Neutral Citation Number: [2024] EWHC 149 (Comm)

Case No: CL-2022-000219

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 19/01/2024

Before :

MR JUSTICE JACOBS

- -

Between :

Motorola Solutions, Inc. & Anr

Claimant

- and -

Hytera Communications Corporation Ltd. & Ors

Defendant

- -
- -

Thomas K Sprange KC and Gayatri Sarathy (instructed by **King & Spalding**) for the **Claimant**
Stephen Rubin KC and Alexander Milner KC (instructed by **Steptoe International (UK) LLP**) for the **Respondent**

Hearing dates: 19th January 2024

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Approved Judgment

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MR JUSTICE JACOBS

MR JUSTICE JACOBS :

1. This is an application by the defendants, whom I will call "Hytera", but particularly Hytera Communications Corporation Limited, for a stay of the enforcement of a judgment of Mrs Justice Cockerill given in November 2023.

Factual background

2. The background to the case can be found in an earlier decision of mine which was reversed by the Court of Appeal in January 2021: [2020] EWHC 980 (Comm); [2021] EWCA Civ 11. This case arises out of proceedings in the Northern District of Illinois brought by Motorola in relation to the theft of intellectual property, trade secret misappropriation and copyright infringement.

3. A jury verdict was given in February 2020 and judgment was entered. That judgment was later modified and reduced. The effect of it was, and is currently, that Motorola has judgment in its favour for US$136.3 million in compensatory damages under the US Copyright Act 1976 for the period 2010 to May 2016. It also has judgment in its favour for US$135.8 million for compensatory damages under the US Defend Trade Secrets Act 2016, and US$271.6 million in exemplary or punitive damages. There is also judgment for around US$86.5 million interest and costs.

4. It is the first of those figures which is relevant to the English proceedings. The judgment given by Mrs Justice Cockerill in November 2023 was in respect of the US$136.3 million compensatory damages. Motorola, accepts that it cannot obtain judgment in this jurisdiction for the exemplary/punitive damages element, and there are issues which will have to be resolved in due course, as to whether or not it can obtain judgment in this jurisdiction for the 135.8 million in compensatory damages under the 2016 Act.

5. The position in the United States proceedings has moved in a number of respects after January 2021, when the modified judgment was entered. There has been an appeal which was heard by the Seventh Circuit Court of Appeals in December 2023. Judgment on that appeal, which was by Hytera with a cross-appeal by Motorola, is awaited. There are various estimates which have been given in the materials before me as to when judgment can be expected. The range of possibilities extends, broadly speaking, to a maximum of one year from the date of the hearing. On Motorola's case, judgment is certainly likely to be given by the end of the year. Hytera's case is that it is probable that judgment will be given rather sooner, and they point to some statistical evidence, on the basis of research carried out by a Chicago law firm, which indicates that judgments of that appeal court tend to be given on average within four months of the hearing of the appeal. But there is obviously uncertainty as to when judgment on the appeal, which raised substantial issues which were plainly arguable, will be given. I am not in any position to form a view as to when that is likely to be. My instinct suggests that it is probably somewhere between April and September as a likely period. But there is uncertainty, as I have said.

6. The US judgment has not been formally stayed. In order for Hytera to obtain a stay of enforcement, they would have had to file a bond, but they were not in a position to do that and, therefore, the judgment is an enforceable judgment. Motorola has had some success and some failure in actually getting cash from Hytera pursuant to that

judgment. There have been two decisions in the US proceedings, subsequent to the modified judgment, which have formed part of the parties' arguments at this hearing. The first is the decision of Judge Norgle of the District Court of Illinois (the trial judge) in September 2021. This was on Motorola's application for "Turnover" relief. The second is the decision of Judge Martha Pacold of the same court dated August 2023 in relation to royalties claimed by Motorola. Judge Pacold had replaced Judge Norgle as assigned judge following the former's retirement.

