

IN THE COMPETITION

Case No. : 1382/7/7/21

APPEAL

TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Thursday 4th September 2025

Before:
Justin Turner KC

(Sitting as a Tribunal in England and Wales)

BETWEEN:

Consumers' Association

Class Representative

v

Qualcomm Incorporated

Defendant

APPEARANCES

Michael Armitage (On behalf of Consumers' Association)

David Bailey & Alexandra Breckenridge (On behalf of Qualcomm Incorporated)

Ben Rayment (On behalf of Huawei)

Sarah Abram Kc & Jacob Rabinowitz (On behalf of Apple Inc)

Josh Holmes Kc & Nikolaus Grubeck (On behalf of Samsung)

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Thursday, 4 September 2025

(10.00 am)

JUDGE TURNER: Some of you are joining us on live stream, so I must start with a warning. An official recording is being made and an authorised transcript will be produced, it is strictly prohibited for anyone else to make an unauthorised recording, whether audio or visual, of the proceedings, and breach of that provision is punishable as contempt of court.

Right.

Can we just start with some introductions?

MS ABRAM: Yes, absolutely, sir. I will kick off. To start with myself, I am Sarah Abram for Apple and I'm appearing with Mr Rabinowitz for Apple. To start from the left, my left: this is Mr Armitage, who is appearing for Which?; Mr Grubeck and Mr Holmes KC, who are appearing for Samsung; Mr Rayment who is appearing for Huawei; and then at the end Professor Bailey and Ms Breckenridge, who are appearing for Qualcomm.

JUDGE TURNER: Right. I wanted to start with some questions actually for Qualcomm. Just to let you know where I am or what my understanding is. So today we are just trying to determine the status of documents as they go into trial bundles, we are not making any final ruling as to the status of each document and how it should be

1 dealt with in a nonconfidential judgment or perhaps even
2 at trial.

3 We are dealing principally with pragmatic
4 arrangements, as I understand it.

5 At the PTR, which I wasn't present at, but
6 I understand there was a -- I don't know if it was
7 a ruling or an indication, but I understand it to be
8 common ground that there is a presumption, if I can
9 paraphrase it, of non-confidentiality if a document is
10 more than five years old, which is rebuttable.

11 As to documents we are concerned with, as
12 I understand there are 321 documents referred to in
13 pleadings and witness statements. In addition,
14 a further 700 or so were identified on 13 August and
15 a further 150 on 20 August. So we are talking about
16 a little over 1,000 documents and that is all the
17 documents that we are concerned with, is that right
18 or --

19 MS ABRAM: My understanding is that the corpus of documents
20 for the trial bundles in the case, we are not concerned
21 with all of those today.

22 JUDGE TURNER: No. I understand that. I understand that.
23 That is all going into the trial bundle.

24 But you are representing Apple?

25 MS ABRAM: I am for Apple, yes.

1 JUDGE TURNER: So if I could perhaps speak to
2 Professor Bailey.
3 Yes, of course Professor Bailey for Qualcomm.
4 I just wanted clarification. From your skeleton, I am
5 looking at paragraph 14.
6 PROFESSOR BAILEY: Yes, sir.
7 JUDGE TURNER: I just needed clarity on 14C, I think. So
8 these were internal Qualcomm documents. That is, as
9 I understand, produced by Qualcomm which refer to Apple
10 and Samsung which the parties would agree to maintain
11 was confidential in light of concerns raised by those
12 parties?
13 They are -- I may be misinterpreting that, that
14 seems to say that if a document refers to Apple or
15 Samsung then it is going to be treated as confidential
16 irrespective of whether it is confidential, am
17 I misunderstanding that?
18 PROFESSOR BAILEY: That is not quite right, sir. There is
19 a sort of background to this issue --
20 JUDGE TURNER: Yes.
21 PROFESSOR BAILEY: -- it is explained by Ms Fairhead in her
22 fourth witness statement, and I can try and summarise if
23 it would assist.
24 JUDGE TURNER: Yes.
25 PROFESSOR BAILEY: Last month, the solicitors for Apple and

1 Samsung expressed strong concerns about what would
2 happen to information that may be confidential to them
3 that is contained in internal Qualcomm documents.

