



Neutral Citation Number: [2019] EWHC 3030 (Pat)

Case No HP 2019-000024

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)
PATENTS COURT

Royal Courts of Justice
The Rolls Building
7 Rolls Buildings
Chancery Lane
London, WC2A 1HP

Date: Friday, 8th November 2019

Before:

HIS HONOUR JUDGE HACON
(Sitting as a Judge of the High Court)

Between:

IPCOM GMBH & CO.KG
(A limited liability partnership under the laws of
Germany)

Claimant

- and -

(1) LENOVO TECHNOLOGY (UNITED
KINGDOM) LIMITED
(2) MOTOROLA MOBILITY UK LIMITED

Defendants

MR. MARK VANHEGAN QC (instructed by **Bristows LLP**) appeared for the **Claimant**.

MR. MICHAEL BLOCH QC and **MR. TIMOTHY LAU** (instructed by **Powell Gilbert LLP**) appeared for the **Defendants**.

Approved Judgment

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HIS HONOUR JUDGE HACON :

1. This is an application by the claimant, which I will call 'IPCom', to restrain anti-suit proceedings in California. It is in effect an application to extend the order made by Norris J on 30th October 2019 following an ex parte application on notice by IPCom to hold the ring until today's hearing.
2. Mark Vanhegan QC appeared for IPCom, the applicant. Michael Bloch QC and Timothy Lau appeared for the respondents.
3. IPCom is the proprietor of European Patent (UK) No. 1,841,268, which I will refer to as 'EP '268'. It is one of a portfolio of patents owned by IPCom, all of which relate to the operation of mobile phones. IPCom has declared to the relevant standard setting organisation that these patents are essential to one of the standards applicable to mobile phones, namely the UMTS standard. IPCom has also declared that it is willing to offer licences on FRAND terms.
4. IPCom alleges that its patents have been infringed by companies in the Lenovo group of which the two defendants form part. I will call the defendants in these proceedings 'the UK Companies'.
5. Since 2014, IPCom has invited companies in the Lenovo group to enter into a global licence on terms which IPCom has offered and which it says are FRAND.
6. Pausing there, IPCom's position is that Lenovo has engaged in what is known as 'holding out'. This is where a potential FRAND licensee purports to negotiate in good faith but in practice drags its feet in negotiating terms and in the meantime continues to infringe. Lenovo's perspective on this is that IPCom has offered terms which are not FRAND on a take it or leave it basis, making it impossible for Lenovo to agree to a licence. I was told by Mr Bloch that this is known as 'holding up'.
7. I return to the chronology. The most recent offer made by IPCom was in March 2019. The offer was accompanied by an indication from IPCom that it would seek an injunction if the offer was not accepted by 15th March 2019. Lenovo's response came on the day before the expiry of the deadline. On 14th March 2019, US members of the Lenovo group (which I will call 'the US Companies') filed proceedings in the United States District Court for the Northern District of California, against IPCom. I will call these 'the US Proceedings'.
8. In the US Proceedings, the US Companies seek an adjudication of FRAND terms for a global licence under IPCom portfolio of patents. There is also an application for a declaration of non-infringement of two of IPCom's US patents.
9. On 2nd July 2019, IPCom filed a motion in the US proceedings alleging that the US court has no personal jurisdiction over IPCom. This is due to be heard by the US court on 14th November 2019, which is next Thursday.
10. On the same day, 2nd July 2019, IPCom began the present action in which it alleges infringement of EP '268.

11. On 18th September 2019, the US Companies filed a motion for an anti-suit injunction in the US proceedings. They seek an order that IPCom be enjoined from prosecuting the present English proceedings. They also seek a more general order regarding proceedings outside the US jurisdiction which would have the effect of restraining proceedings in France, among other places. The return date for this anti-suit application is also next Thursday, 14th November 2019.
12. On 23rd September 2019, the defendants filed their Defence and Counterclaim in the present proceedings. The defendants deny infringement and counterclaim for revocation of EP '268.
13. On 15th October 2019, IPCom served a Reply and Defence to Counterclaim. On the same day, 15th October 2019, IPCom made a number of applications before a court in Paris. It has been referred to in some of the documents as the 'District Court'. I think it was probably the Paris *Tribunal de Grande Instance*, bearing in mind the nature of the case and a judgment which has been handed to me today, to which I will refer later.
14. These applications included an ex parte application for a *saisie contrefaçon*. The defendants to the application are French companies in the Lenovo group (which I will call 'the French Companies'). An order was made on that day, and the *saisie* was executed on 16th October 2019. So far as I am aware, no substantive proceedings have yet been brought against the French companies, but a *saisie* is a common preliminary step in French proceedings, carried out in advance of a patent infringement claim.
15. On 25th October 2019 IPCom filed an application notice in this court, which is the application before me today. It takes the form of what is commonly called an anti-anti-suit application. The respondents are the UK Companies only. The UK Companies are not parties to the US proceedings. IPCom seeks an order against the UK Companies in these terms:

"1. The defendants and each of them (whether acting by their directors, officers, employees or agents or otherwise howsoever) be prohibited from sanctioning, continuing to sanction or in any way assisting any application before any court which seeks directly or indirectly to prevent, (a) this court from making directions for the conduct of these proceedings, or any order in relation to the UK claim; or (b) the claimant from pursuing this UK claim to trial."
16. On 28th October 2019 the US Companies filed an emergency motion before the US court to expedite the hearing of the anti-suit injunction to any date before 6th November 2019. I am not certain what happened to that motion, but so far as I am aware there was no expedition and the hearing of the anti-suit injunction will still be on 14th November.
17. On 30th October 2019 IPCom made an ex parte application before this court seeking an order restraining the UK Companies from procuring the hearing of the US anti-suit injunction until the determination of the substantive application, i.e., the application before me today. Norris J granted an order until today, not in terms of restraining the UK Companies from 'procuring' the hearing of the US anti-suit injunction, but in terms

which were the same as those of the order being sought today, i.e. the terms which I have just quoted.

18. Meanwhile in Paris, on 30th October 2019, pursuant to applications made by IPCom, the Paris court ordered that the US Companies immediately withdraw their application to expedite the hearing of the anti-suit injunction in California. The Paris court also ordered the US Companies to refrain from filing any new applications or proceedings which purported to deprive the hearing before the Paris court on 6th November of any useful purpose.
19. Mr. Vanhegan told me that the hearing went ahead on 6th November and that judgment was handed down today. I have been provided with a copy of the judgment. I have not had the opportunity of reading it in any detail, but I understand it not to be in dispute that an injunction was granted in Paris which takes the form of an anti-anti-suit injunction against the US Companies restraining them from pursuing the anti-suit motion in California in so far as it affects litigation in France. I also understand that the Paris court's order is enforceable immediately, on pain of a fine of 200,000 Euros per day.
20. I turn to the law. It is common ground that this court has jurisdiction to grant an anti-anti-suit injunction. The applicable principles of law are broadly the same as those which apply to the grant of an anti-suit injunction. However, particular caution must be applied in the case of an anti-anti-suit injunction because potentially there is an even greater danger of interfering improperly with the conduct of foreign proceedings.
21. In *Deutsche Bank AG v Highland Crusader Offshore Partners LP* [2009] EWCA Civ 725; [2010] 1 WLR 1023, Toulson LJ, with whom Goldring LJ and Carnwath LJ agreed, summarised the key principles to be applied to the assessment of whether to grant an anti-suit injunction. Toulson LJ said:

"[50] Leaving aside the provisions of the Brussels I Regulation and previous conventions, which are not relevant in this case, I would summarise the relevant key principles as follows

(1) Under English law the court may restrain a defendant over whom it has personal jurisdiction from instituting or continuing proceedings in a foreign court when it is necessary in the interests of justice to do.

(2) It is too narrow to say that such an injunction may be granted only on grounds of vexation or oppression, but, where a matter is justiciable in an English and a foreign court, the party seeking an anti-suit injunction must generally show that proceeding before the foreign court is or would be vexatious or oppressive.

(3) The courts have refrained from attempting a comprehensive definition of vexation or oppression, but in order to establish that proceeding in a foreign court is or would be vexatious or oppressive on grounds of forum non conveniens, it is generally necessary to show that:

(a) England is clearly the more appropriate forum (the natural forum), and

(b) justice requires that the claimant in the foreign court should be restrained from proceeding there.

(4) If the English court considers England to be the natural forum and can see no legitimate personal or juridical advantage in the claimant in the foreign proceedings being allowed to pursue them, it does not automatically follow that an anti-suit injunction should be granted. For that would be to overlook the important restraining influence of considerations of comity.

