



Neutral Citation Number: [2025] EWCA Civ 1667

Appeal Nos: CA-2024-002773 and CA-2025- 000387

Claim No: CL-2022-000219

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS**  
**COMMERCIAL COURT (KBD)**

Mr Justice Calver

[2024] EWHC 2891 (Comm)

Sean O'Sullivan KC sitting as a Deputy Judge of the High Court

[2025] EWHC 257 (Comm)

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 19/12/2025

**Before:**

**SIR GEOFFREY VOS, MASTER OF THE ROLLS**

**and**

**LORD JUSTICE POPPLEWELL**

**-Between:**

**(1) MOTOROLA SOLUTIONS, INC**  
**(2) MOTOROLA SOLUTIONS MALAYSIA SDN BHD**

**Claimants/**  
**Appellants**

**- and -**

**(1) HYTERA COMMUNICATIONS CORPORATION LTD**  
**(2) HYTERA AMERICA, INC**  
**(3) HYTERA COMMUNICATIONS AMERICA (WEST), INC**

**Defendants/**  
**Respondents**

**Thomas Sprange KC, Kabir Bhalla and Gayatri Sarathy (instructed by King & Spalding LLP) for the Claimants/Appellants (Motorola)**

**Stephen Rubin KC, Alexander Milner KC and Leah Gardner (instructed by Steptoe International (UK) LLP) for the Defendants/Respondents (Hytera)**

Hearing dates: 9 and 10 December 2025

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on Friday 19 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

**SIR GEOFFREY VOS, MASTER OF THE ROLLS and LORD JUSTICE POPPLEWELL:**

**Introduction**

1. These appeals raise two important questions concerning the enforcement of foreign judgments in England and Wales.
2. The question raised by the first appeal (the first appeal) from Calver J (the judge) is as to the proper construction of section 5 of the Protection of Trading Interests Act 1980 (section 5), which precludes enforcement of a foreign “judgment for multiple damages”, defined as “a judgment for an amount arrived at by doubling, trebling or otherwise multiplying a sum assessed as compensation for the loss or damage sustained by the person in whose favour the judgment is given”. The question, in essence, is whether section 5 prohibits enforcement of only the additional multiple element of the damages award or also prohibits enforcement of the compensatory element of the damages award. The judge decided that section 5 precluded the enforcement of the entire award.
3. The questions raised by the second appeal (the second appeal) from Mr Sean O’Sullivan KC, sitting as a deputy judge of the High Court (the deputy judge), are as to the court’s power to revoke a final judgment granted in England and Wales to enforce a foreign judgment, when that foreign judgment is itself overturned on appeal. The deputy judge revoked the foreign judgment under CPR Part 3.1(7), which is a provision relating to the case management powers of the court. It eventually became common ground that the more appropriate power was contained in CPR Part 40.8A. The question then arose as to whether the revocation granted under CPR Part 3.1(7) could stand, or whether it should be set aside. The final question in the second appeal was whether, and if so how, this court should remake the deputy judge’s decisions as to revocation and/or a stay of the English Judgment.
4. Motorola entities are the appellants in both appeals. There is no need to distinguish between them. Motorola is headquartered in Chicago, Illinois. Motorola’s business includes the development and manufacture of two-way radio equipment. Hytera is Motorola’s competitor in that industry. The first Respondent (HCC) is incorporated and headquartered in China, and the second and third respondents are two of HCC’s US subsidiaries.
5. In 2017, Motorola commenced proceedings against Hytera in the US District Court for the Northern District of Illinois, Eastern Division (the Illinois Court). The claim was for theft of its intellectual property, trade secret misappropriation and copyright infringement. The causes of action were under two US statutes, namely the Copyright Act and the Defend Trade Secrets Act (the DTSA). The DTSA allows for the award of punitive (or exemplary) damages of up to twice the compensatory damages if breaches are wilful and malicious.
6. Following a jury trial, the Illinois Court gave various judgments (the Illinois Judgments) for Motorola against Hytera whose constituent elements are:
  - (1) compensatory damages of US\$136.3 million under the Copyright Act;

