

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

THE FAIR STANDARDS ALLIANCE

Intervener

SUBMISSIONS OF THE FAIR STANDARDS ALLIANCE

A. INTRODUCTION

1. On 30 June 2025 Tesla Inc. and Tesla Motors Limited (“**Tesla**”) were granted permission to appeal to the Supreme Court from the judgment of the Court of Appeal in *Tesla Inc & Anr v InterDigital Patent Holdings Inc & Ors* [2025] EWCA Civ 193 (“*Tesla v Avanci*”). [12/236]
This appeal concerns the important legal question of whether the Courts of England and Wales have jurisdiction to decide whether the terms upon which licences to patents which have been declared essential to certain standardised cellular connectivity technologies (“**standard-essential patents**” or “**SEPs**”) are FRAND (fair, reasonable and non-discriminatory), where the SEPs in question are licensed on a pooled or collective basis.

2. Specifically, the case is concerned with a pool of 5G patents for connected cars. The pool is known as the Avanci 5G Vehicle pool and is administered by the Third Defendant/ Respondent (“**Avanci**”). Avanci prefers the terminology of a ‘platform’ rather than a ‘pool’. However, what matters is not the terminology but the feature whereby a number of SEP holders offer to license their patents on a collective basis. These submissions will use the traditional terminology of a patent ‘pool’.
3. These are the written submissions of the Fair Standards Alliance (the “**FSA**”), following it receiving permission on 24 February 2026 to intervene in writing in the above appeal under Rule 24(1)(c) of the Supreme Court Rules 2024. In accordance with the FSA’s Rule 24 Application, these written submissions are limited to Tesla’s Ground 1 (which concerns whether the Avanci 5G Pool Licence is arguably required to be FRAND).

B. THE FSA’S INTEREST IN THE APPEAL

4. The FSA is an industry organisation representing more than 45 British, European and global companies.¹ Its members range from small and medium size enterprises (“**SMEs**”) to large multinationals at different positions in the value chain. Those members are active in a wide variety of sectors, including automotive, telecommunications, energy, broadcasting, healthcare, semiconductors, consumer electronics and more. They are also active in a variety of geographies. The FSA’s members contribute significantly to innovation in the UK, Europe and globally. Annually, the aggregate turnover of the FSA’s members is more than £2 trillion, and in aggregate its members invest more than £150 billion in R&D and innovation annually. Some of its members dedicate as much as a third of their annual revenues to R&D.
5. The FSA was founded in 2015 to strengthen the voice of innovative technology companies of all sizes to ensure that the licensing of standardised technology is done on a FRAND basis. The FSA’s activities include meetings with policy makers, politicians and industry in order to promote the FRAND licensing of SEPs. The FSA also participates in UK, European and global public consultations in relation to SEPs. In an increasingly connected world, standardised technologies are frequently the building blocks of innovation and, across all of these industries, FSA members are reliant on

¹ <https://fair-standards.org/members/>.

access to such technologies on FRAND terms in order to develop products, bring innovations to the market and compete effectively. The longstanding experience of the FSA's members is that an inability to obtain SEP licences on FRAND terms, including where such licences are offered through SEP pools, can have a material and negative impact on a company's ability to innovate, launch new products and operate across its global markets (including the UK), irrespective of whether it is an SME or multinational.

