

ENGLAND AND WALES / JUDGMENT

Acer Incorporated & Anor v Nokia Technologies OY [2026] EWCA Civ 604 (18 May 2026)

[2026] EWCA Civ 604

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Neutral Citation Number: [2026] EWCA Civ 604 Case No: CA-2026-000349 IN THE COURT OF APPEAL (CIVIL DIVISION) ON APPEAL FROM THE HIGH COURT OF JUSTICE, BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES, INTELLECTUAL PROPERTY LIST (ChD), PATENTS COURT Mr Justice Mellor

[2025] EHWC 3331 (Pat) Royal Courts of Justice Strand, London, WC2A 2LL 18 May 2026 B e f o r e : LORD JUSTICE PETER JACKSON LORD JUSTICE ARNOLD and LORD JUSTICE ZACAROLI

Between:

- (1) ACER INCORPORATED
- (2) ACER U. K. LIMITED Claimants/Respondents
- and - NOKIA TECHNOLOGIES OY Defendant/Appellant And between :
- (1) ASUSTEK COMPUTER INC
- (2) ASUS GLOBAL PTE LTD Claimants/Respondents
- and - NOKIA TECHNOLOGIES OY Defendant/Appellant

Mark Chacksfield KC and Edmund Eustace (instructed by Bird & Bird LLP) made written submissions for the Appellant Andrew Lykiardopoulos KC, Isabel Jamal and Joshua Marshall (instructed by Morgan, Lewis & Bockius UK LLP) made written submissions for the Respondents

HTML VERSION OF JUDGMENT APPROVED

Crown Copyright © This judgment was handed down remotely at noon on 18 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives. Lord Justice Arnold: On 12 May 2026 this Court handed down a judgment (

[2026] EWCA Civ 564 , "the main judgment") in which the Court decided to dismiss Nokia's appeal on jurisdiction, but to allow its appeal with respect to the case management stay. The Court's normal practice once the disposition of an appeal has been decided is to invite the parties to try to agree the consequential order. If they cannot agree, they are requested to file brief written submissions on the points in dispute. In that event, the Court will normally determine those points on paper, which typically involves giving brief reasons either by way of a reasoned order or in an email to the parties. The extent of the reasons depends on the nature of the issues: some decisions require little elaboration. In some cases it may be necessary to hear further oral argument. In other cases it may be appropriate to give more extended, or at least more public, reasons even though it is not necessary to hear further oral argument. This is such a case. The parties raised a number of consequential issues, but several of them are contingent upon the resolution of the issue which was left open in paragraphs 28 and 92 of the main judgment. It is therefore convenient to address that issue first. To recap, during the course of oral argument on the appeal, counsel for the Claimants raised a new point concerning a term of the Adjustable Licences offered by Nokia which permits either party to contend that the arbitration should include the terms of a (F)RAND (cross-)licence in respect of any patents which the other party (or its group) owns, controls or manages within its scope, and which requires the other party to stay, withdraw or abandon (or procure the stay, withdrawal or abandonment of) any litigation concerning such patents. The Claimants are concerned that this term may prevent them, and associated parties, from enforcing SEPs concerning mobile telephony standards pending a decision by the arbitrators as to the scope of the (cross-)licence. I will refer to this term as "the disputed term". The Court accepted counsel for Nokia's submission in reply that, for procedural reasons, this argument was not open to the Claimants as a basis for upholding the judge's order to dismiss Nokia's application for a case management stay, but held that whether the disputed term should be included in the Adjustable Licence if Nokia was otherwise successful on its appeal against that order was a different question. Since Nokia's case did not depend on the inclusion of the disputed term, it was disregarded for the purposes of determining the appeal with respect to the case management stay. The Court held that, disregarding the disputed term, Nokia's Adjustable Licence Offers were offers of licences of the Nokia Codec SEP Portfolio on RAND terms which were capable of acceptance by the Claimants. Accordingly, the Court held that, if the Claimants did not accept those offers, they were unwilling licensees and could not invoke the English courts' declaratory jurisdiction to determine what terms are RAND. In the light of the main judgment, although possibly subject to any appeal, the Claimants have indicated that they are prepared to accept the Adjustable Licence Offers, with the consequence that the determination of what terms for the final licences are