7. The first application, for "Turnover" relief, was a failure as far as Motorola was concerned. "Turnover" relief is a discretionary method of enforcement under Illinois law whereby a judgment debtor may be compelled to hand over intangible assets in satisfaction of the judgment. Judge Norgle decided that it was not appropriate to grant that order. The principal reason given by the judge was that the court anticipated that a significant appeal would be ruled on expeditiously by the Seventh Circuit. He said that in July 2022. On one view, the appeal has not been ruled on expeditiously: we are now in January 2024, and the case only came on before the Seventh Circuit in December of 2023. However, it is not clear how much time Judge Norgle had in mind when he referred to the appeal being ruled on expeditiously. At all events, the court exercised a discretion not to order "Turnover" relief, deciding that it would be premature to do so. This was not either in form or effect a stay of enforcement. It does, however, mean that Hytera is entitled to retain its intangible assets pending determination of the appeal. The judge clearly thought that it was not appropriate, with a substantial appeal pending, for Hytera to lose the intangible assets which were being sought by Motorola. It is not difficult to imagine that, if the application were granted, this might have substantially disrupted Hytera's business.

8. The judgment in relation to royalties was a very detailed and thorough judgment of Judge Pacold given in August 2023. The judge there had considerable evidence, including oral evidence under cross-examination, from Mr Jiliang Kang, who is Hytera's Financial Director., as well as expert evidence. The issue which the judge was deciding was whether or not Hytera should pay into escrow the sum of approximately US$49 million, which had previously been ordered to be paid by the court in respect of, in substance, royalties which the court considered should be paid, because Hytera was using Motorola's trade secrets and technology.

9. Hytera sought to resist paying, pursuant to the order to which it had previously agreed, on the basis that it was not in a position to pay. The counter-position of Motorola was that Hytera was in contempt of court. The question which the judge had to consider primarily was whether Hytera had made a reasonable and diligent effort to comply with the order previously been made. The judge considered that Hytera had not done so. There are a number of strands in her reasoning. One strand, which has featured to a large extent in Mr Sprange KC's argument on the present application, is that Hytera had only started trying to raise the funds to pay the royalties very late in the day. The judge was also not persuaded that Hytera could not raise the money.

10. Subsequent events proved that the judge was right to some extent, since the money was in fact raised. The subsequent raising of those funds, at least on Hytera's evidence, was a consequence of a further order that the judge said that she would make. Motorola had argued, successfully, that Hytera should be injuncted from the sale of any two-way radio products worldwide, regardless of whether they incorporated Motorola technology. The evidence of Mr Kang is that that presented

such a serious threat to the continued existence of Hytera that banks which previously had not been prepared to advance additional funds were persuaded that funds should be advanced on that occasion. Therefore, because of the threat of the injunction, Hytera was in the event able to pay the money into escrow and to avoid the injunction which had been threatened.

11. As far as the proceedings in England are concerned, there have been a number of hearings in relation to the present proceedings, which were started on 28 April 2022. It is not necessary to summarise everything that has happened. It suffices to say that the present proceedings in England were started some time after the US judgment had been given. (The present proceedings are not the same as the proceedings which resulted in the 2021 judgment of the Court of Appeal referred to above). There has been some delay in getting proceedings to the stage when Mrs Justice Cockerill gave judgment in November 2023. Part of the delay in the progress of the proceedings was the result of a refusal by Motorola to pay certain costs which had been ordered in relation to Motorola's ultimately unsuccessful application for a freezing injunction; i.e the application which resulted in the judgment of the Court of Appeal. Ultimately as a result of an order and judgment of Mr Simon Rainey KC sitting as a deputy judge, the costs were paid, the action revived and judgment was given by consent or without opposition in November 2023. The sum of the judgment being, as I have indicated, US$136.3 million plus interest.

12. Mrs Justice Cockerill on that occasion ordered an interim stay pending the determination of Hytera's substantive application for a stay. That is the application which has come on before me today and I have heard extensive submissions, from Mr Rubin KC for Hytera and Mr Sprange KC for Motorola, and I am grateful to them for their careful and thorough submissions.