4 JUDGE TURNER: Yes. I understand the point.

5 PROFESSOR BAILEY: It is not a simple passing reference like
6 if the word "Apple" appears then it would go into this
7 confidential bundle. But if on the other hand there is
8 a reference of a substantive nature to Apple and
9 Samsung, they said: well, we are concerned about any
10 de-designation where they had not had an opportunity to
11 look at that --

12 JUDGE TURNER: They have not seen these documents?

13 PROFESSOR BAILEY: They have not seen these documents
14 because they are internal to Qualcomm. The practical
15 dilemma is that there are hundreds of internal Qualcomm
16 documents, they contain Qualcomm confidential
17 information, they may contain Apple and/or Samsung
18 confidential information and of course other third
19 parties as well. So practically what my solicitors
20 discovered last month was that many of these documents
21 run to tens if not hundreds of pages. With the best
22 will in the world it would not be practically possible
23 to go through, identify what bits were specific to Apple
24 within an internal Qualcomm document, redact the other
25 bits, prepare a version that could be put to Apple in

1 sufficient time both for Qualcomm and Apple and/or
2 Samsung to apply.

3 So we wrote to the Class Representative and asked
4 for their bright ideas as to how to deal with this
5 issue. They didn't have any solutions. So we came up
6 with a pragmatic proposal, which was that in relation to
7 internal Qualcomm documents that make a substantive
8 reference to either Apple or Samsung information, rather
9 than go through the sort of myriad of steps in terms of
10 reviewing it, redacting it, putting it to the third
11 party, we put those in a confidentiality bundle so that
12 this would not involve a disproportionate amount of
13 time, work, effort and cost.

14 JUDGE TURNER: Mm.

15 PROFESSOR BAILEY: Of course that is critically important,
16 as I understand it, to the third parties, because they
17 are relying on these bundles to preserve their
18 confidential information.

19 It is important also to note, sir, that the Class
20 Representative was then asked whether it would agree to
21 these proposals and at least in August they did agree to
22 it without any reservation or qualification. They
23 expressed no concern about the implications for the
24 running of the trial. So that is essentially the
25 background to the third carve out --

1 JUDGE TURNER: What are we talking about in terms of the
2 300 -- let's assume, it may be a naive assumption, that
3 the documents we are going to be focusing on most are
4 those that have already been referred to in the
5 pleadings and witness statements, which are 300-odd.
6 How many of those will get caught by 14C?

7 PROFESSOR BAILEY: So we --

8 JUDGE TURNER: Is this going to be a practical problem for
9 the running of the trial?

10 PROFESSOR BAILEY: It is quite difficult. We have asked the
11 Class Representative to give us an indication of which
12 documents and which parts of documents that they seek to
13 rely upon at trial. We would then look and review those
14 and we could obviously again either de-designate it or
15 make a specific request. The Class Representative has
16 not given that indication, so we don't actually know yet
17 what part or parts of which documents in the trial
18 bundle they seek to rely upon.

19 We have -- because the Class Representative asked us
20 and it was in their skeleton argument as well -- sought
21 to work out the volume of documents that fall within
22 this category and my understanding, we wrote to the
23 Class Representative solicitors yesterday about this,
24 that we are talking about 80 documents that would be
25 confidential in full. That straddles both the additions

1 that were made mid-August --

2 JUDGE TURNER: 80 out of the 1,100 or 1,200?

3 PROFESSOR BAILEY: Correct. Then there is a further 50 that

4 would be partially confidential, so a total of 130,

5 which is roughly about 11 per cent of the total number

6 of documents in the bundle.

7 JUDGE TURNER: Right.

8 PROFESSOR BAILEY: I --

9 JUDGE TURNER: If Apple or Samsung had sight of these

10 documents they might form the view that there is nothing

11 confidential in that.