RAND will be carried out by an arbitral tribunal, with the exception of the disputed term. They have invited Nokia to drop its demand for the disputed term to be included in the Adjustable Licences, but Nokia has declined to do so. In those circumstances the Claimants contend that the order for a case management stay should be made conditional upon Nokia's agreement to excise the disputed term from the Adjustable Licences. Nokia again argues that, for procedural reasons, it is not open to the Claimants to advance this contention. I disagree. I adhere to the view I expressed in the main judgment at paragraph 28 that there is a difference between the Claimants advancing this point in support of the judge's order and advancing it as a condition to be attached to this Court's order. Furthermore, Nokia has now had, and taken, the opportunity to address the merits of the contention in written submissions. Turning to the merits of the Claimants' contention, Nokia's principal argument is that the question whether the final licence should be a one-way licence from Nokia to each of the Claimants or a cross-licence, and if the latter the extent of the cross-licence, is a matter for the arbitrators to determine, and not a matter to be summarily prejudged by this Court now. I do not accept this argument. Nokia's case on its appeal with respect to the case management stay was that this Court was able to, and should, summarily determine that the Adjustable Licence Offers were RAND. The Court accepted that case. The Court is equally able summarily to determine whether the disputed term is RAND. In my judgment it is clear that the disputed term is not RAND for the following reasons. The starting point is that the Claimants seek licences in respect of the Nokia SEP Codec Portfolio, which is subject to Nokia's RAND obligation. Disregarding the disputed term, Nokia has complied with that obligation by offering the Adjustable Licences, which provide for determination of RAND terms for the final licences by the arbitral tribunal. Let it be assumed that Nokia wishes to contend before the arbitrators that RAND terms for final licences of the Nokia SEP Codec Portfolio should include, or be made conditional upon, cross-licences in respect of patents owned by the Claimants. I consider that it is at least arguable that Nokia's RAND obligation can be satisfied through the offer of a licence that is conditional upon the implementer's willingness to enter into a cross-licence of its own portfolio of SEPs declared essential to ITU-T's standards on RAND terms. I do not accept, however, that if the terms of that cross-licence are not agreed, and if the implementer refuses to submit that dispute to arbitration, Nokia will have complied with its RAND obligation by including a term in its licence whose effect is to require the implementer to submit the dispute over the terms of that cross-licence to arbitration. It follows from Nokia's own argument which the Court accepted in paragraphs 85-88 of the main judgment that a SEP owner is entitled to choose between arbitration and court proceedings as a mechanism for determining (F)RAND terms. So far as SEPs owned or controlled by the Claimants are concerned, therefore, that choice lies with the Claimants and not with Nokia. (For the avoidance of doubt, this does not preclude Nokia from commencing proceedings concerning such SEPs in this jurisdiction with a view to obtaining a declaration as to what terms are (F)RAND and seeking an interim licence declaration.) Even if that is wrong, I do not consider that it is arguable that Nokia's RAND obligation can be made conditional upon the implementer's willingness to submit to

arbitration a dispute over the terms of a cross-licence of SEPs in a different area of technology which have been declared essential to different standards promulgated by a different SDO subject to a different intellectual property rights policy governed by a different law. The Claimants also argue that imposing this condition in the exercise of the Court's discretion to order a case management stay would be consistent with the conditions proposed in paragraph 92 of the main judgment, which are designed to ensure that, so far as possible, the arbitration picks up where the English proceedings leave off, rather than having to start all over again from scratch, and would reduce the risk of satellite litigation over compliance with the terms of the Adjustable Licences. I agree with these points. This conclusion makes it unnecessary to determine whether, as Nokia contends, the Claimants would be in breach of the undertakings they have given in these proceedings if they do not accept the Adjustable Licence Offers including the disputed term. It also makes it unnecessary to determine contingent applications by the Claimants to be released from those undertakings and for a stay of the case management stay pending the determination of an application by the Claimants for permission to appeal to the Supreme Court. I shall deal with the remaining issues briefly. First, Nokia seeks declarations that the Adjustable Licence Offers are RAND and that it has complied with its RAND obligations. The Claimants oppose this on the ground that, as discussed in the main judgment at paragraphs 57-60, Nokia did not apply for summary judgment, but rather for a case management stay, and therefore declaratory relief is inappropriate. I agree with this. Secondly, while all parties have agreed to the conditions proposed in paragraph 92 of the main judgment, Nokia argues that these conditions should be incorporated into the Adjustable Licences, while the Claimants contend that they should be included in the Court's order. I agree with the Claimants since these are conditions for the grant of the case management stay. Nokia also wants it clarified that these conditions are without prejudice to the arbitrators' normal case management powers going forward (e.g. to deal with applications to amend statements of case or to seek further disclosure or to adduce further evidence). The Claimants have not agreed to this, but I agree that this clarification is appropriate. Thirdly, the Claimants seek permission to appeal to the Supreme Court. This application is expressed to be contingent upon the Court resolving the issue concerning the disputed term in favour of Nokia, but the grounds advanced by the Claimants do not depend on the resolution of that issue. For the avoidance of doubt, therefore, I would refuse permission to appeal. There remains outstanding the question of costs, as to which I understand that both sides seek permission to make further written submissions once the Court's decision on the issues addressed in this judgment is known. I would grant the parties until close of business on 26 May 2026 try to reach agreement as to costs, and in the absence of agreement to file such submissions. There are also some minor points of detail on the wording of the draft order, but none of these appear particularly contentious. I would again give the parties until close of business on 26 May 2026 to try to reach agreement on the wording, failing which the Court will determine any remaining issues. Lord Justice Zacaroli: I agree. Lord Justice Peter Jackson: I also agree.

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Prepared on 22 October 2026 · Esheria