(5) An anti-suit injunction always requires caution because by definition it involves interference with the process or potential process of a foreign court. An injunction to enforce an exclusive jurisdiction clause governed by English law is not regarded as a breach of comity, because it merely requires a party to honour his contract. In other cases, the principle of comity requires the court to recognise that, in deciding questions of weight to be attached to different factors, different judges operating under different legal systems with different legal policies may legitimately arrive at different answers, without occasioning a breach of customary international law or manifest injustice, and that in such circumstances it is not for an English court to arrogate to itself the decision how a foreign court should determine the matter. The stronger the connection of the foreign court with the parties and the subject matter of the dispute, the stronger the argument against intervention.

(6) The prosecution of parallel proceedings in different jurisdictions is undesirable but not necessarily vexatious or oppressive.

(7) A non-exclusive jurisdiction agreement precludes either party from later arguing that the forum identified is not an appropriate forum on grounds foreseeable at the time of the agreement, for the parties must be taken to have been aware of such matters at the time of the agreement. For that reason an application to stay on forum non conveniens grounds an action brought in England pursuant to an English non-exclusive jurisdiction clause will ordinarily fail unless the factors relied upon were unforeseeable at the time of the agreement. It does not follow that an alternative forum is necessarily inappropriate or inferior. (I will come to the question whether there is a presumption that parallel proceedings in an alternative jurisdiction are vexatious or oppressive).

(8) The decision whether or not to grant an anti-suit injunction involves an exercise of discretion and the principles governing it contain an element of flexibility."

22. Toulson LJ went on to set out support for each of his eight propositions, relying in particular on the speeches of Lord Goff in *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] AC 871, and in *Airbus Industrie GIE v Patel* [1999] 1 AC 119, and also the judgment of Hoffmann J in *Barclays Bank v Homan* [1993] BCLC 680.
23. In *Michael Wilson v Emmott* [2018] EWCA Civ 51; [2018] 2 All ER (Comm) 737 the Master of the Rolls, Sir Terence Etherton said this:

"[34] The general principles as to the grant of an anti-suit injunction were not in dispute on the appeal.

[35] The jurisdiction derives from s 37 of the Senior Courts Act 1981, which provides as follows:

'(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.'

[36] In very broad terms, the touchstone for the grant of an anti-suit injunction, as with any other injunction, is what the ends of justice require. This determination involves an exercise of discretion by the court. The particular facts of the case are critical to the exercise of this discretion. Subject to the particular facts, and the overriding discretion of the court in achieving the interests of justice, the following principles for the exercise of the discretion are well established.

[37] In *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] 3 All ER 510 at 519, [1987] AC 871 at 892, Lord Goff (giving the judgment of the board) held that the following four principles govern the grant of an anti-suit injunction. (1) The jurisdiction is to be exercised when the ends of justice require it. (2) Where the court decides to grant an injunction restraining proceedings in a foreign court, its order is directed not against the foreign court but against the parties so proceeding or threatening to proceed. (3) An injunction will only be issued restraining a party who is amenable to the jurisdiction of the court, against whom an injunction will be an effective remedy. (4) Since such an order indirectly affects the foreign court, the jurisdiction is one which must be exercised with caution.

[38] In *Donohue v Armco Inc* [2001] UKHL 64, [2002] 1 All ER (Comm) 97, [2002] 1 Lloyd's Rep 425, Lord Bingham (with whom the majority of the appellate committee agreed) noted and approved those principles (at [19]). He went on to say (at [24]) that, if contracting parties agree to give a particular court or tribunal exclusive jurisdiction to rule on claims between them, and a claim falling within the scope of the agreement is made in a forum other than that which the parties have agreed, the English court will ordinarily exercise its discretion to grant an

anti-suit injunction in order to secure compliance with the contractual bargain, unless the party suing in the non-contractual forum can show strong reasons for suing in that forum: *Donohue* at [24].

[39] *Donohue* concerned a clause providing for the exclusive jurisdiction of the English courts. The same approach would apply to an arbitration agreement governed by the law of England and Wales. Bearing in mind, however, the caution that must be exercised in respect of injunctions against foreign proceedings, the court requires a high degree of probability that there is an arbitration agreement which governs the dispute in question where, as in the present case, an anti-suit injunction is sought in respect of foreign proceedings: *Ecobank Transnational Inc v Tanoh* [2015] EWCA Civ 1309, [2016] 1 WLR 2231, [2015] 1 Lloyd's Rep 360 (at [89]).