- (2) compensatory damages of US\$135.8 million under the DTSA;
  - (3) punitive damages under the DTSA of US\$271.6 million (i.e. double the compensatory damages awarded under the DTSA);
  - (4) US\$51,128,975 in pre-judgment interest;
  - (5) US\$34,244,385.50 in attorney fees;
  - (6) US\$2,674,631.36 in costs (i.e. disbursements); and
  - (7) An entitlement to post-judgment interest.
7. In April 2022, Motorola commenced proceedings in the Commercial Court to enforce the Illinois Judgments, with the exception of the compensatory and punitive elements awarded under the DTSA (i.e. heads (2) and (3) in [6] above). It now wishes also to enforce head (2), the compensatory element of the DTSA damages. In August 2022, Motorola appealed the Illinois Judgments to the US Court of Appeals for the Seventh Circuit (the USCA). Whilst that appeal was pending, Motorola sought summary judgment in respect of head (1), the compensatory damages of US\$136.3 million awarded under the Copyright Act. Hytera consented to judgment in that sum and sought a stay of execution pending the appeal to the USCA. Cockerill J gave judgment in November 2023 for US\$136.3 million plus interest (the English Judgment) and granted a temporary stay until Hytera's substantive stay application could be heard after the service of evidence. In January 2024, Jacobs J stayed the English Judgment pending the USCA appeal decision on condition that Hytera paid US\$25 million (the US\$25 million) into court, which it did.
8. The USCA judgment was handed down on 2 July 2024. It reversed the award of copyright damages in two respects and remanded the case for further proceedings before the Illinois Court consistent with its opinion. The USCA judgment overturned the damages of US\$136.3 million plus interest and required a new assessment of the copyright damages to which Motorola was actually entitled (the Assessment). It was common ground before us that the maximum damages likely to be awarded on the Assessment is about US\$14.67 million plus interest. Hytera's position is that an award between zero and US\$1.5 million is appropriate. The Assessment of the Illinois Court is still awaited.
9. Following the USCA judgment, on 15 July 2024, HCC issued an application notice seeking an order that the English Judgment be revoked pursuant to CPR Part 3.1(7), alternatively a permanent stay, and an order for the return of the US\$25 million held in court pursuant to the order of Jacobs J, on the grounds that the entire basis of the English Judgment had fallen away (the revocation application).

*The first appeal*

10. Before the revocation application could be heard, the trial of the remainder of the claim took place in November 2024. Motorola pursued its heads of claim (4)-(7) in respect of interest, fees and costs (see [6] above), but not (as we have said) head (2) in respect of the compensatory award under the DTSA. The main issue at trial was whether enforcement of such claims was precluded by section 5. Hytera contended that section

5 was fatal to enforcement of: (a) the compensatory and punitive damages under the DTSA, and (b) the parts of the Illinois Judgments in respect of interest, fees and costs. Motorola contended that section 5 only barred enforcement of the punitive element of a judgment for multiple damages, not the compensatory element. The judge held that section 5 barred enforcement of the compensatory and punitive damages under the DTSA and also the claims for interest, fees and costs. Males LJ granted permission in the first appeal.

11. For the reasons given below, we agree with the judge that section 5 precludes recovery of the compensatory and punitive damages under the DTSA and also the claims for interest, fees and costs. Accordingly, we have decided to dismiss the first appeal.

*The second appeal*

12. The revocation application (to set aside the English Judgment for US\$136.3 million plus interest) came before the deputy judge in January 2025. The deputy judge set aside the English Judgment and ordered the return of the US\$25 million. He granted permission to appeal and stayed the return of the US\$25 million pending the appeal, save that he reduced the US\$25 million to US\$20 million (the US\$20 million) to reflect the maximum which Motorola could expect to recover in Copyright Act compensation plus interest and costs on the Assessment. The second appeal is against the deputy judge's decisions on revocation of the English Judgment.
13. For the reasons given below, we have decided that the revocation application ought to have been made under CPR Part 40.8A, rather than CPR Part 3.1(7). We have, accordingly, decided to reverse the deputy judge's decision made under CPR Part 3.1(7). We have also decided that it is appropriate for this court to remake the judge's decisions. In our view, the English Judgment ought not to be revoked at this stage, whilst the US proceedings are on foot and the Assessment has not been provided by the Illinois Court. In the meantime, the stay should be continued with the US\$20 million remaining in court.
14. We will deal with our reasons under the following headings: (i) the relevant facts and procedural history, (ii) the first appeal (the meaning of section 5), (iii) the second appeal (revocation of the English Judgment), and (iv) conclusions.

