



JUDICIARY OF
ENGLAND AND WALES

A View from the UK

AIPPI 100 Event
Zeist, 11 March 2026

(Mr Justice) Richard Meade
Judge in Charge of Intellectual Property, High Court of England and Wales

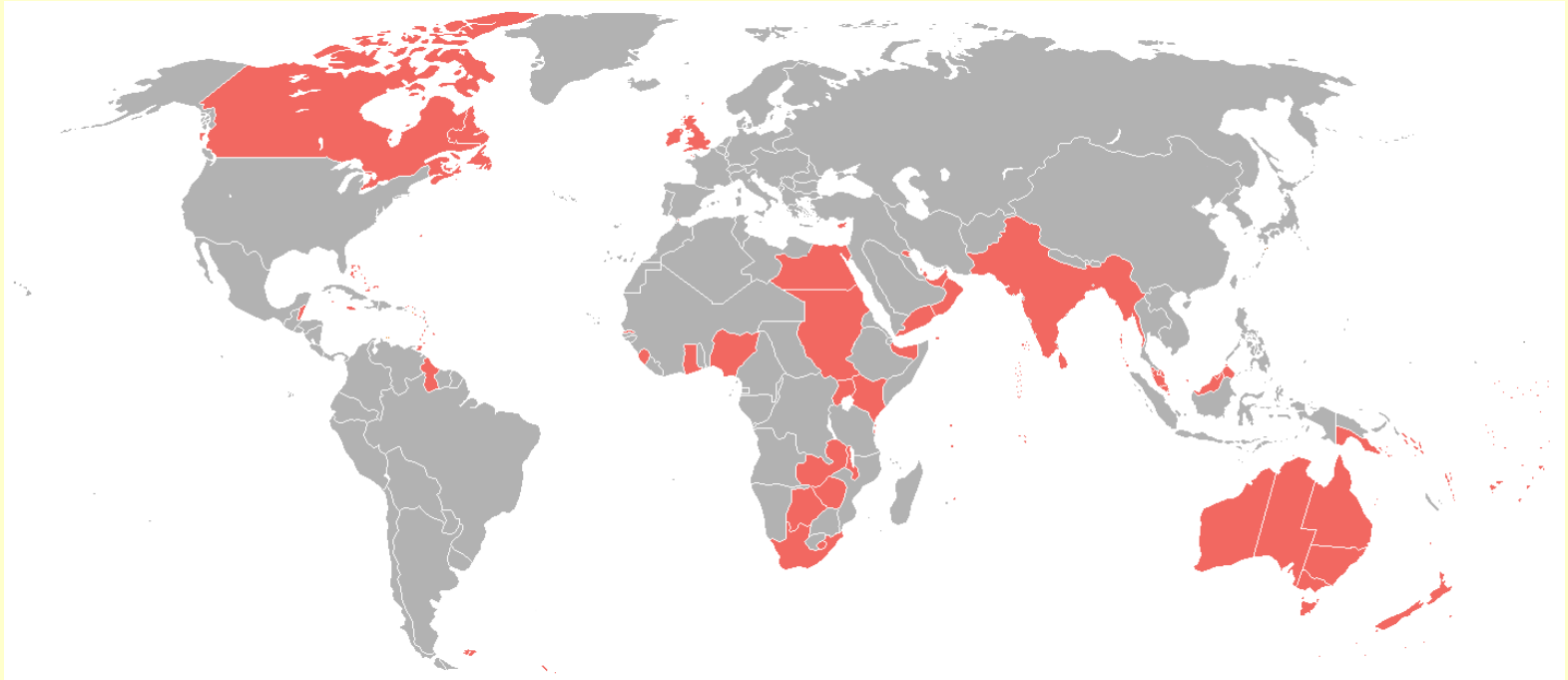
Judicial Imperialism ?

What comes next ?

Thanks and acknowledgments

- **AIPPI**
- **Legal community of the Netherlands**
- **UPC**
- **ETSI**

1893



- The Moçambique rule: the House of Lords decision in *British South Africa Co v. Companhia de Moçambique* [1893] AC 602

1991



- *Tyburn Productions v Conan Doyle* [1991] Ch 75
- Declaration that US copyright did not exist refused: no jurisdiction

2011: A Different Empire



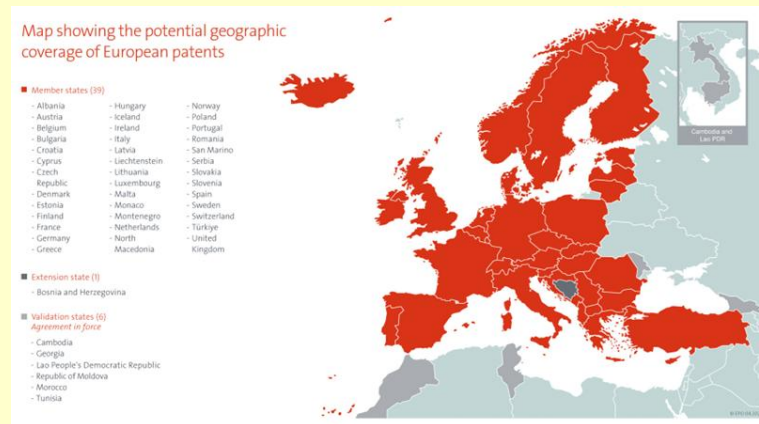
- *Lucasfilm v Ainsworth* [2011] UKSC 39: *Tyburn* wrongly decided: US copyright is justiciable in the UK at common law
- Position on patents left open: at least in relation to validity

Things have changed ...