[40] More generally, it may be appropriate to grant an anti-suit injunction where a matter is justiciable in both an English and a foreign court and the proceedings before the foreign court are vexatious or oppressive: *Société Nationale Industrielle Aerospatiale* at 896."

24. To these principles I would respectfully add one more since it has some application to the argument advanced by IPCom in the present case. I believe it follows from the section in Toulson LJ's judgment in *Deutsche Bank* on the principles of comity, in the passage drawing on what Lord Goff said in *Aerospatiale*. The simple point is that the less that an anti-anti-suit injunction granted in England would interfere with the foreign proceedings to which it is directed, the more likely it is that the court will exercise its discretion to grant such an injunction.
25. Mr. Bloch submitted that the more distant the connection of the foreign proceedings to England, the less likely it is that the respondent's conduct in bringing those proceedings will be considered vexatious, oppressive or unconscionable. He referred to *Barclays Bank v Homan*, at page 701 of Hoffmann J's judgment. I am not sure that this passage of the judgment advances that principle, but I do not dissent from it.
26. Mr. Bloch also emphasised that the injunction sought is discretionary. He argued that the delay in bringing the application is a relevant factor in the exercise of the court's discretion.
27. Mr. Bloch also submitted that a relevant factor is the exercise of the court's discretion is whether the foreign court in question is in a friendly jurisdiction, which applies similar standards to the grant of an anti-suit injunction as do the courts in this jurisdiction. If so, Mr. Bloch said, the English court should generally rely on the foreign court not to grant an anti-suit injunction which would be unconscionable.
28. Applying the law to the present facts, Mr. Vanhegan argued that the injunction sought would address only the issue of whether a UK designated European patent is valid and infringed and where those issues should be decided. He said that England is manifestly the more appropriate forum, as opposed to California. He submitted that reserving

those issues to this court will not interfere with the substantive US proceedings since those issues are not before the US court. The only overlap which could arise would happen if the US court settles a global FRAND licence, in which case the infringement issue in this jurisdiction falls away. However, he said, that will not happen before this court decides the question of infringement. Moreover, this court deciding whether EP '268 is valid may assist in deciding the correct terms for the licence.

29. Mr. Vanhegan also pointed out that the anti-suit injunction sought in the US court would not, as is usually the case, have the effect of removing proceedings from one jurisdiction to another. The Californian court would never hear the issue of infringement and validity of EP '268. So the effect of the order sought in the US would be to extinguish the action in this court altogether.
30. Mr. Vanhegan further argued that the determination of the infringement and validity of EP '268 by the English court is a matter of significance to his clients. At one point he emphasised that the UK Companies had refused to undertake to take a licence on FRAND terms settled by the US court. That was certainly the case up until a submission made a short time ago this afternoon. Mr. Bloch took instructions and told me that his clients undertook to accept a FRAND licence that may be settled by the US court, subject to all appeals and, of course, subject to the US court ever settling such a licence bearing in mind the motion by IPCOM to bring the US proceedings to a halt on a jurisdiction point.
31. Mr. Vanhegan said that nevertheless, as matters stand, the only means open to IPCOM to bring any pressure on the Lenovo companies and the UK Companies in particular to move forward and settle FRAND terms in good time, is by the action in this court. In addition, the US court may not decide to settle FRAND terms. In that circumstance too IPCOM must remain free to rely on the enforcement of its patent in this court. These proceedings will also mean that his clients will obtain money from the UK Companies more quickly than waiting for a global licence.
32. Mr. Vanhegan submitted that the bringing of the anti-suit injunction was unconscionable because IPCOM would be deprived of its right to continue the present action here or, in reality, anywhere else. The acts of the UK Companies in support of the anti-suit motion in California were by extension unconscionable and the effect would be vexatious and oppressive to IPCOM.
33. My attention was drawn to the words of the motion before the California court. There, the US Companies assert that they are affiliated with the UK Companies, such that their interests coincide and are practically identical. The US Companies further assert that the US and UK Companies are well represented by each other.
34. I was also referred to the evidence of Peter Damerell, a partner in Powell Gilbert LLP who have conducted these proceedings for the UK Companies. He says that in the US anti-suit motion, the US Companies have repeatedly made clear that they were authorised to enter into a FRAND licence on behalf of all Lenovo affiliates, including the UK Companies.
35. Mr. Vanhegan said that the only fair inference to be drawn from this was that the UK Companies were communicating their support of the anti-suit motion to the US Companies and that this support was being reported to the US court.