12 PROFESSOR BAILEY: That gives rise to the practical

13 difficulties that Ms Fairhead describes, that in order

14 for us to be able to put an internal Qualcomm document

15 to, say, Apple and its solicitors we would have to go

16 through that document. We would have to review it for

17 confidential information of Qualcomm, which we have

18 done, but we would also have to then review it for the

19 information that we believe to be confidential

20 potentially to, say, Apple and then any other third

21 party information, redact the document appropriately --

22 JUDGE TURNER: Well -- sorry, there is a bit I am missing.

23 So these are documents which as far as Qualcomm is

24 concerned no confidentiality attaches to that

25 document --

1 PROFESSOR BAILEY: No. These are internal Qualcomm
2 documents --

3 JUDGE TURNER: Right.

4 PROFESSOR BAILEY: -- which we also regard as confidential.

5 JUDGE TURNER: Okay. So they are being treated as
6 confidential in any event? I understand.

7 PROFESSOR BAILEY: To understand the quite specific concern
8 that was raised by the third parties, is that as they
9 understood it there could well be references --

10 JUDGE TURNER: Yes. I have that point. Sorry. I had not
11 appreciated -- so they are already --

12 PROFESSOR BAILEY: Confidential.

13 JUDGE TURNER: -- being treated as confidential by Qualcomm?

14 PROFESSOR BAILEY: Correct.

15 JUDGE TURNER: So this is not actually affecting the status
16 of documents as to how they are treated at trial. They
17 are confidential documents in any event. All that is
18 happening is you are putting them in the bundles because
19 you know that they are confidential for two reasons, not
20 just because of Qualcomm but because of Apple and
21 because of Samsung?

22 PROFESSOR BAILEY: Exactly. It is a pragmatic proposal,
23 because of course we have not vicariously on behalf of
24 Apple or Samsung looked at their information, but we do
25 understand their concerns and we obviously wanted to

1 assuage them as far as we could and we thought that this
2 proposal would do the trick and we understand that the
3 third parties agree with that.

4 JUDGE TURNER: Right. Understood. So do I have a draft
5 order?

6 PROFESSOR BAILEY: Not yet, sir. We didn't want to be so
7 presumptuous. We were proposing to draw up a draft
8 order in light of the decisions that you make at today's
9 hearing.

10 JUDGE TURNER: Right. I mean, I have read your skeleton and
11 I was broadly content with -- I was content with the
12 documents you set out from paragraph 18 to the end, that
13 they be treated at least for the time being as
14 confidential. I am grateful for the efforts that have
15 been made to identify the relevant passages. I was not
16 proposing today to go through the documents line by line
17 and go, "I'm not sure about that, could you help me?"
18 That's not the task for today, but obviously, as you
19 made clear, a great deal of effort has gone into
20 identifying which document is confidential, which is
21 extremely helpful.

22 I also understand from your skeleton that you are
23 not anticipating the trial will be interrupted.

24 PROFESSOR BAILEY: No. We have given that anxious
25 consideration as well.

1 First of all, I should say I am very grateful for
2 the indication from the Tribunal, that will be obviously
3 be music to my client's ears. Obviously they do take
4 this issue very seriously and they had sought to be
5 pragmatic and bear in mind open justice when reaching
6 the request that they have made.

7 JUDGE TURNER: Yes.

8 PROFESSOR BAILEY: As to the smooth running of the trial, we
9 with the Class Representative have a shared interest in
10 making it go as efficiently and smoothly as possible.
11 As you know, sir, from (inaudible) Licensing disputes
12 there are probably inevitably going to be certain parts
13 of the trial that will have to be dealt with in private.
14 I think both parties, as I understand it, are in
15 agreement that will be the case, just to allow fairness
16 to the witnesses, fairness to the experts. But we are
17 also hoping that the majority of the hearing can be
18 dealt with in open court by inviting the Tribunal to
19 read passages in the usual way.

20 JUDGE TURNER: Yes.

21 PROFESSOR BAILEY: So that is certainly our expectation. We
22 don't understand the Class Representative to demur from
23 that, but obviously he can indicate now if he has any
24 concerns.

25 MR ARMITAGE: No, we don't. Just thinking about the example

1 of the internal Qualcomm documents referring to Apple
2 and Samsung, one can see at least a proportion of those
3 are going to be important at the trial. Insofar as they
4 are being treated as confidential, we fully accept there
5 is going to need to be a way of managing that and it may
6 need to be private sessions at times.

7 JUDGE TURNER: Yes. There may be key documents we feel we
8 need to revisit the question of whether they would be
9 confidential, as you know which documents --

10 MR ARMITAGE: Of course. For example, the skeleton
11 arguments may be a staging post. You know, they will
12 refer to some confidential documents. And, as you say, moving
13 towards producing judgment these things can be
14 revisited, of course.

15 JUDGE TURNER: Obviously, insofar as they contain Apple,
16 Samsung or Huawei confidential information, they will
17 have to be involved in any decision to change the
18 status, obviously.