13. Much of the argument in the case has focused on the question of whether Hytera is in a position to meet the substantial judgment which has been given now by the English court, pursuant to the order of Mrs Justice Cockerill. In his skeleton argument on behalf of Motorola, Mr Sprange describes Hytera as a robust going concern with substantial cash flows.

14. That seems to me on the evidence to be a reasonably fair description, although questions arise as to whether the word "robust" is appropriate. There is no doubt that, notwithstanding the substantial judgment which was given against Hytera, the company has in fact carried on business over the last few years and has ridden out to some extent, if not completely, the problems which were a consequence of the very substantial judgment which had been given in the United States.

15. Mr Kang has provided a lengthy witness statement which describes in some detail the financial position of Hytera in the period since the US judgment was given in 2020. That evidence describes the immediate impact of the US judgment against Hytera as creating serious liquidity problems. Hytera’s bankers have, since the judgment, sought significantly to reduce their exposure over the last three years. Hytera has been able to continue in existence, with the support of its banks, albeit now with substantially less borrowing.

16. If one focuses simply on the current balance sheet position of Hytera, it appears that it has substantial assets which are more than sufficient to meet its liabilities, and a net

asset position which is in excess of the English judgment which Motorola has obtained. It is also clear that Hytera operates a very substantial business and that it has been profitable in 4 of the past 5 years, on the evidence of Mr Kang. Its profits in 2022 were US$ 55.7 million, and in the first 9 months of 2023 were US$ 20.2 million. Therefore if one were simply looking at Hytera on the basis of its balance sheet as a profitable business which could potentially be sold, it appears reasonable to conclude that Motorola would be paid the sum of the English judgment, if indeed that is the sum which remains outstanding after the outcome of the US appeal.

17. But that may be too simplistic a way of looking at matters. As Mr Sprange has said in his submissions, it may well be that many of Hytera's assets are in jurisdictions which are difficult for Motorola to access, in terms of obtaining assets pursuant to the judgment, and that enforcement is likely to take considerable time. For that reason Motorola wishes to pursue enforcement as quickly as possible. The sooner they can start the sooner they can finish and the less opportunity there will be for assets to be disposed of, whether legitimately or illegitimately, in the intervening period.

18. The sum of the English judgment inclusive of interest is US $151 million or thereabouts. That is, plainly, a very substantial sum. It is clear from the evidence of Mr Kang that, notwithstanding the strength of its balance sheet and its profitability, it does not have cash or other assets readily available to pay that sum, and that it does not have ready access to lending facilities which would enable that sum to be paid. Whilst banks have been prepared to continue to advance money for the purposes of enabling Hytera to carry on its day-to-day business, the evidence indicates that they are not willing to do so for the purpose of meeting the very substantial judgment given in the United States and (to the extent of US$ 131.6 million plus interest) now given in England. As will become clear, I accept the way that Mr Rubin has put the case in paragraph 29 of his skeleton: that for Hytera to pay a sum of that magnitude, it would have to irreversibly dismantle its business by liquidating assets.

19. It seems to me that the evidence which has been given by Mr Kang in that respect is credible and is consistent with the fact that, from almost the very moment that the US judgment came out, the various lenders to Hytera had been concerned to lower their exposure. Mr Kang describes how over the course of time its indebtedness has reduced from something like US$800 million to US$250 million. Some of the important aspects of Mr Kang's evidence are as follows.

20. In paragraph 4, he describes how the payment under the judgment of the sum which is due pursuant to Mrs Justice Cockerill judgment will be extremely disruptive to HCC's operations and unfairly prejudicial to Hytera in the light of the ongoing appeal in the United States. He describes the catastrophic effect which the original US judgment had, and how it caused a severe liquidity crisis from which Hytera has not yet fully recovered. He describes how, in general terms, the free cash which is available to Hytera is limited. He bases his evidence principally on the then latest set of figures which were available at around the end of September 2023 and the figure which he gave was some US$11 million of unrestricted cash. But he explains how the US$11 million, which was unrestricted in the sense that (unlike other "restricted" cash) it was not held as security for specific obligations, was needed to fund monthly operations, and how in fact Hytera's capital requirements were approximately twice that sum.