36. He said it went further. The anti-suit injunction will not be granted by the US judge in so far as it affects the UK unless the court in the US is satisfied that the motion has the approval of the UK Companies. Mr. Vanhegan said that IPCom wishes the US judge to be clear that the UK Companies are restrained from sanctioning any such support. I was not provided with evidence of how a US court approaches an anti-suit injunction, but the assertion that the court would not grant the injunction without being satisfied that it has the approval of the UK Companies was not challenged by Mr Bloch.
37. Mr. Bloch argued as follows. First, there is no basis on which it could be said that the defendants in these proceedings (i.e. the UK Companies) have acted vexatiously, oppressively or unconscionably in the US proceedings. The UK Companies are not parties to the US proceedings. The witness statement of Mr. Damerell states that even though the first defendant indirectly owns Lenovo (United States) Inc, one of the two US Companies, the UK Companies are not involved in the management of the US Companies, they are not involved in the negotiation of FRAND licences with Lenovo, they had no role either in the decision to bring the US proceedings or in the filing of the anti-suit injunction before the US court. Mr. Bloch argued that therefore that the UK Companies cannot conceivably have done anything which could form a basis for the injunction sought.
38. Secondly, he said, the US Companies are not respondents to the present application. Even if it could be said that the US Companies were acting unconscionably, that is irrelevant to this application.
39. Thirdly, the pursuit of the anti-suit injunction by the US Companies cannot, in any event, be characterised as either oppressive or vexatious. All they are seeking is a settlement of FRAND terms by the US court. Mr. Bloch said that the US Companies had made a commitment to the US court that they will take a licence set by that court subject only to appeal.
40. I should interject that whether the US Companies have done anything that binds them to take a licence is very much a matter of dispute. I am not in a position to resolve this issue. I have already noted that this afternoon the UK Companies undertook to take a licence if and when it is settled by the US court.
41. Mr. Bloch also submitted that if a global FRAND licence is granted by the US court, the UK proceedings would serve no useful purpose. By the time of the trial, EP '268 will have expired, so there is no prospect of a final injunction being granted. EP '268 will expire in February of next year. Mr. Bloch also said that damage for past infringement will either be taken care of under the terms of the licence or may be determined by those terms.
42. Fourthly, he said, the terms of the order sought would have the effect of restraining the UK Companies from holding the view that they were in agreement with the anti-suit motion. Holding such a view could be construed as sanctioning the motion. An injunction can never restrain a mental state of a defendant.
43. Fifthly, Mr. Bloch argued that IPCom has unreasonably delayed in bringing this application. The US Companies filed the motion for an anti-suit injunction on 18th September, and informed IPCom of their intent to do so, I think, about two weeks earlier. IPCom made their application for an anti-anti-suit injunction on 25th October.

Mr. Bloch said that was sufficient delay to rule out the exercise of the court's discretion to grant an injunction.

44. Sixthly, Mr. Bloch said that the Californian court was in a better position to decide whether the anti-suit injunction would be unconscionable. In effect, the same question raised before me today would be raised before the US court. Mr. Bloch said the motion in California had been prepared at a more measured pace than here, so the evidence was likely to be more reliable. Moreover, he said, the US court was the court first seized of the issue of the anti-suit injunction which made it all the more appropriate for the US court to decide the issue.
45. In resolving this matter, I think it is important to keep in mind the relief that IPCom is seeking. Often an anti-suit injunction (or an anti-anti-suit injunction) would affect the entirety of the proceedings brought or contemplated in another jurisdiction. In the present instance, that would not be the case if I were to make the order sought.
46. The substantive action before the US court has been brought by US Companies and it concerns only the settlement of a global FRAND licence and two US patents. It does not directly concern the issues in the present action, namely the infringement and validity of the UK designation of EP '268.
47. The order sought in this application would apply in personam to the UK Companies, which are not parties to the US proceedings. The UK Companies would be prohibited from sanctioning or assisting any application before the US court which would have the effect of restraining the pursuit of the present action in this court to decide the issue of infringement and validity of EP '268. The order would not prevent the anti-suit motion by the US Companies going ahead, even in so far as that motion is directed to the action in this court. Still less would it interfere with the substantive proceedings before the US courts concerning the settlement of FRAND terms and the declaration of non-infringement. Thus its effect would be more limited than is usually the case when an anti-anti-suit injunction is granted.
48. The application before me is directed at the substantive question of which court should the issues of infringement and validity of EP 268. The first matter I must consider is whether England is clearly the more appropriate forum in which to decide those issues. Very clearly, it is. The grant of a patent is an act which can be performed only by a state. Therefore the validity of a patent is an issue reserved for the courts of the granting state, at least in Europe, see art. 24(4) of Regulation (EU) 1215/2012. It would surprise me to learn that the rules of jurisdiction applicable in the US court would allow that court to decide whether EP '268 is validly registered in the UK.
49. In fact, Mr. Bloch accepted that the California court would not hear the issues of either infringement or validity of EP '268. It follows, as Mr. Vanhegan submitted, that if the anti-suit injunction is granted in California, there would be no proceedings anywhere which would decide those issues.
50. The next matter I must decide is whether justice requires that the UK Companies should be restrained from sanctioning or assisting the anti-suit motion in the Californian court. I think it is necessary to consider why the present action has come about. Since 2014 the parties have been attempting to negotiate FRAND terms. Each side blames the other for the delay. This is not of course the first time that delay has occurred in the