19 PROFESSOR BAILEY: Yes. We always understood there would be
20 a second stage where the Tribunal then prepares its
21 decision and needs to --

22 JUDGE TURNER: There may be an intermediate stage, which is
23 if a document is central to the trial and having read
24 it, when doubtful about the claims as to
25 confidentiality, they may require further opening up or

1 opening up entirely. That's a matter that will be kept
2 under review, so do not assume this is the final
3 position until we write our judgment. We will have
4 to --

5 PROFESSOR BAILEY: Yes.

6 JUDGE TURNER: -- deal with it pragmatically.

7 PROFESSOR BAILEY: Yes, sir, that isn't, to be fair,
8 a matter that I have canvassed with the third parties,
9 but obviously they hear what you say and it makes sense
10 that if a document is central --

11 JUDGE TURNER: Obviously in the event that this happens,
12 they will obviously have an opportunity to make their
13 position clear at that stage.

14 PROFESSOR BAILEY: Would it assist therefore if at least on
15 this side of the court we prepare a draft order that
16 gives effect to your decision in relation to the
17 documents that were subject to my client's request for
18 confidential treatment?

19 JUDGE TURNER: Yes. Just tell me, in broad terms, what the
20 order will embody. It will be the information in
21 paragraph 14 and identify the categories --

22 PROFESSOR BAILEY: Yes.

23 JUDGE TURNER: -- from paragraph 18?

24 PROFESSOR BAILEY: We will identify the application we have
25 made and the evidence that relates to it and then I

1 think in an annex to the order it will identify the
2 documents so the Tribunal knows which documents, perhaps
3 with the Bates numbers if we have them -- sorry, the
4 Opus references, so you can have a clear guide to what
5 was subject to our application.

6 JUDGE TURNER: Yes.

7 Now, I mean, you may have a number of different
8 confidential bundles. But insofar as we have these
9 confidential bundles, we are talking about up to 1,000
10 documents, some of them --

11 PROFESSOR BAILEY: Yes, that is just the contemporaneous
12 bundle, sir --

13 JUDGE TURNER: It does not include the --

14 PROFESSOR BAILEY: Yes, it does not include all of the
15 expert reports and witness statements and exhibits and
16 things like that.

17 JUDGE TURNER: Yes. Yes. I understand. So having a bundle
18 of 1,000 documents is not going to be terribly helpful
19 or manageable, particularly if one is thinking of hard
20 copies. So for presentation at trial, how are those
21 documents going to be organised? Is it going to be by
22 reference to -- cross-examination bundles and documents
23 to be shown to particular witnesses? Documents referred
24 to in -- I mean, has any thought been given to this yet?

25 PROFESSOR BAILEY: It is something that active thought is

1 being given to. As I understand it, one thing that both
2 sides probably will do is provide the Tribunal with
3 a reading list and you will see therefore the documents
4 that fall out from that. The President asked at the PTR
5 for a core bundle to be prepared for each of the members
6 of the Tribunal in a suitable format. I think when it
7 comes to the question of the contemporaneous documents,
8 it is probably one we should take away to see if there
9 is a practical way we could filter the, if I may use the
10 colloquial term, the hot docs which both sides say the
11 Tribunal really needs to read and have available to
12 them, which hopefully will be a much smaller subset --
13 JUDGE TURNER: I think it is not just that. It is also any
14 document that is going into a bundle, as I understand,
15 is a document you are going to rely on or potentially
16 rely on at trial --
17 PROFESSOR BAILEY: That's correct, sir.
18 JUDGE TURNER: -- they are not going in -- for other
19 reasons.
20 PROFESSOR BAILEY: To knock down trees, no.
21 JUDGE TURNER: So they still need to be organised other than
22 a bundle of here is a miscellaneous bundle of 1,000
23 confidential documents.
24 PROFESSOR BAILEY: I think that's probably a matter that we
25 would need to liaise with the Class Representative about

1 to ensure that we have an appropriate structure if there
2 is a way of getting categories or a way of grouping it
3 in a way that is navigable and manageable.

4 JUDGE TURNER: Or maybe relating to which witness you are
5 putting them to.

6 PROFESSOR BAILEY: Yes. In relation to that, you will
7 recall that in the PSA case the Tribunal ordered that
8 the notice requirement of documents that we have put to
9 witnesses.