21. Mr Kang then describes the various lending arrangements which were in place at the time of his statement. He has exhibited summaries of the key terms of those lending arrangements. He says this in paragraph 80, and I quote:

> "HCC cannot utilise existing, or obtain any new, credit lines for at least partial payment of the Judgment either. As I set out further below, HCC's existing credit lines cannot be used for the purposes of paying the Judgment as that credit is provided to HCC for specific purposes, which do not extend to the payment of the Judgment. Applying those funds to anything other than the specified purpose would constitute a default of the underlying agreement between HCC and the respective bank."

22. Mr Kang describes in his witness statement how attempts were made to obtain money from lenders as well as from subsidiaries in order to make the US$49 million royalty payment ordered by the US court. At least prior to the threat of injunction, all of those attempts in the summer of last year were unsuccessful. In the end, however, the banks considered that they had no practical choice, if Hytera was to continue in operation, but to advance additional funds. That is what they did.

23. The thrust of Mr Kang's evidence is that there is no real chance of lenders providing money to meet this judgment. He shows in his evidence the history of the case, not only in terms of banks seeking to reduce their exposure to Hytera, but also their unwillingness initially to advance any funds in response to the US judgment, and only doing so when their hands were forced.

Legal principles

24. The question which I need to consider is whether it is appropriate to permit Hytera to have a stay of enforcement. The principles which apply were to some extent in dispute. It was, however, agreed that the relevant question is that which arises under CPR 83.7(4)(a), which provides that the court may grant a stay of execution where "there are special circumstances which render it inexpedient to enforce the judgment or order".

25. Mr Rubin submitted to me that the fact that the case is under appeal in the United States is in itself, and independent of the issues raised in Mr Kang's evidence, a sufficient reason for the court to grant the stay of execution. The appeal in itself is a special circumstance which renders it inexpedient to enforce the judgment or order.

26. I do not accept that submission. It seems to me that the question of whether it is inexpedient to enforce the judgment or order cannot simply be answered by saying that there is an appeal pending in a foreign jurisdiction. That cannot in itself be a special circumstance, not least because it is something which will happen extremely frequently. I have no doubt that CPR 83.7(4)(a) is not simply to be read, in the context of a foreign judgment which has then resulted in an English judgment, by asking whether there is a pending appeal, or even as in this case, whether the appeal has been argued with the parties awaiting a decision of the court. In my view, both special circumstances and inexpediency require something more than the existence of a pending appeal. For example, I do not consider that any inexpediency would arise in

the context of an appeal involving well-resourced parties, where a payment pursuant to the judgment under appeal could be made without difficulty and then returned if the appeal succeeds.

27. Mr Rubin referred to a number of authorities, broadly in support of the proposition that the court has a complete discretion and that there is no authority which guides the exercise of that discretion. In my view, however, I need not look beyond the most recent case in this area, which is the decision of HHJ Russen KC in *David Tyler Moss and others v Brian Martin and anr* [2022] EWHC 3258 (Comm). The judge there decided that he should apply by analogy the principles which govern the grant of a stay under CPR 52.16, and he referred to the principles in the well-known decision of the Court of Appeal in *Hammond Suddard Solicitors v Agrichem International Holdings Ltd* [2001] EWCA Civ 2065. Accordingly, when considering whether or not to order a stay of enforcement of an English judgment which gives effect to a foreign judgment, in circumstances where an appeal is pending in the foreign court, the judge decided to apply an approach similar to that taken in English proceedings where there is a pending appeal to the Court of Appeal against an English judgment.

