential questions to emerge from this dispute.

III. The Chongqing Intermediate People’s Court’s Determination. Although the Chongqing decision has not yet been published, public

reporting¹³ indicates several material differences from the English judgment:

a) *FRAND Rate*. The Chongqing court found that ZTE’s \$731 million six-year offer is FRAND. This is reportedly the first occasion on which any court—Chinese or English—has accepted a licensor’s offer as FRAND in a global rate-setting decision.

b) *Methodology*. The Chongqing court is reported to have based the FRAND payment for ZTE’s 2G–4G portfolio on the parties’ 2021 license, but to have calculated the payment for ZTE’s 5G-only portfolio principally on the basis of (i) ZTE’s proposed top-down cross-check and (ii) Samsung’s 5G license with Nokia. This is a departure from the English approach, which rejected the ENI licenses (including Samsung-Nokia) as a usable comparator and declined to apply a top-down methodology.

c) *The 2024 CNS*. The Chongqing court reached the opposite conclusion on the CNS issue, holding that Samsung must pay for its use of ZTE’s patents in 2024 and rolling those royalties into the lump sum due under a recommended 2025–2029 license.

d) *Impact of FRAND Ruling*. Samsung has 30 days to appeal to the IP Tribunal of the Supreme People’s Court. Even apart from any appeal, the Chongqing decision will not become binding on Samsung unless and until the Chinese courts find, in the parallel pending technical trials, that Samsung has infringed valid SEPs owned by ZTE—and possibly not until any appeals in those infringement cases have been resolved. There does

¹⁰ *Id.* ¶¶ 561–562

¹¹ *Id.* ¶¶ 258–270.

¹² *Id.* ¶ 8.

¹³ Adam Houldsworth, *Chinese Court Says ZTE’s \$731 Million Samsung Offer Is FRAND – What We Know So Far*,

IAM (May 5, 2026), <https://www.iam-media.com/article/chinese-court-says-ztes-731-million-samsung-offer-frand-what-we-know-so-far>.

not appear to be clear precedent in China on whether or when Chinese courts will compel SEP licensees to enter licenses on globally determined terms.

IV. Parallel Proceedings. The parties are embroiled in a multi-jurisdictional litigation campaign in which ZTE has secured a series of recent wins.

- **Brazil.** ZTE secured a preliminary injunction against Samsung in January 2025, which was upheld on appeal in February 2026.
- **United States.** ZTE successfully moved to dismiss Samsung's antitrust action in the U.S. District Court for the Northern District of California in January 2026.
- **Germany.** The Munich Regional Court dismissed one of Samsung's German infringement actions following a March 25, 2026 hearing and, more recently, granted ZTE an SEP injunction against Samsung.
- **Unified Patent Court.** The UPC's Mannheim Local Division declined to rule on Samsung's FRAND counterclaim, citing Samsung's pending FRAND action against ZTE in the Frankfurt District Court.

V. Practical Implications.

a) *Implementer-Led FRAND Actions Do Not Foreclose Competing Foreign Determinations.* The Samsung-ZTE outcomes confirm that initiating an implementer-led FRAND action in England no longer precludes a competing global rate from a foreign court. SEP holders are able to seek their own global rate determinations in

licensor-friendly forums, including in China, even where the implementer has filed first elsewhere. Parties should anticipate that this dynamic will continue to drive earlier and more aggressive forum-selection decisions on both sides.

b) *The Outcome-Determinative Role of Comparable License Selection.* The divergence between the English and Chinese rates is largely attributable to differing choices of comparators. The English court's rejection of the ENI licenses as distorted by non-FRAND factors, coupled with its willingness nonetheless to apply upward adjustments to reflect ZTE's depressed bargaining position in the Big Two, offers a roadmap for both implementers and licensors. Implementers should expect English courts to scrutinize the bargaining context surrounding any comparators advanced by an SEP holder, while SEP holders should be prepared to develop a contemporaneous record demonstrating bargaining power, sanctions exposure, out-licensing experience, and similar factors that may have suppressed prior rates.

c) *Limits of Declaratory Relief in a Multi-Forum World.* The English judgment, although carefully reasoned and detailed, is declaratory only and does not bind ZTE. With ZTE having secured an injunction in Munich, a Brazilian preliminary injunction, dismissal of Samsung's U.S. antitrust action, and a Chongqing rate determination accepting its own offer, Samsung's UK forum strategy has not, standing alone, foreclosed material commercial pressure. For net licensees, an English FRAND action remains a powerful but not necessarily sufficient tool, particularly where the SEP holder pursues parallel rate-setting and injunctive remedies abroad.

d) *Cross-Border Recognition of Global FRAND Rates.* The acknowledged dispute

as to whether the Chongqing decision will give rise to *res judicata* in England may become one of the most consequential issues to emerge from this dispute. How English (and other) courts treat foreign global FRAND determinations—particularly those reached without the implementer’s consent to be bound—may materially affect the long-term viability of forum-shopping strategies on both sides.

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