6. The FSA's members collectively hold more than 600,000 patents, including tens of thousands of SEPs, that are either granted or pending. This follows on from their strong support of standardisation across several decades, participating in hundreds of standardisation activities around the world, including the development of connectivity standards, such as cellular and Wi-Fi. Because many FSA member companies are both owners of SEPs and licensees, the FSA and its members have a clear and direct interest in the proper functioning of FRAND licensing and ensuring balanced outcomes, including in relation to the licensing of SEPs through patent pools, which are becoming increasingly prevalent.
7. The FSA itself has a longstanding institutional interest in FRAND licensing. It consistently seeks to promote globally, through published position papers, engagement with regulators and competition authorities, and other avenues, fairness and transparency, along with other key principles,² relating to the licensing of FRAND-encumbered SEPs, including where licensing is conducted through patent pools. The FSA has demonstrated its interest in this appeal from the outset, making submissions under Rule 16 on 24 April 2025 in support of Tesla's application for permission to appeal.
8. Whilst Tesla is an FSA member, which the FSA brought to the Court's attention in its Rule 16 and Rule 24 submissions, this intervention is made by the FSA on behalf of itself as an organisation. This is because of the interests of the FSA and its membership more broadly, rather than due to any instigation by Tesla. The decision to seek to intervene in this case was taken by the FSA through its normal decision-making channels. Tesla has made no financial contribution to the costs of such intervention and nor has it been involved in writing this intervention. As noted above and explained further below, the outcome of this appeal will have a real-world impact beyond the automotive industry or

² <https://fair-standards.org/key-principles/>.

any individual FSA member, including for companies operating in the UK that are making, buying, or selling connected products such as smart meters, EV chargers, and medical devices.

C. THE FSA'S SUBMISSIONS

Introduction

9. The FSA considers that offers by SEP owners to license FRAND-encumbered SEPs must be made on FRAND terms, including where such offers are made via a pool; and that the Court must have jurisdiction to determine whether such offers are FRAND, including in cases of pool licensing. In the FSA's view, this conclusion is necessitated both by the commercial practices experienced by its members across multiple industries and multiple standards when licensing SEPs through pools, and by the applicable legal requirements. The reasoning of this Court on those issues is likely to be relied upon in future disputes and licensing negotiations affecting standards and industries far beyond those directly at issue in this appeal, such as in consumer technology, healthcare, telecommunications, energy, broadcasting, and other markets.

Industry practice

10. The experience of the FSA and its members is that across 5G and multiple other standards, in the increasingly common situation where SEP owners have formed a patent pool, in many cases the only realistic way for manufacturers who include standardised technology in their products to obtain a licence to those SEPs is, in practice, to take a licence to a pool. Licence terms for pools of SEPs are frequently marketed as FRAND and offers of a pool licence are routinely relied upon by the pool's constituent SEP holders as satisfying their individual FRAND obligations.
11. Moreover, in practice, patent pools and SEP owners frequently make bilateral licences effectively unavailable, giving licensees no choice other than to take a pool licence. SEP owners regularly refuse to grant licences to potential licensees on a bilateral basis and require them to take a pool licence. They will also effectively make bilateral licences unavailable by targeting individual prospective licensees in order to create significant pressure to enter into a pool licence and coordinating litigation in a manner that makes bilateral licensing effectively impracticable.

12. Recent litigation concerning the Sisvel Wi-Fi 6 Pool demonstrate these tactics. The Sisvel Wi-Fi 6 Pool contains Wi-Fi 6 SEPs (declared essential to the IEEE-SA standard 802.11ax). The Sisvel Wi-Fi 6 Pool contains SEPs owned by Wilus Institute of Standards and Technology, Huawei, MediaTek, Mitsubishi Electric, Orange, Panasonic, Philips and SK Telecom. It has also been held out to be FRAND and relied upon as fulfilling the licensors' FRAND obligations.
13. The relevant FRAND commitment in that case is not identical to the ETSI FRAND commitment and is subject to New York rather than French law. However, such commitment is materially the same in that it imposes an enforceable contractual obligation on the SEP holder to grant a licence on FRAND terms. (For completeness, the relevant obligation is to *“make available a license for Essential Patent Claims under Reasonable Rates to an unrestricted number of Applicants on a worldwide basis with other reasonable terms and conditions that are demonstrably free of unfair discrimination.”*³)
14. The approach of targeting individual licensees to create pressure to enter a pool licence can be seen by the litigation that has been commenced by pool members against target licensees, which has culminated in the licensee entering into the Sisvel Wi-Fi 6 Pool licence. Examples include Acer entering into the pool licence in 2024 following proceedings commenced by Wilus against it in the Munich Regional Court (Case No. 7 O 11487/23),⁴ and Netgear entering into the pool licence in 2025 following proceedings commenced by Huawei against it in the UPC, Germany and China.⁵
15. This view is further supported by the recent litigation between Wilus and Asus, concerning the terms of a FRAND licence to Wilus' portfolio of Wi-Fi SEPs. Although Wilus offers a bilateral licensing option (administered by Sisvel), it also licenses its Wi-Fi 6 SEPs through the Sisvel Wi-Fi 6 Pool. Wilus sought (and obtained) a permanent