28. I consider that HHJ Russen was right, and in any event, as a fellow first-instance judge in the Commercial Court, I would as a matter of precedent follow his approach unless persuaded that he was clearly wrong. I do not consider that he was clearly wrong. There is in my view a close analogy between the two situations. In a case solely involving the English courts, there will be a valid judgment at first instance which may be altered by an appeal court; for example where there is a High Court judgment which is subject to an appeal to the Court of Appeal. An appeal does not operate as a stay: see CPR 52.16. However, principles have been developed, as explained in *Hammond Suddard* and other cases, where a stay will be granted and these are discussed in the *White Book* in the context of CPR 52.16. In a case with a foreign element, there is again a valid judgment at first instance: here the judgment of Mrs Justice Cockerill which gives effect to the first instance judgment in Illinois. Both first instance judgments may potentially be altered by the outcome of an appeal. The only difference from the first situation is that the relevant appeal is not in England, but is to the appeal court in the foreign jurisdiction. I do not consider that there should be any difference, however, in the basic principles which are applied in the two situations when a stay of enforcement is sought. HHJ Russen was of the same view. My only qualification would be that it may be that, in the case of a foreign judgment, there may possibly be additional factors which may come into play which are not necessarily precisely the same as those which come into play when one is considering whether there should be a stay of enforcement of an English judgment pending appeal. However, the starting point and basic principles should be the same, and I do not consider that there are any relevant additional factors here.

29. Mr Rubin also referred me to a number of Canadian cases which are referred to in *Dicey & Morris* but I did not think those cases took the matter any further and, in any event, for reasons I have given I should follow the most recent Commercial Court decision in this jurisdiction.

30. So I propose to apply the same basic approach as I would apply in considering the question of whether there should be a stay of enforcement as if the relevant appeal was an appeal from a judgment at first instance in an English court.

31. The principles which govern stays of enforcement in the context of appeals in England are set out in a judgment of Mr Justice Eder in *Otkritie International Investment Limited and Others v Urumov* [2014] EWHC 755 (Comm), in particular at paragraph [22]. Mr Justice Eder identifies the starting point as being:

> "... that a successful claimant is not to be prevented from enforcing his judgment even though an appeal is pending ..."

32. Mr Justice Eder then identifies the need for solid grounds having to be put forward by the party seeking a stay and how the court, if there are such grounds, will undertake a balancing exercise. He then quotes from *Hammond Suddard* the types of considerations which are relevant to the balancing exercise, and I quote as follows from *Hammond Suddard* para [22]: case:

> "By CPR rule 52.7, unless the appeal court or the lower court orders otherwise, an appeal does not operate as a stay of execution of the orders of the lower court. It follows that the court has a discretion whether or not to grant a stay. Whether the court should exercise its discretion to grant a stay will depend on all the circumstance of the case, but the essential question is whether there is a risk of injustice to one or the other or both parties if it grants or refuses a stay. In particular, if a stay is refused what are the risks of the appeal being stifled? If a stay is granted and the appeal fails, what are the risks that the respondent will be unable to enforce the judgment? On the other hand, if a stay is refused and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks of the appellant being able to recover any monies paid from the respondent?"

33. It does not seem to me that those are necessarily all the factors which come into play on the balancing exercise. In the present case, for example, it is accepted that the appeal will not be stifled. In fact, unusually, the appeal has actually taken place and the only thing that is needed now is the judgment of the Seventh Circuit Court of Appeals in the United States.

34. Another factor which does not play any significant part in the present case, but which is referred to in the balancing exercise in *Hammond*, is whether the appellant (if successful on the appeal) would be able to recover any monies paid from the respondent. This would be a potential issue in the present case, bearing in mind the difficulties which Hytera experienced in recovering costs which had been ordered by the Court of Appeal and Supreme Court. However, Mr Sprange has made it clear that, as far as Motorola is concerned, any money that is paid pursuant to the judgment can be paid into court or into an escrow account and, therefore, there would be no difficulty in any money being returned to Hytera in the event that the court decides that that is what should happen.