**The relevant facts and procedural history**

15. It is necessary to fill in a little more of the detail of what is a fairly complicated procedural history.
16. On 14 March 2017, Motorola commenced its proceedings against Hytera in the Illinois Court. Motorola proved at trial that Hytera had stolen 21 distinct trade secrets which formed the "playbook" by which Motorola engineers built its own two-way radios. The jury entered its verdicts in favour of Motorola on 14 February 2020. Its verdicts were reflected in the Illinois Court's order of 5 March 2020, which provided that:

FINAL JUDGMENT is hereby ENTERED in favor of [Motorola] against [Hytera] for US\$345,761,156 in compensatory damages and US\$418,800,000 in punitive damages.

17. It is common ground that such sums were made up as follows:
- i) About US\$136.3 million as compensatory damages under the Copyright Act. These damages were in respect of the period from 2010 to 10 May 2016, the day before the DTSA came into force. Although described as compensatory damages (to distinguish them from punitive damages awarded under the DTSA), they in fact represented disgorgement of profits made by Hytera rather than loss of profits to Motorola.
  - ii) US\$209.4 million as compensatory damages for Hytera's trade secret misappropriation under the DTSA. These damages were in respect of the period between 11 May 2016 and 30 June 2019 and were made up of (a) US\$135.8 million as the net profits which Hytera had made from the DTSA breaches, and (b) US\$73.6 million in Hytera's avoided research and development costs. These damages too represented disgorgement of Hytera's profits and savings, exceeding the US\$81 million which Motorola proved to have been its own attributable loss of profit.
  - iii) US\$418.8 million as DTSA punitive damages, being double the compensatory DTSA damages of US\$209.4 million.
18. On 24 April 2020, Jacobs J granted a domestic freezing order over Motorola's assets in support of the US proceedings. That order was set aside by the Court of Appeal on 11 January 2021 on the grounds that Motorola had not established a sufficient risk of dissipation ([2021] EWCA Civ 11, [2021] QB 744).
19. Three days earlier, on 8 January 2021, the Illinois Court delivered a narrative judgment rejecting all but one of the challenges to the amounts that the jury had awarded. It reduced the DTSA compensatory damages to US\$135.8 million, because the jury verdict involved double recovery. As a result, the total compensatory damages were reduced to US\$272,177,259, and the total DTSA punitive damages were reduced to US\$271.6 million (i.e. twice US\$135.8 million).
20. The narrative judgment ended with the words "IT IS SO ORDERED". It did not identify clearly whether and to what extent it was substituting separate awards in respect of the constituent parts of the damages. We think that the right way to read it is that it was amending the order of March 2020 so as to give judgment in favour of Motorola for: (a) compensatory damages of US\$272,177,259 and (b) punitive damages of US\$271.6 million. That is not, however, critical to our analysis of the issues. It is clear that the varied judgment comprised the following three constituent parts:
- i) About US\$136.3 million as compensatory damages under the Copyright Act in respect of the period from 2010 to 10 May 2016; and
  - ii) US\$135.8 million as compensatory damages for Hytera's trade secret misappropriation under the DTSA, in respect of the period from 11 May 2016 to 30 June 2019; and
  - iii) US\$271.6 million as punitive damages in respect of the DTSA claim, being double the compensatory DTSA damages of US\$135.8 million.