f.n.4
[62/975]

f.n.5
[63/981]

³ IEEE-SA Letter of Assurance available at <https://mentor.ieee.org/myproject/Public/mytools/mob/loa.pdf> as defined in clause 6 of the IEEE-SA Standard Board Bylaws at <https://standards.ieee.org/about/policies/bylaws/sect6-7/#loa>.

⁴ <https://www.sisvel.com/news/acer-and-sisvel-strike-wi-fi-6-pool-licence-deal/>.

⁵ UPC Munich Local Division Case No. UPC_CFI_9/2023, Munich I Regional Court Case Nos. 7 O 4995/24 and 21 O 5901/24, Jinan Intermediate People's Court (2022) Lu 01 Intellectual Property Civil First Instance Nos 407 and 408. Sisvel press release available at <https://www.sisvel.com/news/netgear-becomes-the-latest-licensee-of-the-sisvel-wi-fi-6-pool/>.

injunction against Asus for the infringement of one of its Wi-Fi 6 SEPs in Germany on 8 January 2026 (Munich I Regional Court Case No. 7 O 5007/25), relying on the Sisvel Wi-Fi 6 Pool licence offer as well as its own bilateral licence as being FRAND. In those proceedings the Munich Court determined that the Sisvel Wi-Fi 6 Pool rates were FRAND⁶ and Sisvel promotes that its pool is FRAND off the back of this decision.⁷ (Copies of these judgments in English translation can be supplied if that would assist the Court.)

16. The coordination of litigation is perhaps most starkly demonstrated in the cases brought separately by Sisvel Wi-Fi 6 Pool licensors Wilus, Philips and Huawei against HP on the basis of their Wi-Fi 6 SEPs. Wilus brought proceedings in the US District Court for the Eastern District of Texas,⁸ Philips in Munich Regional Court,⁹ and Huawei in UPC Munich Local Division.¹⁰ In each of these cases the relevant Sisvel Pool member asserted that the Sisvel pool was FRAND, and these disputes were ultimately settled by HP entering into the Sisvel Wi-Fi 6 Pool licence.¹¹
17. These recent examples provide real-world evidence of:
 - (i) Pool members relying upon the pool licence terms as satisfying their FRAND obligations;
 - (ii) Courts determining whether pool licence terms are FRAND; and
 - (iii) Prospective licensees coming under severe pressure to enter into a pool licence.

⁶ Munich I Regional Court decision of 8 January 2026 (Case No. 7 O 5007/25) at [153].

⁷ <https://www.sisvel.com/news/munich-regional-court-validates-sisvel-wi-fi-royalty-rates-as-frand/>.

⁸ Case Nos. 2:25-cv-00069, 2:24-cv-00764, 2:24-00752.

⁹ A. Houldsworth, “*HP joins Sisvel Wi-Fi 6 pool, following suits by Wilus, Huawei and Philips*”, IAM Media (18 November 2025) at <https://www.iam-media.com/article/hp-joins-sisvel-wi-fi-6-pool-following-suits-wilus-huawei-and-philips>, stating that “HP’s decision to join also brings to an end previously unreported legal proceedings initiated by Philips, which asserted three European patents against it at the Munich Regional Court. Hearings had been scheduled for May, June and July in those cases.”

¹⁰ Case No. UPC_CFI_752/2025.

¹¹ <https://www.sisvel.com/news/hp-becomes-sisvel-wi-fi-6-pool-licensee-ending-disputes-with-wilus-huawei/>.

