

36. *Chronology of the litigation.* HTC has been a licensee of Nokia's portfolio of standard-essential patents since 2003. For the reasons explained in Confidential Annex 3 to my previous judgment, HTC has known since October 2008 that Qualcomm customers were not licensed under Nokia's patents without a separate licence from Nokia and that Nokia was offering licences for certain Nokia patents to Qualcomm customers. There is no evidence that HTC had any reason to believe that its position would be any better so far as Broadcom chips were concerned. At some point in 2011, Nokia communicated to HTC its belief that HTC was infringing a number of Nokia's non-essential patents and asked HTC to stop using the technology or alternatively to take a short term licence to give HTC time to work around the patents. HTC did neither of those things, however.

37. On 2 May 2012 Nokia sued HTC for infringement of the Patent (and other patents) in Germany. (It also brought proceedings in the USA in respect of various patents.) Nokia's complaint of that date alleged infringement by HTC phones containing Broadcom BCM4239 and BCM4330 chips. The allegation of infringement was supported by circuit diagrams showing the features of the claims. These were based on reverse engineering analyses (so-called "teardowns") of the chips conducted on behalf of Nokia by a company called UBM TechInsights. (I interpolate that HTC's position at earlier stages of these proceedings were that these analyses were unreliable, yet at the hearing on 28 November 2013 counsel for HTC submitted that they were indicative, if not definitive).

38. In response to the German proceedings for infringement, HTC commenced these proceedings by claiming for revocation of the Patent on 17 May 2012 (it also applied to revoke other Nokia patents). Nokia brought a cross-action for infringement on 23 July 2012 (it also brought claims for infringement of other patents). Originally, Nokia complained of infringement of the Patent by various HTC phones incorporating Broadcom BCM4329 and BCM4330 chips (i.e. the same chips as in Germany). No application was made by Nokia for an interim injunction.

39. In November 2012 HTC launched its 8S and 8X phones containing the Qualcomm WTR1605 chip in the UK. In December 2012 HTC launched its One SV phone containing the Qualcomm WTR1605(L) and Broadcom BCM4334 chips in the UK. Nokia commissioned teardowns of these chips from UBM TechInsights. On 22 March 2013 (Broadcom BCM4334) and 30 April 2013 (Qualcomm WTR1605(L)) Nokia wrote to HTC alleging infringement of the Patent by phones containing these chips. Also on 30 April 2013 Nokia sent HTC copies of the UBM TechInsights reports. On 16 May 2013 Vos J granted Nokia permission to amend its Particulars of Infringement to raise these allegations. At the same time, Nokia also obtained permission to amend its claim to allege infringement by phones containing Qualcomm RTR6285 and RTR6285A chips.

40. In the meantime, HTC launched its One phone, which contains the Qualcomm WTR1605L chip, in March 2013. This phone also contains a Broadcom BCM4335 chip. As described below, the One is currently HTC's flagship phone.

41. HTC subsequently counterclaimed for a declaration of non-infringement in relation to phones containing Qualcomm RTR6285 and RTR6285A and Broadcom BCM4335 chips. On 17 September 2013 Nokia admitted that the Bluetooth transmit path of the Broadcom BCM4335 chip did not infringe the Patent. On 25 September 2013 Nokia admitted that the transmit path from the baseband input to the output of the radio frequency upconverter of the Qualcomm RTR6285 and RTR6285A transceiver chips did not infringe the Patent. There is no evidence that these three chips infringe in any other way.

42. HTC launched its One Mini phone in August 2013. This phone contains a Qualcomm WTR1605L chip and a Broadcom BCM4334 chip. HTC has revealed that the decision to include the Broadcom BCM4334 chip in this phone was taken on 2 January 2013 (i.e. about eight months after Nokia started the German proceedings).

43. HTC launched its One Max phone in October 2013. This phone also contains a Qualcomm WTR1605L chip. It does not contain any of the Broadcom chips I have mentioned. It appears that by this point in time HTC had stopped selling the One SV in the UK.

44. The trial took place on 7-11 October 2013 and I gave judgment on 30 October 2013. By that date HTC had known of the allegation of infringement by the Broadcom BCM4329 and BCM4330 chips for nearly 18 months and had known of the allegation of infringement by the Qualcomm WTR1605(L) and Broadcom BCM4334 chips for six months. In my judgment I concluded that the Broadcom BCM4329 and BCM4334 chips and the Qualcomm WTR1605(L) chips infringed. Nokia's evidence is that there is no material difference between the Broadcom BCM4329 and BCM4330 chips for this purpose, and HTC has not adduced any evidence to the contrary.