10 JUDGE TURNER: Yes.

11 PROFESSOR BAILEY: The President made a similar direction at the
12 PTR, so in fairness to the witnesses and the experts, both
13 sides will have to prepare a list of the documents and
14 then we could provide either a distinct bundle in Opus
15 and/or a physical hard copy so that everyone has those
16 documents that will be put to that witness or expert.

17 JUDGE TURNER: Right. I think it would be helpful to have
18 some correspondence with the Tribunal at some stage when
19 you come up with a system and we can see if we have any
20 input into that.

21 PROFESSOR BAILEY: Would it assist if Qualcomm liaise with
22 the Class Representative and we see if we can find
23 common ground as to --

24 JUDGE TURNER: Absolutely, you will be discussing bundles
25 with each other anyway.

1 PROFESSOR BAILEY: We will and we have.

2 JUDGE TURNER: You could also just before they are

3 finalised, before the index is finalised --

4 PROFESSOR BAILEY: Yes. The index is due to be finalised on

5 16 September. In advance of that we can try and see if

6 we can come up with some proposals --

7 JUDGE TURNER: Maybe in a week or so you could -- yes.

8 PROFESSOR BAILEY: -- and run them by the Tribunal so that

9 they can be content.

10 JUDGE TURNER: Yes.

11 PROFESSOR BAILEY: Just to be clear, so I understand the

12 Tribunal's concern, is that you want something that is

13 manageable, you want something that is useful and you

14 want something that is not a morass of documents that

15 starts in 1993 and then works chronologically all the

16 way through to the present day.

17 JUDGE TURNER: That would seem -- there is just going to be

18 so many documents. Anyway, I'm not giving a firm

19 direction because I have not thought about it as much as

20 you have. But if you could give some active thought of

21 a sensible way of doing that.

22 PROFESSOR BAILEY: I am conscious obviously that we were not

23 the only ones making applications and obviously the

24 other parties will need to address you in relation to

25 those. I think if you are happy that we will prepare

1 a draft order for the Tribunal's consideration along the
2 lines that I have indicated, and obviously we can try
3 and make sure we mirror insofar as you are content with
4 the other applications.

5 JUDGE TURNER: Yes. Very good. Just give me a second

6 (Pause)

7 Right.

8 PROFESSOR BAILEY: Sorry. There is one other thing that
9 would be of great assistance. That is that we have been
10 engaging with the Class Representative for a date by
11 which they would give us an indication of the part or
12 parts of particular documents that they are going to
13 seek to rely upon so that we could make sure that they
14 can be reviewed and if possible de-designated.

15 If the Class Representative could give an indication
16 to us either today or tomorrow, that would obviously be
17 extremely helpful and would allow us to address some of
18 the bundles and the confidentiality issues.

19 MR ARMITAGE: I was going to push back slightly gently on
20 that one. This relates principally, I think, to the
21 documents that are above 20 pages, if that's right.

22 JUDGE TURNER: Yes.

23 MR ARMITAGE: Would have been subject to an agreed carve
24 out, at least pro tem. We certainly propose to address
25 this in the context of the written openings, they are

1 due on 19 September insofar as they refer to documents
2 that are over 20 pages and have not already been
3 reviewed for confidentiality. We say at that stage it
4 makes sense for those documents to be considered by
5 reference to the rule of thumb, effectively, that was
6 laid down at the PTR. That will hopefully result in
7 a degree of further de-designation, one hopes.

8 Insofar as there is a delta, if you like, of
9 documents that are greater than 20 pages not referred to
10 in the skeletons but maybe referred to at trial, for
11 example, in cross-examination, there is already
12 a process for advance notification of those documents,
13 inspired as it happens by your order in the Stellantis
14 case, we would not propose respectfully a separate
15 process where we give advance notification of those
16 pages, subject of course to the Tribunal's views.

17 JUDGE TURNER: Well, sorry, you say if it is a longer
18 document you will need to -- I can't remember what was
19 ordered in Stellantis.

20 MR ARMITAGE: Three business days before the relevant
21 cross-examination.

22 JUDGE TURNER: You should identify the relevant parts of the
23 document to the witness, in any event.

24 MR ARMITAGE: I think the mechanism actually is just that
25 the documents are notified.

1 JUDGE TURNER: Yes, but if it is a document over, let's say,
2 ten pages then you really need to say at least which
3 pages should be looked at.