18. The effect of entering into a pool licence is, of course, to resolve at a stroke the litigation pursued by all individual pool members. The alternative is for the target company to be faced with continuing litigation on multiple fronts (and potentially in multiple jurisdictions) which the various Claimants may well be unwilling to settle on a bilateral basis, but only on pool licence terms. The judgment of the Court of Appeal in this case means that a prospective licensee subject to such tactics has to choose between the unpalatable options of continuing to defend litigation on multiple fronts or to enter into a pool licence without any ability to contest whether those terms are FRAND.
19. The experience of the FSA's members is that pools use financial incentives that discourage litigating members from agreeing to bilateral licences. The FSA considers that the DOJ Business Review Letter of 28 July 2020¹² (referenced in Tesla's Written Case and the Statement of Facts and Issues) provides an example of this. At page 6 it explains that Avanci Pool licensors not only receive an increased royalty distribution for enforcing their SEPs, but *"In addition to earning royalty points, licensors that sue for patent infringement of an essential patent may request reimbursement of costs if the litigation results in a Platform license."* [20/429]
20. Furthermore, the commercial reality is that individual pool members can make bilateral licences effectively unavailable by demanding royalties several multiples higher than what they would obtain from their relative share of the pool. An example of this can be seen with the Sisvel Wi-Fi 6 Pool, which advertises its Wi-Fi 6 per unit rate as \$0.50 and includes Huawei as a licensor (together with 9 other licensors).¹³ However, Huawei's bilateral Wi-Fi 6 rate is also \$0.50,¹⁴ meaning that it would never make commercial sense for a licensee to take the bilateral rather than pool licence.
21. The FSA respectfully submits that the majority of the Court of Appeal fell into error in its conclusion that FRAND obligations are limited to bilateral licensing. Unless overturned, the majority ruling in the Court of Appeal will set a precedent which has the effect of preventing prospective licensees from proactively seeking a determination from

¹² Available at <https://www.justice.gov/atr/page/file/1298626/dl?inline>.

¹³ <https://www.wifipatentpool.com/licensing-info/>.

¹⁴ <https://www.huawei.com/en/ipr/license/wi-fi>.

the English Courts as to whether the terms of a SEP pool licence are FRAND, notwithstanding that every SEP in the pool is subject to a FRAND commitment. Such an outcome would be regrettable as a matter of policy, given the widespread use of patent pools as a mechanism for licensing SEPs which are subject to an obligation to license on FRAND terms. In the absence of any supra-national regulatory regime governing SEP licensing,¹⁵ oversight by the courts remains the only means by which compliance with contractual FRAND undertakings given by SEP holders can be ensured and are not circumvented by licensing only via a pool where the FRAND-nature of such licences is not subject to judicial review.

22. The FRAND regime is intended to ensure that standards remain open and to encourage implementation across all markets by providing confidence to potential licensees that licences to essential technology will be available on terms that are FRAND. Where access to FRAND-encumbered SEPs is channelled through a patent pool, the effectiveness of that guarantee depends on whether the pool licence itself is capable of FRAND scrutiny. Where the pool licence is insulated from FRAND scrutiny, manufacturers are left with no practical alternative but to accept the pool licence terms as offered, without any mechanism to test whether those terms are in fact FRAND. That risks weakening FRAND as an effective access guarantee to standardised technology.
23. The basis of the majority ruling of the Court of Appeal is that there is no realistic prospect of the Court at trial concluding that the licence which would be FRAND in a particular case is a pool licence. However, what is FRAND must depend upon commercial practice. The English Courts have upheld that the prospective licensee cannot necessarily insist on licensing bilaterally rather than through a pool (where one exists).¹⁶ It is difficult to see why the same position should not apply equally in both directions. Notably, because this is a jurisdiction appeal, the question is only whether such a contention has reasonable prospects of success following a trial which has not yet even taken place. In the FSA's

f.n. 16
[147/2386]

¹⁵ We have previously supported, and continue to support, the European Commission's proposed SEP Regulation, as one way to improve the regulatory framework around FRAND licensing. However, this is currently no longer being pursued by the Commission. See FSA Comments on the European Commission's Proposal for SEP Regulation (August 2023). Available here: <https://fair-standards.org/2023/08/30/fsa-comments-on-the-proposed-sep-regulation/>.