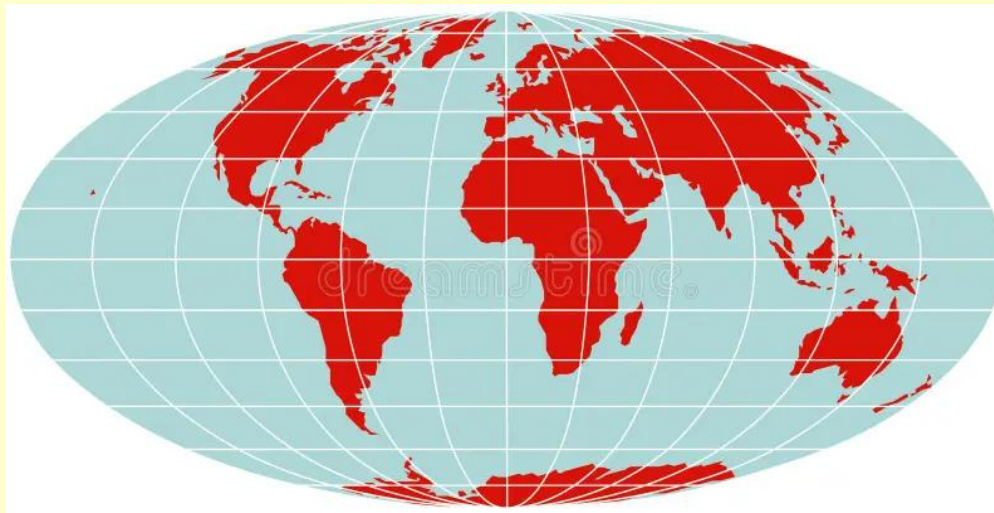
- **Brexit**
- **Brussels regime context**
- **FRAND**
- ***BSH v Electrolux***

Effect of BSH

- **UPC courts have wide jurisdiction:**



- **National EU courts have wider jurisdiction:**



Life after *BSH*

- **Interim injunctions**
- **Practical effect**
- **Stays**

Early Issues, Questions

- **Jurisdiction asserted by national court over US patents; US antisuit**
- **UPC claim over UK patents *Fujifilm v Kodak* – ongoing**
- **No responsive litigation in the UK yet**
- **Will depend on what litigants seek**
- **Is validity of a foreign patent justiciable? The *Lucasfilm* question**

FRAND



6.1 When an ESSENTIAL IPR relating to a particular STANDARD or TECHNICAL SPECIFICATION is brought to the attention of ETSI, the Director-General of ETSI shall immediately request the owner to give within three months an irrevocable undertaking in writing that it is *prepared to grant irrevocable licences on fair, reasonable and non-discriminatory ("FRAND") terms*

FRAND - competition law or contract?

- Is this the right question? Can both be relevant?
- *Huawei v ZTE* – clearly competition analysis, is it a complete code?
- History of ETSI and approval by the Commission
- If it is contract as well – implementers have substantive rights
- If it is contract as well – different attitude to jurisdiction

Ideal FRAND Scenario

- Patentee is paid
- Implementer can use the standard and be on the market
- Royalties are FRAND (within the FRAND “corridor” or “range”)
- No hold up or hold out

If any of these is not achieved, it needs to be justified

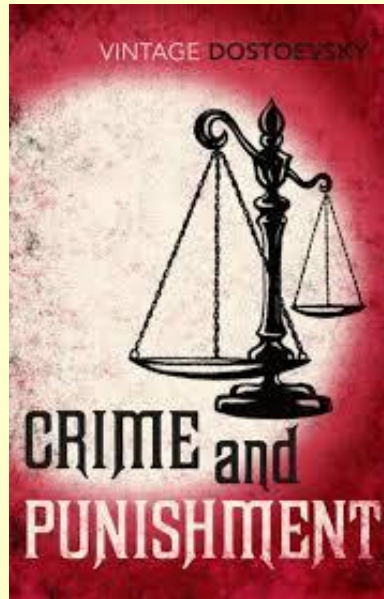
UK Approach

- *Unwired Planet* Supreme Court case – can set global rates
- Sought first by *patentees* as an answer to “madness”
- Based on right to a *UK* injunction
- Rates set in several cases
- What to do while waiting for the FRAND trial?
- Litigants have changed, *implementers* started applying

Approach of German Courts

- *Huawei v ZTE* “dance”
- Patentee must make an offer not obviously non-FRAND
- Then over to the implementer
- Conduct, and offer in FRAND range
- Very few successful FRAND defences
- Injunction followed by negotiation

Disincentive or punishment for hold out?



- Does UK approach disincentivise hold out enough?
- Germany: effectively a fine for making the wrong offer, or negotiating misconduct? Loss of contractual right?
- Have genuine disagreements over rates replaced hold out? ¹⁶

Anti-suit injunctions



- **Date back to the 14th century**
- **Initially domestic**
- **Later, international**
- **Main uses not in IP and many positive or not controversial**
- **“Dangerous”**

Anti-suit injunctions – European context

- *Turner v Grovit* (Case C-159/02)
- “Principle of mutual trust” – no anti-suits between member states in any circumstances

Interim Licence Declaration

- *Panasonic v Xiaomi, Ericsson v Lenovo, Nokia v Amazon*
- Refused in *Samsung v ZTE* by the Court of Appeal
- Not coercive, persuasive
- But not seen that way: deterrent even if not preventative
- Anti-suits granted in *Amazon v InterDigital, Samsung v ZTE*

Storm in a teacup?



- Language matters
- Completely prevents the bringing of a substantive contract claim
- Against ETSI proceedings (DE Court in Munich)

What comes next?