4 MR ARMITAGE: I see.

5 PROFESSOR BAILEY: I only hesitate to jump up, because
6 I think we are eliding aligning two different issues. There is
7 fairness to the witness or expert, whereas the concern
8 I was raising was one about if it would assist the
9 Tribunal for Qualcomm to review for confidentiality
10 those documents which the Class Representative intends to rely
upon or
11 put, then obviously we need more time than 48 hours to
12 do it.

13 JUDGE TURNER: Obviously by the time the bundle is prepared
14 and/or the skeletons, depending on whether they are
15 referred to in the skeletons, it would be helpful to
16 identify which parts are confidential. It may be marked
17 up in some way.

18 MR ARMITAGE: We can endeavour to do that --

19 JUDGE TURNER: I don't see any need to do that before
20 skeletons are due. I just feel if we do it too early
21 then it will just end up being redone.

22 PROFESSOR BAILEY: Just to manage people's expectations in
23 terms of when the skeletons are served, obviously we
24 will be digesting it and preparing our substantive
25 defence. If we have to then go through confidentiality

1 of all of the provisions that we don't yet know that CR
2 are going to identify, it slightly depends on how many
3 there are I suppose is my word of caution.

4 JUDGE TURNER: It is an active process, no doubt, through
5 trial.

6 PROFESSOR BAILEY: Yes. I am grateful.

7 MR ARMITAGE: Yes.

8 JUDGE TURNER: For clarification, identifying documents to
9 be put to witnesses, and I appreciate two issues --

10 MR ARMITAGE: Yes.

11 JUDGE TURNER: But if they are more than, let's say, ten
12 pages you need to identify which pages you will be
13 putting to the witness.

14 MR ARMITAGE: By three business days before --

15 JUDGE TURNER: Yes, exactly. Insofar as you were referring
16 to these longer documents, either in your skeleton or
17 putting them in your bundles at the same time you should
18 have alerted Qualcomm to the relevant parts to give
19 Qualcomm an opportunity to review for -- it's a bit
20 late. I just wonder -- anyway, Qualcomm will then have
21 a -- before witnesses go into the witness box they will
22 certainly have an opportunity to review. Obviously if
23 you are swamped with too many documents, you may not be
24 able to do it in sufficient time.

25 PROFESSOR BAILEY: Indeed, sir. We understood that the

1 parties had actually agreed last month that we would
2 both reciprocally indicate to one another what documents
3 would be relied upon so they can be reviewed for
4 confidentiality. I think our current position would be
5 that if we leave it to the skeletons it is going to be
6 very late in the day and cause a bit of a time squeeze.
7 As you say, it may be actually impossible if there are
8 too many documents. If it could be done at least
9 a little bit in advance of when the trial bundle index
10 is meant to be finalised, which is 16 September, that
11 would obviously greatly assist and facilitate the
12 process, because it would build in a bit more time for
13 us to be able to review the documents. Perhaps it is
14 one we can take away in correspondence and see if we can
15 reach a landing, particularly if Qualcomm do the same on
16 a reciprocal basis.

17 MR ARMITAGE: I think we would respectfully ask that this be
18 aligned with the deadline for the skeleton, just because
19 there is an ongoing process of actually working out
20 documents and working out what we are going to be
21 relying upon. Obviously it should be reciprocal,
22 Qualcomm should have to do the same.

23 JUDGE TURNER: We will stick with those dates, the date of
24 the skeleton. Otherwise we will end up being given too
25 many documents to review and it won't be focused enough

1 or having to redo it.

2 MR ARMITAGE: I am grateful.

3 JUDGE TURNER: Good.

4 All right. Apple?

5 MS ABRAM: That takes us to the third parties' applications.

6 Just to be clear with the Tribunal, sir, about the way

7 that the third parties' applications interact with the

8 Qualcomm application. Certainly in Apple's case, there

9 is a great deal of overlap between the two so the --

10 JUDGE TURNER: Yes, I read that in your skeleton.

11 MS ABRAM: -- order that you have made in relation to the

12 documents mentioned in the Qualcomm application will

13 resolve a large part of the Apple application. But

14 there are some documents in respect of which Apple has

15 applied to maintain confidentiality that weren't the

16 subject of Qualcomm's application.