¹⁶ *Mitsubishi Electric Corp v Oneplus Technology* [2021] EWHC 1541 (Pat).

view, this claim should be allowed to proceed to a trial, at which point appropriate evidence on this issue could be adduced.

24. There is a clear risk that if prospective licensees cannot obtain a determination of whether the pool rate is FRAND, they will be forced to pay the pool rate, even if the pool rate is supra-FRAND. That appears to be what the Defendants in this case hope will happen. It is not otherwise apparent why they are so resistant to this Court reviewing whether the pool rate in this case is FRAND or not. (Indeed, if the pool rates were FRAND, a finding to that effect by the Patents Court in this jurisdiction would be to the commercial benefit of the pool, as validating the rates being demanded.)¹⁷ It would be of significant concern to the FSA's members if, following this case, SEP holders were able to evade their FRAND obligations by adopting a practice of licensing via pools whose licence terms are effectively immune from scrutiny. Allowing pools to become a vehicle for FRAND evasion would encourage SEP holders acting in bad faith to form patent pools for the sole purpose of obtaining the monopoly profits that the FRAND commitment is supposed to prevent. Such a practice would have far-reaching effects beyond the automotive industry in other industries seeking to implement standardised technologies subject to FRAND commitments into their products including EV charging, smart meters, broadcasting, asset tracking, fleet management, and healthcare.

Legal analysis

25. In the FSA's submission, a tension has emerged in the authorities between two competing principles. The first is the principle that a prospective licensee is entitled to seek a FRAND determination. The second is that there is no such thing as a "free-standing" FRAND determination. In the FSA's submission the tension between these principles has led to confusion and to error in the courts below, in particular because the leading case on free-standing FRAND determinations, namely the *Vestel* case, concerned a licence to a patent pool of SEPs.
26. On one view, the difference between the majority and minority in the Court of Appeal in this case is a difference as to whether the FRAND determination sought in this case does or does not contravene the rule against "free-standing" FRAND determinations. In the

¹⁷ See footnote 7 above.

view of the majority it was “free-standing” because they concluded the ETSI FRAND obligation did not extend to a situation where the SEPs were licensed on a pooled basis (even though all other SEPs in the pool were subject to exactly the same FRAND obligation).¹⁸ In the FSA’s view this represents an error which flows from a prior misconception as to what is meant by “free-standing”.

f.n.18
[12/295]

27. In the FSA’s view a claim to a “free-standing” FRAND determination is one where the Claimant has not asserted any legal right to a FRAND licence.

28. The *Vestel* case is explicable by reference to the fact that, although the SEPs in that case were encumbered by FRAND declarations, and although the Claimants were beneficiaries of those declarations, the Court had no jurisdiction over any claim to enforce them. No claim to enforce the SEP owner’s FRAND obligation was asserted at first instance, because the Court would not have had jurisdiction over any such claim under the Brussels I Regulation, which at that time applied as between the implementer and the SEP holder.¹⁹ An attempt to found a claim for a FRAND determination on competition law failed²⁰ and was not pursued on appeal. As such, by the time the matter came before the Court of Appeal, Vestel’s case had been amended such that its claim was for “...the court to exercise the inherent jurisdiction to make a FRAND declaration despite the absence of an assertion of a right to such a licence”.²¹

f.n. 21
[174/3055]

29. Thus, in the FSA’s contention, the difference between a FRAND determination the prospective licensee is entitled to seek in relation to a pool license and a free-standing FRAND determination it is not entitled to seek is whether the prospective licensee asserts a legal right entitling it to the FRAND determination being sought from the Court. The

¹⁸ Court of Appeal judgment in this case at [236].