21. On 8 January 2021, the Illinois Court also granted Motorola's motion for pre-judgment interest "on the full award, as reduced by the Court's finding of facts and conclusions of law". It was to be calculated from March 2010 to 5 March 2020. The Illinois Court also held that post-judgment interest should be calculated on the entire award, but we were not told whether it was.
22. On 10 March 2021, the Illinois Court awarded Motorola its reasonable attorney fees under: (i) the DTSA on the grounds that the breaches were wilful and malicious, and (ii) under the Copyright Act by the exercise of a general discretion. The parties were directed to seek to agree the amount of such fees.
23. On 6 August 2021, the Illinois Court awarded Motorola costs (disbursements) against HCC in the sum of US\$2,674,631.36 (with liberty to apply against the US subsidiaries), on the basis that Motorola was the "prevailing party" in that it had been awarded "the full amount of damages Motorola requested", both compensatory and punitive. Hytera did not suggest to the judge or to us that it was possible to separate out the total costs award so as to be able to attribute a particular constituent amount as awarded in respect of the Copyright Act claim or in respect of the compensatory damages awarded under the DTSA claim.
24. Following the submission of rival calculations on interest, on 10 August 2021, the Illinois Court accepted Hytera's figures and made an award against Hytera in favour of Motorola of US\$51,128,975 in pre-judgment interest. It was common ground before us that such sum was calculated as interest on the compensatory damages awarded, both under the Copyright Act and under the DTSA; but that no part of it constituted interest on the punitive DTSA damages. There was no attempt before the judge or us to identify what part applied to the Copyright Act damages and what part to the compensatory DTSA damages, although it is apparent from the narrative judgment that the interest was calculated as commencing month by month by reference to Hytera's monthly sales over the period from March 2010 to June 2019, so that such separation calculation ought in theory to be possible.
25. On 15 October 2021, the Illinois Court awarded Motorola US\$34,244,385.50 in attorney fees against HCC. Motorola did not seek before us or the judge to identify any part of that as separately referable to the successful Copyright Act claim as opposed to the DTSA claim as a whole, nor as to the compensatory damages awards as opposed to the punitive damages award.
26. The constituent parts of the various awards by the Illinois Court were therefore those set out at [6] above.
27. Motorola's claim form dated 28 April 2022 sought judgment for the compensatory Copyright Act damages, the total pre-judgment interest and the disbursement costs totalling US\$190,164,762.36, together with interest. The Particulars of Claim sought also (a) the compensatory damages under the DTSA by characterising them as Copyright Act damages, (b) the attorney fees, and (c) post-judgment interest which Motorola quantified at either US\$618,042.29 or US\$374,922.51 at the date of the claim form. In other words, the claim was for all the Illinois Court awards **except** for the punitive damages element of the DTSA claim. Credit was also given for US\$14.9 million recovered from the Hytera US subsidiaries in bankruptcy proceedings on 25 February 2022 and (later on) 22 December 2022.

28. The pursuit of the proceedings was delayed by: (a) Hytera's service/jurisdictional challenge, which Picken J rejected on 11 November 2022, and (b) a stay imposed by Mr Simon Rainey KC sitting as a deputy judge of the High Court for Motorola's failure to pay the costs ordered by the Court of Appeal on the freezing order appeal (and ordered by the Supreme Court when refusing Motorola permission to appeal). In due course the stay was lifted after Motorola paid those costs on 27 June 2023.
29. In the meantime, on 3 August 2022, HCC had filed an appeal against the Illinois Judgments to the USCA, following an earlier attempted appeal which had been dismissed for lack of jurisdiction. On the appeal, HCC did not challenge liability, but advanced six challenges to the damages awards. In respect of the Copyright Act damages, it argued that: (i) copyright damages should not have been awarded for its sales outside the US, (ii) copyright damages should have been apportioned to account for its own contributions to its profits, and (iii) the Copyright Act barred recovery of damages for breaches committed more than 3 years before the copyright claims were added. In respect of the DTSA damages awards, it argued that: (iv) DTSA damages should not have been awarded for its sales outside the United States, (v) DTSA damages should have been apportioned to account for its own contributions to its profits, and (vi) the DTSA punitive damages violated the Fifth Amendment's due process clause.
30. After the stay was lifted in the English proceedings, Motorola filed an amended Claim Form and Amended Particulars of Claim on 14 July 2023. These claimed the same amounts as identified in the unamended Particulars of Claim (subject to typographical and arithmetic corrections) and made clear that the DTSA compensatory damages were sought on the basis that they represented damages to which Motorola would have been entitled under their Copyright Act claim which included the period from 11 May 2016 to 30 June 2019. There was no claim for that sum if and insofar as it was the compensatory damages element of the treble damages awarded on the DTSA claim (which it was).
31. Hytera filed its Defence on 8 August 2023, saying at [2] that it was pleading without prejudice to its arguments on the appeal to the USCA. Hytera admitted at [15] that the Copyright Act damages award in the sum of US\$136.3 million was enforceable "expressly without prejudice to [Hytera's] appeal before the Seventh Circuit Court, in which [Hytera] disputes the Illinois Court's jurisdiction to make the orders it made against Hytera". The reference to jurisdiction is not readily understandable, but we take it to be a reference to the first three grounds of challenge in the USCA appeal described at [29] above.
32. On 2 October 2023, Motorola applied for summary judgment on the Copyright Act damages award of US\$136.3 million plus interest. On 26 October 2023, Hytera applied for a stay of execution under CPR Part 83.7(4)(a) on any judgment entered on Motorola's summary judgment application pending the outcome of the USCA appeal.
33. Hytera consented to the summary judgment application, realistically recognising the well-established principle that a pending appeal against a final foreign first-instance judgment is not a bar to it being enforced in this jurisdiction. As we have said at [7] above, Cockerill J's English Judgment for the US\$136.3 million copyright damages plus interest was entered by consent on 9 November 2023. It followed a CMC hearing on 3 November 2023, and grant of an interim stay of execution under CPR Part

83.7(4)(a) until the substantive hearing of the stay application, for which she gave directions.