17 JUDGE TURNER: I understand that.

18 MS ABRAM: That is so for a couple of reasons. Some of them

19 are pedestrian, so for example, no criticism at all of

20 Qualcomm, but Qualcomm didn't have time in the time before

21 the latest batch of trial bundle editions and the

22 deadlines for this hearing to identify their

23 confidentiality claims to the documents in that batch,

24 whereas Apple by the superhuman efforts of Freshfields

25 did manage to do that. So there is an overlap in that

1 bit of the application but it is not complete.

2 There are also inevitably some documents that raise
3 particular concerns for Apple that don't raise
4 equivalent concerns for Qualcomm, so there are documents
5 where we have made confidentiality claims and Qualcomm
6 just aren't engaged with those documents in the same
7 way.

8 I am sorry.

9 PROFESSOR BAILEY: Can I just address you on what we are
10 proposing to do about that batch of documents that were
11 added to the bundle on 20 August? My learned friend is
12 right that we effectively, even the best will in the
13 world, we tried to be superhuman but we were not able to
14 go through all those documents on top of everything
15 else, but our proposal was --

16 JUDGE TURNER: I understand. That's a work in progress and
17 you will mirror what has happened -- I understand that.
18 I understand that.

19 MS ABRAM: But to a very large extent, the same
20 considerations apply to the Apple documents to the
21 extent they are not the same as the Qualcomm documents,
22 subject to the application. I am not sure whether, sir,
23 you have had an opportunity to consider the Apple
24 application in the same way.

25 JUDGE TURNER: I have, I have looked at it carefully. I am

1 extremely grateful to Apple for looking at these
2 documents in such a short space of time. It is very
3 helpful to the Tribunal, I appreciate you are not
4 a party to this action. Yes, I am content to -- I won't
5 say make the order sought -- treat the documents you have
6 identified as confidential, as confidential pro tem.
7 Obviously if for any reason it is necessary to revisit
8 that, then you should be given opportunity to make
9 further more detailed submissions on the documents --

10 MS ABRAM: I'm really grateful, sir. That substantially
11 resolves everything that I wanted to raise.

12 Can I just raise one very small point about timing,
13 which is more of a plea to the parties and to the
14 Tribunal than anything else. I appreciate that there is
15 a lot going on in this case and on the Tribunal's plate
16 and on the parties' plates. But Apple and doubtless the
17 other third parties too have had to do an awful lot in
18 very short time periods in relation to the documents
19 that were the subject of these applications. If for
20 example on three business days' notice we were to get
21 a whole list of documents which it was proposed were
22 going to be rendered nonconfidential, having been
23 treated as confidential in the proceedings for two or so
24 years, that is going to cause difficulties.

25 JUDGE TURNER: You need sufficient notice unless there is

1 a good reason not to have sufficient notice.

2 MS ABRAM: Yes, quite so. The CRO, the Confidentiality Ring

3 Order, provides for timings for these steps for

4 a reason --

5 JUDGE TURNER: It is likely to be once the judgment is --

6 possible it could arise before, it is most likely to be

7 once the judgment has been written, at least in draft.

8 So we can tackle that at that stage --

9 MS ABRAM: I hear what you say, sir. I am very grateful.

10 JUDGE TURNER: Samsung.

11 MR HOLMES: Yes, indeed.

12 JUDGE TURNER: Sorry, I have spent a little less time on the

13 Samsung documents than I have on the Apple documents,

14 I might just need a bit more assistance from you.

15 MR HOLMES: Of course, yes.

16 JUDGE TURNER: You have identified the various documents and

17 you are seeking confidentiality in their entirety, you

18 are not --

19 MR HOLMES: No, sir, the situation has moved on. We have

20 now produced versions that are less redacted which you

21 will find at the back of Samsung volume 4. We have

22 sought, in view of the -- they begin at tab 16.

23 JUDGE TURNER: Yes, just show me one so I get the approach.

24 MR HOLMES: Yes.

25 JUDGE TURNER: I see.

1 MR HOLMES: You will see we have sought to be constructive
2 by identifying those passages that contain specific
3 confidential material.