¹⁹ The contractual head of jurisdiction under that Regulation is limited to cases where England is the place of performance of the obligation in question (Article 7(1)(a)). (The SEP owner in that case was a Netherlands company and the corporate group to which the Claimants belonged was headquartered in Turkey). The provision of that Regulation concerning property within the jurisdiction (Article 24(1)) is limited to *immovable* property.

²⁰ On the ground that the only way for the SEP holder to enforce its patents was by legal proceedings in which the prospective licensee could rely upon its FRAND rights by way of a shield, thereby removing any potential for abuse. Judgment in *Vestel* at [63]-[65].

²¹ *Vestel and Anr v Access Advance and Anr* [2021] EWCA Civ 440 (“**Vestel (CA)**”) at [72].

issue that arose in *Vestel* was that Vestel’s claim was not based on any arguable legal right or cause of action of any kind, see e.g. *Vestel (CA)* at [34]:

[174/3051]

“Before leaving the procedural issues, I will make one final observation. Notable by its absence is a claim by Vestel that it has a legally enforceable right to a FRAND licence. When the claim began Vestel claimed such a legally enforceable right, on the basis that for either respondent to refuse to offer a licence on FRAND terms was a tort actionable by Vestel, i.e. an abuse of dominant position. That claim has been dropped and no attempt is made in the consequential amendments to introduce a new claim to a right to a FRAND licence. The argument based on the tort of patent infringement is the other way round and will be addressed below. The argument based on the inherent jurisdiction is not founded on a claim to a legal right to a FRAND licence.”
[Emphasis added].

30. The question of whether a claim is “free-standing” (in the above sense) under *Vestel* should not be confused with the question of the contractual and commercial scope of the FRAND obligation itself, in a case (such as the present) where the Claimant has asserted a legally-enforceable claim for a FRAND licence, and the Court has jurisdiction to entertain that claim.
31. The Court’s (international) jurisdiction over a prospective licensee’s contractual claim to enforce a SEP owner’s FRAND declaration depends upon the following:
 - (i) Whether such reliance arises by way of claim or defence;
 - (ii) In the case of rights asserted by way of claim, whether the claim is served in the jurisdiction or outside it; and
 - (iii) In the case of claims served outside the jurisdiction, whether the claim falls within a relevant gateway.
32. In cases like *Unwired Planet* the SEP holder’s FRAND declarations were relied upon by way of defence; in particular, by way of defence to a claim for patent infringement. There is no issue of international jurisdiction in such a case since the SEP owner, by bringing

proceedings in this jurisdiction, is regarded as submitting to the jurisdiction in relation to any matters which may be raised by way of defence to that claim.

33. In matters such as the instant case, an equivalent jurisdiction arises on the basis that the prospective licensee's contractual rights under the FRAND commitment are unambiguously tied to other issues concerning UK patent rights raised by the prospective licensee's pleaded case, including by seeking declarations of invalidity and non-infringement.
34. In such circumstances these claims can be served within the jurisdiction against the SEP owner under CPR 63.14 if there is an appropriate address for service on the Patent Register (as in the instant case). This means there is no need to bring individual parts of that claim within the gateways for service out. In such a case, therefore, it will always be open to the Claimant to raise any contractual rights which it claims to have. Whether it has such rights or not will be a matter for trial, but there can be no doubt as to the Court's jurisdiction over such claims (subject to potential challenges on forum conveniens grounds). [75/1064]
35. In the case of proceedings served outside the jurisdiction, the Court will have jurisdiction over contractual claims only to the extent that they fall within a gateway. Tesla has addressed the gateways in its written case at [60]-[94]. The FSA agrees with that analysis and therefore, rather than repeating it here, simply adopts it. [3/45]
36. It is submitted that once the "free-standing" nature of the FRAND determination sought in the *Vestel* case is properly understood, it is clear that the claim for a FRAND declaration in this case is not "free-standing" in that sense. Once it is understood that the Court in this case has (international) jurisdiction over the contractual rights which the Claimants are seeking to enforce, the objection to jurisdiction based on *Vestel* falls away. Properly understood, *Vestel* is not authority for the proposition that the Court lacks jurisdiction to determine whether the terms of a pool licence are FRAND, simply because the pool administrator has not itself made any FRAND declaration in relation to the patents in the pool. Instead, it is authority for the proposition that the Court lacks jurisdiction to determine the FRAND terms of any particular licence where the Claimant has not asserted in the proceedings any legal entitlement to a licence.