34. On 19 January 2024, Jacobs J stayed the English Judgment under CPR Part 83.7(4)(a) (see [90] below) until the USCA judgment on the appeal was handed down (the hearing of which had taken place on 5 December 2023 but with judgment still pending) on condition that Hytera pay US\$25 million into court by 19 March 2024 ([2024] EWHC 149 (Comm)). Having considered detailed evidence from HCC, Jacobs J concluded that a stay was justified by the fact that HCC had limited free assets from which to meet the English Judgment; and that if it were required at that time to liquidate sufficient assets to meet the judgment sum, it would have to dismantle its business irreversibly, which would be unfairly prejudicial should the pending USCA appeal succeed. The US\$25 million was selected by reference to Hytera's resources and what it could reasonably have been expected to be able to provide without undue disruption to its business. The US\$25 million was not connected to any assessment of the potential outcome of the USCA appeal. Mr Alexander Milner KC, for Hytera, accurately characterised the US\$25 million simply as the price which Hytera had to pay in order to secure the stay of execution of the English Judgment.
35. Extensions of time were granted by Motorola to Hytera for payment of the US\$25 million into court. The full amount was ultimately paid into court by Hytera in accordance with such extensions.
36. As we have said at [8] above, the USCA judgment was handed down on 2 July 2024, accepting Hytera's first and second challenges. It held that, in respect of the Copyright Act damages, the profits should be limited to those earned in the US, and that Hytera was entitled to reduce such damages to reflect its own contribution to them. Those matters were remanded to the Illinois Court for them to be quantified. The DTSA challenges were rejected. The rival arguments on the effect of the successful appeal in relation to the Copyright Act damages were that Hytera contend that they would be reduced to zero, whereas on Motorola's best case they would be reduced to about US\$14.6 million, plus interest.
37. The dispositive part of the USCA's order provided that:

The judgment of the district court is REVERSED IN PART with respect to the availability of copyright damages for Hytera's extraterritorial sales, Hytera's entitlement to prove apportionment of its copyright damages under a proximate cause theory, and the denial of Motorola's Rule 60(b) motion for reconsideration of the denial of injunctive relief. The case is REMANDED for further proceedings on those issues consistent with this opinion. In all other respects, the judgment of the district court is AFFIRMED.
38. The USCA judgment was further reflected in the court's mandate issued on 15 October 2024 by which it "remand[ed] for the district court to recalculate the copyright damages limited to Hytera's domestic sales and to reconsider the issue of apportionment. This means the copyright award will ultimately be reduced substantially from the original award of US\$136.3 million, perhaps roughly by an order of magnitude".
39. The deputy judge (at [20]) treated the effect of that order as being that the whole of the Copyright Act damages award was no longer valid and was remitted to the Illinois



Court for further consideration. The effect of the USCA judgment was, in fact, to abrogate the award of copyright damages in the sum of US\$136.3 plus interest and to require the new Assessment of the damages to which Motorola was actually entitled. Motorola did not seek to challenge that analysis on this appeal.