settling of FRAND terms. I have no basis on which to reach any view today about which side, if either, has been at fault in the present case. Both sides claim that they would like global FRAND terms to be settled as soon as possible and are content for this to be done by the US court. IPCom says this is subject to its being certain that the Lenovo companies would accept the terms settled by the US court. But in any event, it is the US Companies who have the conduct of the proceedings in California and in principle it is they who are in the best position to push for a resolution of the FRAND terms as quickly as possible.

51. The only realistic means a patentee of a standard essential patent has to move things forward is to bring an action for infringement. That is what IPCom has done in this court in relation to EP '268. If the present action were to be brought to a halt, that means of bringing pressure would vanish altogether. Other potential advantages to IPCom of this action, referred to by Mr Vanhegan, would also fall away.
52. I take the view that it would be vexatious and oppressive to IPCom if it were deprived entirely of its right to litigate infringement and validity of EP '268 and thereby be deprived of those advantages.
53. That by itself does not establish that any behaviour of the UK Companies has been, or threatens to be, unconscionable. However, I am satisfied from what the US Companies have said in their motion in support of the anti-suit injunction and from what Mr. Damerell said in his evidence, that the judge in the United States is very likely to obtain the impression that the anti-suit injunction sought has the approval and support of the UK Companies. That is liable to lead to the motion brought by the US Companies going forward. As I have said, to the extent that motion would affect the proceedings in this court, in my view its positive outcome would be vexatious and oppressive. Therefore acts done by the UK Companies which may lead to the extinction of IPCom's right to have the issues of infringement and validity of EP 268 ever being decided would be unconscionable.
54. It follows that it would not be conscionable for the UK Companies to endorse the impression already given to the US court that they sanction the US anti-suit motion in so far as it affects proceedings in this court. The requirements for an anti-anti-suit injunction are met.
55. I am not satisfied that this court is in a significantly worse position than the US court to decide on the issue of whether the relevant acts by the UK Companies would be conscionable. Mr. Bloch did not point to any evidence which his clients have been unable to file in this court in the time available which would make a significant difference.
56. I take into account that the court in California may reach its view regarding the anti-suit motion on a similar principles of law as are applied to equivalent circumstances in this jurisdiction. However, I think that there is a risk that the assessment by the US court may go forward on the assumption that the UK Companies are free, so far as English law is concerned, to sanction the anti-suit motion. If I grant the order sought it will be clear that, as a matter of English law, I have taken the view that they are not. There is therefore a good practical reason to grant the order.

57. It does not seem to me to make a difference that the anti-suit issue was issued first before the court in California and that therefore the court in California was first seized.
58. I also think it is significant that the principle of comity would not be significantly infringed by the granting of the injunction sought. It would in no way interfere with the bulk of the issues before the US court.
59. I do not believe that the delay, whether it is five weeks or two months, is such as to overcome my view that the court's discretion should be exercised by granting the injunction sought.
60. For the foregoing reasons, I will grant the order. At present, I do not think that the order would have the effect of purporting to restrain the defendants from holding any particular view, but I will hear submissions from counsel if it is felt that there is a need for further clarity in the terms of the order.