35. But there is a factor which is much relied upon by Mr Rubin in the present case which perhaps does not fit precisely within the judgment of Clarke LJ in *Hammond Suddard.* He submits that, if enforcement were permitted, the consequence would be that Hytera would, in effect, have to dismantle its operations in order to meet the

judgment, because the only way in which it could conceivably raise the amount of the judgment would be to sell off significant parts of its business. The substance of Hytera's case is that that is not a fair thing to do, in the balancing exercise, in circumstances where the appeal judgment is going to come out relatively soon and where, as Mr Rubin submits, the position is that Hytera is a substantial company, and that the company will be in existence and thriving as it is thriving now as and when the judgment comes out. I agree that this factor, if made out on the evidence, is a relevant and indeed potentially very important factor in the balancing exercise.

36. So those are the principles which I consider to be applicable. I do not consider, contrary to Mr Rubin argument, that any difficulties arise in relation to comity. It is true that the US court has in one respect made an order which could be regarded as, to some extent, the equivalent of a stay, namely, the decision of Judge Norgle to refuse the "Turnover" order. But equally it has to be noted that Judge Pacold made the order for the royalties payment of US$49 million, and that was in due course paid. However, neither judge was considering whether or not to permit or prevent enforcement of the whole of the judgment. Indeed, it is clear on the evidence that there is no stay which is actually in place. Accordingly it seems to me that, as described above, I should approach this case by applying the ordinary principles which are applied by the English courts in deciding whether or not to permit a stay of enforcement. I am not pointed in any particular direction on that issue by what has been said in either of the judgments of the US court. The most that can be said, in my view, is that the Judge Norgle may have been influenced by the potentially significant effect on Hytera's ongoing business of a Turnover order which would require Hytera to transfer its intangible assets to Motorola. This may perhaps indicate an unwillingness on the part of that judge to make an order which would have the practical impact of dismantling Hytera's business in circumstances where there was a pending appeal. As I have said, I regard that as a potentially very important factor.

37. This means that it is necessary to look, as I will in a moment, at the financial position of Hytera and their practical ability to raise the money which would be required to be raised in order to satisfy the judgment or at least some significant part of that judgment. But before doing that I should note that there is one unusual feature of this case which in my view is relevant to the exercise of my discretion. It is an unusual feature that the appeal has actually been argued out in the United States, and that it can fairly be said that the judgment on appeal is reasonable imminent. Indeed, it may possibly be given in the next 3 months or thereabouts. It also is clear from the materials which I have seen (and indeed from the fact that the appeal judgment is not expected for some time) that the appeal there raises matters of some complexity. This is not therefore a case where one is waiting for an appeal to come on, but where one is simply waiting for a decision to come from the court in the context of an appeal raising substantial issues. Against this background, I would regard it as undesirable and unjust to require a party to be put in the position of having effectively to dismantle its business in order to meet a significant judgment, where the appeal result is reasonably imminent.

38. The question is therefore whether the size of the judgment would require Hytera effectively to dismantle its business irreversibly in order to meet the liability. That was the point which Mr Rubin made in his skeleton argument and I consider on the

materials which I have seen concerning Hytera's position and Mr Kang's evidence that that point is made out.

39. Mr Sprange in his submissions has focused to a large extent, although not exclusively, on what has happened in the past. He criticises Hytera for not having taken steps, once the US judgment came out, to ensure that money was set aside in order that it could be in a position to meet the judgment. He says that one should look backwards to see how Hytera has carried out its business. He submits in particular that Hytera should not have acted in the way that it did act, by reducing significantly its indebtedness to its lenders. In his skeleton argument and elsewhere there are criticisms of investments in research and development which Hytera has made, and overall Mr Sprange invites me to take the view that it is Hytera's fault that it is now in the position, if it is now in the position, of having to dismantle its business in order to meet the judgment of Mrs Justice Cockerill.

40. I do not consider that that is the correct perspective from which to view matters. I am concerned here with a judgment of Mrs Justice Cockerill which was only given last November. That is the judgment which Motorola seeks to enforce and whose enforcement Hytera seeks to stay. I do not consider it appropriate to look back some years in order to examine Hytera's conduct of its business. Indeed, it is difficult to see where such the retrospective analysis would stop; because it could be said that the US judgment itself all stemmed from Hytera's improper conduct which should not have happened in the first place.