40. Argument on the Assessment has concluded before the Illinois Court but the outcome is awaited. It was said by Mr Tom Sprange KC, for Motorola, to be very imminent, but this was also the prognosis in February 2025, and is not accepted by Hytera.
41. To return to the chronology of the English proceedings, as we have said at [9] above, following the USCA judgment, on 15 July 2024, HCC issued the revocation application under CPR Part 3.1(7) seeking also an order for the return of the US\$25 million held in court pursuant to the order of Jacobs J. It also sought a further interim stay of execution on the English Judgment pending the hearing of its revocation application. As we have said at [10] above, the judge then tried Motorola's claims for the pre-judgment interest, attorney fees and post-judgment interest. Motorola did not pursue at trial any claim to enforce the DTSA damages (abandoning its pleaded claim that the compensatory element could be enforced because the same sum could have been awarded under the Copyright Act).
42. At the outset of the trial, Mr Sprange submitted that the claims being pursued by Motorola could be supported by reference to an entitlement to enforce the compensatory DTSA damages, which were not barred from enforcement by section 5, although there was no claim being pursued for those damages themselves. Mr Stephen Rubin KC, for Hytera, did not object to this being advanced by way of argument. This was the main issue dealt with at the trial. There is no binding English authority on the point as a matter of *ratio*, although some guidance is to be found in a number of authorities and textbooks, which the judge considered, and we consider below. The judge concluded that section 5 precluded enforcement of the whole of the DTSA damages awards, not just the punitive element, and that this was fatal to each of the claims being pursued because they were all in part awarded as ancillary to the DTSA claims, and the effect of section 5(1) in precluding the enforcement of **any sum** under a multiple judgment was to preclude claims for sums ancillary to such a judgment. None of the awards claimed (interest, attorney fees or costs) had been awarded on a divisible basis so as to identify an amount which was referable only to the Copyright Act claims or to enable such identification to take place.
43. The judge went on in a postscript to address an additional defence which Hytera had advanced, which was that the effect of the USCA judgment and mandate was that the interest, fees and costs were liable to be varied and that they were not, therefore, final and conclusive so as to fulfil the conditions for enforcement of a foreign judgment. The judge observed that, whether this was the effect of the USCA judgment and mandate, was a question of US law. The procedural history of the parties' stances on US law made that a question which it would be unfair to Hytera to seek to resolve in the time available for the trial. The parties agreed that it could be dealt with by treating the other issues in the case as a trial of a preliminary issue, and the judge said he acceded to that course. In the light of his findings on section 5, the determination of the preliminary issue was dispositive of the whole claim, and there was no need to consider Hytera's additional argument that the sums claimed were not in any event final and conclusive.

44. When the deputy judge heard the revocation application on 22 and 23 January 2025, both parties submitted that the only available jurisdictional route for setting aside the English Judgment was CPR Part 3.1(7). The deputy judge considered the authorities which indicated that CPR Part 3.1(7) was only to be exercised in exceptional circumstances, and only very rarely in relation to a final order. He considered the suggested alternatives, including an appeal out of time, and rejected them all as unsatisfactory. He concluded that the English Judgment should be set aside under CPR Part 3.1(7). At [94]-[96], the deputy judge rejected the suggestion that he should take the existence or need for security for the future outcome of the Assessment into account in deciding on revocation. Ultimately, on 23 January 2025, as we have said at [12] above, the deputy judge set aside the English Judgment and ordered the return of the US\$25 million. In his ruling of 4 February 2025, he stayed the return of the reduced security amount of US\$20 million pending appeal. He granted permission to appeal on the basis that there were no English cases deciding how the court should deal with the situation in which there has been a successful foreign appeal against a judgment on which an English judgment has already been entered, and the authorities suggested that there was very little scope for reliance on CPR Part 3.1(7) in relation to a final order.
45. On 7 February 2025, Males LJ granted leave to appeal from the judge's decision, on the grounds that the question whether Motorola was entitled to enforce the compensatory DTSA damages was an issue of some importance and sufficiently arguable, that it would need to be determined as part of the appeal to enforce the interest and other ancillary sums awarded, that Hytera appeared to be correct in saying that Motorola had not hitherto sought to enforce the DTSA compensatory damages award but had now indicated that it wished to make such a claim, and that the parties should seek to agree the terms of the preliminary issue which the Judge had decided but not himself formulated.
46. On 7 March 2025, Males LJ directed that the appeal from the judge would be conducted on the basis that the preliminary issue decided by the Judge was whether section 5 precluded Motorola from recovering pre and post judgment interest, attorney fees and costs. He noted that in order to decide the appeal on that issue the court would need to decide whether section 5 precluded a claim to enforce the DTSA compensatory damages award, that Motorola had not sought to enforce that award in the court below but now sought to do so (by a draft reamendment served on 4 February 2025), and that whether Motorola should be entitled to do so would be determined at the hearing of the appeal.
47. Accordingly, one additional issue in the first appeal is whether Motorola should be granted permission to amend to pursue a claim to enforce the DTSA compensatory damages award which it did not claim to do before the judge.