4 JUDGE TURNER: Okay. That's very good. Again, I am content
5 to have those documents treated as confidential.

6 MR HOLMES: I am grateful.

7 JUDGE TURNER: How are we doing this? Is it one order? It
8 is presumably one order -- you will be dealing with the
9 Apple and the Samsung applications in a single order,
10 with an indication that Apple and Samsung --

11 MR HOLMES: We will liaise about that, thank you.

12 JUDGE TURNER: Huawei.

13 MR RAYMENT: That's me, sir. I don't know where you have
14 reached on the Huawei materials.

15 JUDGE TURNER: Yes. I have read the letter and, again,
16 I was broadly content. Again, do we have redacted
17 versions or are these --

18 MR RAYMENT: I'm afraid we don't at the moment.

19 JUDGE TURNER: Right.

20 MR RAYMENT: We have offered to prepare those ASAP.

21 JUDGE TURNER: Yes. I would be grateful if you could do
22 that. I won't make an order to that effect, but if you
23 could --

24 MR RAYMENT: I am grateful.

25 JUDGE TURNER: ... give an indication that should be done,

1 and if there are any issues, we can come back and make
2 any necessary orders.

3 MR RAYMENT: I'm very grateful, sir.

4 JUDGE TURNER: How long would you anticipate needing for
5 that to produce redacted versions?

6 MR RAYMENT: I need to take precise instructions on that.

7 JUDGE TURNER: Is there anybody there you can take
8 instructions from?

9 MR RAYMENT: Yes, she is right --

10 JUDGE TURNER: Please feel free to come forward. (Pause)

11 MR RAYMENT: My solicitor says three days, but perhaps
12 I could ask for five, just to make sure.

13 JUDGE TURNER: Let's say a week anyway.

14 MR RAYMENT: A working week, thank you.

15 JUDGE TURNER: Thank you very much.

16 I am extremely grateful to all the third parties for
17 coming along and giving their assistance.

18 MS ABRAM: Sir, that leaves the question of costs in
19 relation to the third party application. I will make
20 a proposal in relation to costs, on behalf of Apple,
21 I don't make this on behalf of Samsung or Huawei, who
22 may have their own views. The question of costs of our
23 involvement in the proceedings, including this
24 application and this hearing, should be reserved to the
25 end of the proceedings.

1 JUDGE TURNER: Well, that makes my job easy today. Yes.

2 I don't know what the normal order is, whether there is

3 an established practice for what costs order to make in

4 this sort of situation. I haven't had a chance to --

5 MS ABRAM: Let me tell you what it is then, because I want

6 to make sure --

7 JUDGE TURNER: Yes.

8 MS ABRAM: The default position in the CAT is that a third

9 party who gets involved in proceedings should not

10 normally expect either to be the beneficiary or to bear

11 the burden of a costs order. Normally no costs orders

12 in either direction in the CAT for third parties.

13 This case is a bit different, because this is not

14 a case where my client has chosen to get involved in

15 proceedings of its own volition. We are much more like

16 a respondent to a third party disclosure order, where we

17 have had no choice, particularly in Apple's case where

18 our documents seem to be involved in these proceedings

19 where we are mere bystanders in a huge quantity and said

20 to be important, and we have had no option as a result

21 of Which?'s application of 16 July.

22 JUDGE TURNER: I understand the argument. What happens in

23 the 1782 application, you presumably don't get costs?

24 MS ABRAM: No, because it is in the US. It is not for me to

25 criticise that.

1 Here, in the UK, in this jurisdiction, we would
2 expect for our costs to be paid if we were the
3 respondents to a third party disclosure order. The
4 argument that I want to be able to make in the future,
5 I'm not making it today, I'm just telling you what it
6 will be, is that we are effectively in that position, we
7 have had no choice about it --

8 JUDGE TURNER: No, I understand the argument. Obviously it
9 would be helpful if you have any authority to support
10 that position, any analogous cases from the High Court,
11 not necessarily from the CAT. When you come to argue
12 it, that would be helpful.

13 MS ABRAM: I am very grateful.

14 MR HOLMES: May we also make like provision --

15 JUDGE TURNER: Yes.

16 MR RAYMENT: Just for the record, the same for Huawei,
17 obviously we are very remotely associated with the
18 case --

19 JUDGE TURNER: Yes, you are even more remote.
20 If you could just send in the draft order. I think
21 that is hopefully everything.

22 (10.43 am)

23 (The hearing adjourned)

24

25