41. I also consider that it would not be practical to conduct an investigation as to whether Hytera could in fact retrospectively have conducted its business in a different way, for example by paying off different debts or debts to a smaller extent than it has actually paid. That sort of exercise is not one which the courts are well equipped to carry out generally on an application of this kind, and I do not consider that I have the material which would enable me to form any sort of sensible judgment as to how Hytera could have acted differently. My impression from all the materials is that Hytera was put in a very difficult position as a result of the judgment in the United States and the pressure which then resulted from its bankers and the severe liquidity problemswhich resulted. . It wished to continue in business, which is of course perfectly understandable and, as Mr Sprange said at one point in his submissions, realistically that is the best way in which Motorola is going to be paid. I consider that I should look at the position as we now stand, particularly bearing in mind that the English judgment was only given in November, rather than seeking to carry out some retrospective analysis as to whether the way in which Hytera has conducted its business could have in some way have been different.

42. So that brings me to the question of whether Mr Rubin has really made good the case that, in order to meet this judgment in this sum, the business would in practical terms have to be dismantled. It does seem to me that that is realistically the only way in which this judgment in the full amount could now be met. It is apparent from Mr Kang's evidence that there is insufficient cash in Hytera itself, and that its existing cash reserves are relatively small and are required to fund its day-to-day operations. I do not consider that Hytera can be criticised for wishing to carry on its day-to-day operations because it has a judgment which is under appeal and it does not accept that judgment and has substantial arguments which have been advanced as to why the judgment should be substantially reduced.

43. So the cash, in my judgment, is not there. There is, it is fair to say, cash in some subsidiaries of Hytera, but Mr Kang's evidence, which in my view makes sense, is that as a parent company Hytera is not in a position simply to take the cash which its subsidiaries have, in circumstances where they are trading subsidiaries and the directors of those companies will owe the usual fiduciary duties to make sure that those companies are properly run. The factual evidence is that when Hytera sought money from its subsidiaries in order to try to pay the US$49 million royalty payment, that money was not forthcoming. I am not persuaded by the argument that there are large amounts of cash which can be readily and easily be drawn upon by the parent company, in circumstances where those subsidiaries are trading and have their own operating expenses to meet.

44. The next possible source of funds is lending arrangements, but the evidence of Mr Kang again, which is set out in considerable detail in his witness statement, is that the lenders were unwilling originally to pay the US$49 million, that they only did so under extreme pressure and that they would not be willing to enter into lending arrangements which would result in significant payment of the judgment to Motorola.

45. Mr Sprange says, well, surely it would be possible for Hytera to pledge valuable assets, for example shares in subsidiaries, to banks, who would be perfectly willing to lend further funds. It seems to me that is contrary to the evidence of Mr Kang and, in any event, it creates certain difficulties. I have been shown the terms of a very large number of loan agreements which have been entered into by Hytera. The broad position is, in summary, that Hytera is not in a position simply to pledge or dispose of its assets. If it were to do so, it would breach its agreements with its lenders. That would have inevitable consequences unless further arrangements could be made; because, if a company breaches its covenants, then that potentially not only puts an end to that particular lending arrangement, but also, because of cross-default provisions, enables all the other lenders to "pull the plug" as well. Therefore, when companies have entered into covenants with their lenders, I do not take the view that they can easily be breached or cast aside.

46. Against that background, it seems to me that the idea that, contrary to the evidence of Mr Kang, Hytera is in a position readily to pay US$151 million is an unrealistic one. I do consider that there is solid evidence that that could only be done by Hytera in effect dismantling its business and, when I consider the balancing exercise, I do not consider that is something which Hytera should be required to do in circumstances where an appeal decision is reasonably imminent.

47. I also bear in mind a number of matters in that context. Although the position is that money would be secured under the arrangements proposed by Mr Sprange, it would not result in any actual money being paid to Motorola. It would simply be held in escrow. That would advantage Motorola, I accept, because it would facilitate enforcement at a later stage, but it would come at the cost of Hytera having to dismantle its business in the way that Mr Rubin has submitted.