### **The First Appeal (the meaning of section 5)**

#### *The relevant provisions of the Protection of Trading Interests Act 1980 (the PTIA)*

48. The long title of the PTIA is “[a]n Act to provide protection from requirements, prohibitions and judgments imposed or given under the laws of countries outside the United Kingdom and affecting the trading or other interest of persons in the United Kingdom”.

49. Section 5 provides as follows:

**Restriction on enforcement of certain overseas judgments.**

(1) A judgment to which this section applies shall not be registered under Part II of the Administration of Justice Act 1920 or Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 and no court in the United Kingdom shall entertain proceedings at common law for the recovery of any sum payable under such a judgment.

(2) This section applies to any judgment given by a court of an overseas country, being—

(a) a judgment for multiple damages within the meaning of subsection (3) below;

(b) a judgment based on a provision or rule of law specified or described in an order under subsection (4) below and given after the coming into force of the order; or

(c) a judgment on a claim for contribution in respect of damages awarded by a judgment falling within paragraph (a) or (b) above.

(3) In subsection (2)(a) above a judgment for multiple damages means a judgment for an amount arrived at by doubling, trebling or otherwise multiplying a sum assessed as compensation for the loss or damage sustained by the person in whose favour the judgment is given. ...

50. Section 6 of the PTIA (section 6) provides as follows:

**Recovery of awards of multiple damages.**

(1) This section applies where a court of an overseas country has given a judgment for multiple damages within the meaning of section 5(3) above against—

(a) a citizen of the United Kingdom and Colonies; or

(b) a body corporate incorporated in the United Kingdom or in a territory outside the United Kingdom for whose international relations Her Majesty's Government in the United Kingdom are responsible; or

(c) a person carrying on business in the United Kingdom,

(in this section referred to as a “qualifying defendant”) and an amount on account of the damages has been paid by the qualifying defendant either to the party in whose favour the judgment was given or to another party who is entitled as against the qualifying defendant to contribution in respect of the damages.

(2) Subject to subsections (3) and (4) below, the qualifying defendant shall be entitled to recover from the party in whose favour the judgment was given so much of the amount referred to in subsection (1) above as exceeds the part attributable to compensation; and that part shall be taken to be such part of the amount as bears to the whole of it the same proportion as the sum assessed by the court that gave the

judgment as compensation for the loss or damage sustained by that party bears to the whole of the damages awarded to that party.

(3) Subsection (2) above does not apply where the qualifying defendant is an individual who was ordinarily resident in the overseas country at the time when the proceedings in which the judgment was given were instituted or a body corporate which had its principal place of business there at that time.

(4) Subsection (2) above does not apply where the qualifying defendant carried on business in the overseas country and the proceedings in which the judgment was given were concerned with activities exclusively carried on in that country.

(5) A court in the United Kingdom may entertain proceedings on a claim under this section notwithstanding that the person against whom the proceedings are brought is not within the jurisdiction of the court.

(6) The reference in subsection (1) above to an amount paid by the qualifying defendant includes a reference to an amount obtained by execution against his property or against the property of a company which (directly or indirectly) is wholly owned by him; and references in that subsection and subsection (2) above to the party in whose favour the judgment was given or to a party entitled to contribution include references to any person in whom the rights of any such party have become vested by succession or assignment or otherwise.

(7) This section shall, with the necessary modifications, apply also in relation to any order which is made by a tribunal or authority of an overseas country and would, if that tribunal or authority were a court, be a judgment for multiple damages within the meaning of section 5(3) above.

#### *The judge's judgment*

51. The judge first addressed and rejected a submission by Motorola that the punitive damages element of the DTSA award was not barred by section 5. That argument has not been pursued on appeal.
52. The judge then addressed the various authorities we refer to below, treating the question essentially as being whether he should follow either: (i) the decision of Cockerill J in *SAS Institute Inc v. World Programming Ltd* [2018] EWHC 3452 (Comm), [2019] FSR 30 (*SAS*), treating what she said on this subject as *ratio*, or (ii) the *obiter* decision of Mann J in *Lucasfilm Ltd v. Ainsworth* [2008] EWHC 1878 (Ch), [2009] FSR 2 at [224]-[231] (*Lucasfilm*). He concluded that he should follow *SAS*. He then determined that all the sums claimed, being interest, fees and costs, were within section 5 as ancillary to the DTSA claim because no part could be separated out as referable only to the Copyright Act claim, and that interest, fees and costs which were ancillary to a multiple damages claim caught by section 5 were precluded by the prohibition in section 5(1) on the recovery of “any sum payable under” a section 5(3) judgment.