37. Once any objection based on the allegedly “free-standing” nature of the FRAND declaration sought in this case has been cleared out of the way, the issue which remains is the scope and meaning of FRAND in a case of the present kind. In the FSA’s submission, the question of whether the Claimants’ contractual rights to a FRAND licence entitle them to a determination of the rates offered by means of the pool licence is not properly a matter of jurisdiction at all, but a matter of merits for trial. That issue concerns the proper scope and interpretation of the Claimants’ contractual rights in the relevant factual and commercial context, and in particular what is or is not FRAND in such context. Those are matters which turn upon factual and potentially expert evidence of current market practice, which can only be heard at the trial. The trial is thus the correct occasion to determine the important question of whether a SEP holder’s FRAND obligation extends to circumstances where the licence it offers is through a pool. Similarly, the trial is the proper place to decide any question whether, notwithstanding the existence and operation of the Avanci 5G Vehicle pool, it would be FRAND for InterDigital (and/or the other members of the pool) to insist on licensing their respective SEPs bilaterally, where the licensee is seeking the pool licence which is held out as being FRAND and is relied upon by pool members as fulfilling their FRAND obligation.
38. This is a very similar issue to the issue which arose and was resolved at the *Unwired Planet* trial as to whether a party could insist on licensing on a patent-by-patent or country-by-country basis. Ultimately, the ruling in that case, based on the evidence the Court heard at the trial, was that only a portfolio-wide global licence was FRAND.²² This issue is also the mirror of the situation in *Mitsubishi and Anr v Oneplus Technology*,²³ where the judge concluded it may not be FRAND for the prospective licensee to insist on bilateral licensing where a pool licence was on offer.
39. In the FSA’s submission, there is at the very least a real prospect of the Court ruling at trial in the present case, having heard the evidence, that where a licensing pool exists and has become the standard method of SEP licensing in the industry, only a pool licence is

f.n.22
[171/2919]

f.n. 23
[147/2397]

²² See e.g. *Unwired Planet v Huawei Technologies Co* [2017] EWHC 711 (Pat) at [543], where the Court held that a willing licensor and a willing licensee “would regard country by country licensing as madness”. The Court might reach the same conclusion in relation to the suggestion that a prospective licensee should negotiate bilaterally with each of many dozens of SEP owners who all offer to license their patents via a pool.

²³ *Mitsubishi Electric Corp v Oneplus Technology* [2021] EWHC 1541 (Pat) at [32].

FRAND. In this regard it is notable that not just the English Court, but other courts have accepted that a pool licence can be FRAND (e.g. the Munich Court in the Wilus proceedings against Asus (see paragraph 15 above) and the Chinese Court in *TCL v Access Advance*). In those circumstances, the Claimants' claim to be entitled to a determination of the FRAND terms for a pool licence must at the least be arguable.

40. In the FSA's view, this Court should take this opportunity to resolve the confusion apparent in the cases below as to what is meant by a "free-standing" FRAND licence, which in the FSA's view is an element of the case-law which has led to confusion in the courts below and has in this case contributed to the majority of the Court of Appeal falling into error.

D. CONCLUSION

41. In view of the above, the FSA respectfully requests that Tesla's appeal on Ground 1 is allowed and this matter is permitted to proceed to trial.
42. If the FSA can assist this Court further in relation to any of the matters addressed above, or any other matters on which it is in a position to assist, the FSA would of course be willing to do so.

COLIN WEST KC

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23 MARCH 2026