48. It also seems to me that I have to stand back and bear in mind the thrust of Mr Sprange submission, which has been that Hytera is a substantial company which is doing really quite well and has continued to operate in a relatively responsible way in terms of conducting its business, leaving aside its failure to pay the judgment in the last three or four years. When I consider that background, it does not seem to me that

there is any reason or good reason to think that things are going to change very radically in the period between now and the time when the Seventh Circuit judgment actually comes out.

49. It is clear that there may well be difficulties which face Motorola in enforcement but those difficulties are inherent in the fact that they have a judgment against a company whose substantial business is principally in China. Such difficulties as exist will remain whether enforcement is started now or started as and when the US judgment comes out.

50. It also seems to me to be a relevant factor that the present proceedings, although they have now resulted in a judgment, were not started immediately and have not in fact been progressed with immense speed. I have already referred to the fact that there was some delay of about seven or eight months because of Motorola's unwillingness to pay costs which have been ordered by the Court of Appeal and the Supreme Court. The delay in knowing the result of the appeal needs to be considered in the context of delays which have occurred in the past.

51. So when I consider the balancing exercise I have come to the view that this is an appropriate case for a stay, certainly if one considers the question of whether Hytera should be required to pay the full amount of the judgment.

52. I have, however, considered whether, in light of the evidence as a whole, I should make any stay conditional on the payment of some sum of money. When I look at the evidence as a whole it does seem to me to be a realistic conclusion that, if push came to shove, Hytera would be able to pay some money into court in a relatively short period of time, and that this would not involve a dismantling or significant dismantling of its business. Hytera is running a successful business. Its subsidiaries do have reasonable amounts of cash. It does have relationships with a number of lenders, and the evidence of events relating to the US$ 49 million royalty payment shows that, if pressure is applied, additional monies can be obtained. Against this background, I am not persuaded that Hytera is simply unable to pay anything at all. An order to pay some money into court is likely, in my view, to be productive. It will have the effect, at least if Hytera is concerned about the impact of enforcement of the English judgment, have the effect of moving payment of the judgment higher up Hytera's list of priorities where, as Judge Pacold's royalties judgment indicates, it may previously have been rather low if indeed present at all.

53. Mr Rubin has submitted that I have to take a principled approach to this, and he says that the principled approach only results in the court possibly ordering US$1.4 million, which is something which he more or less accepts is an irreducible minimum of the amount which is a possible reduction of the current US judgment. He submitted that Hytera could have really no complaint if that sort of sum was to be ordered. But he points out that it is a figure which is so small that it is not really what this case is about.

54. It does seem to me that, if I look at the matter standing back and consider the amount of revenue which is being generated by the business, the fact that there is some unrestricted cash, the fact that there may be scope for savings, the fact that there is an ongoing relationship with a large number of lenders and the fact that subsidiaries of

this substantial company do have cash, the idea that Hytera is unable to pay anything at all within any period of time is unrealistic.

55. I am entitled to impose as a matter of discretion conditions to the grant of a stay and I consider it appropriate in this case to make a condition of a stay that a payment of some money should be made into court in order for the stay to continue. I therefore propose and will order that there will be a stay of these proceedings, that the stay will last for a period of two months, that the stay will continue thereafter, subject to any further applications by either side, provided that the sum of US$25 million is paid into court. If it is not paid in two months, in other words by 19 March 2024, then the stay will be lifted. It will be possible for Hytera, if it has not paid that sum, to make an application to extend that time, but I have been very generous in my view as to the amount of time which has been permitted and, therefore, if there was to be any application to extend the time, it would have to be on the basis that any extension would be a very short one only, and only on the basis that any extension would facilitate the payment of the US$25 million.

56. So to that extent Motorola's opposition to the application to stay succeeds, but in principle the application by Hytera for a stay of enforcement succeeds with that condition.