#### *The language and purpose of section 5*

53. Section 5 provides a shield against enforcement of certain judgments. Section 6 provides for clawback of sums paid under certain judgments. It is worth observing at

the outset that, quite apart from the issue which arises in this appeal, the shield in section 5 is wider in scope than the sword in section 6. In particular:

- i) Section 6 applies only to judgments for multiple damages as defined in section 5(3) (and equivalent awards by tribunals or authorities under section 6(7)), whereas section 5 extends to other judgments to the extent prescribed by the Secretary of State in secondary legislation under sections 5(2)(b) and 5(4) and contribution claims in respect of either category under section 5(2)(c).
  - ii) Section 5 provides a shield irrespective of the nationality or business activities of the defendant and irrespective of where the trading activities giving rise to the claim occurred. By contrast, the section 6 clawback rights are conferred, under section 6(1), only on UK nationals and those carrying on business in the UK, and even within that class they are not enjoyed by those ordinarily resident or with their principal place of business in the relevant overseas country, or where the judgment was concerned with activities wholly carried on within its own country. As Parker J observed in *British Airways Board v. Laker Airways Ltd* [1984] QB 142 (*British Airways*) at page 162D-E, section 5 would, for example, prevent one US corporation from enforcing in this country an antitrust action for multiple damages against another US corporation which had assets here notwithstanding that the antitrust infringements took place wholly within the US.
54. These differences point to the conclusion that, whereas section 6 is solely concerned with protection of the trading interests of UK nationals, section 5 is also concerned more widely with judgments whose nature is such that our courts should not lend any assistance to their enforcement. The rationale is akin to the prohibition on the enforcement of foreign penal laws: see Parker J at page 163D in *British Airways*, and Lord Hodge in *Service Temps Inc v. MacLeod* [2013] CSOH 162 (*Service Temps*) at [35] in the Outer House of the Court of Session.
55. These two separate purposes of section 5 are reflected in the two purposes described in the long title (see [48] above).
56. Against that background, we consider that the language of section 5 is clear and unambiguous in barring enforcement of the whole of a multiple damages claim including its compensatory part. What is barred under section 5(1) is “any sum payable” under a qualifying judgment. Under section 5(2)(a), one such qualifying judgment is a judgment for multiple damages within the meaning of subsection 5(3). Subsection 5(3) provides that a judgment for multiple damages means “a judgment for an amount arrived at by doubling, trebling or otherwise multiplying a sum assessed as compensation”. Where a judgment is for treble damages by multiplying the sum assessed as compensation by three, the “amount arrived at” includes the compensatory element. If, for example, a judgment for US\$3,000 is calculated by trebling a compensatory award of US\$1,000, the whole of the US\$3,000 is the “amount arrived at” by that process. The amount arrived at is **not** the additional US\$2,000 which represents the non-compensatory element. That is so as a matter of the clear language of section 5(3). It defines the multiple damages judgment as the amount arrived at by applying the multiplier (double, treble etc...) to the multiplicand (the compensatory amount). It does not define the multiple damages judgment as only the amount arrived at **after deducting** the multiplicand.

57. This is also the only interpretation which is consistent with the wording of section 6. Section 6(2) makes provision in relation to “so much of the amount referred to in [section 6(1)] as exceeds the part attributable to compensation”. The amount referred to in section 6(1) is the amount of the damages paid under a judgment for multiple damages within the meaning of section 5(3). The compensatory part of such a multiple damages judgment is treated as part of a multiple damages judgment within the meaning of section 5(3) and is specifically carved out from the whole for the purposes of the limited clawback rights conferred in section 6. If a multiple damages judgment as defined by section 5(3) extended only to the punitive element, there would be no need for this carve out. The clawback would apply simply to the multiple damages judgment as defined by section 5(3) if the “amount arrived at” under that subsection was only the punitive element.
58. The last part of section 6(2) provides further support. When a judgment creditor with a multiple damages judgment has enforced part of the amount awarded against particular assets, the enforcement will not usually identify whether the part being enforced is the compensatory or punitive constituent. Where there has been enforcement of the multiple damages judgment only in part, section 6(2) caters for this problem. It is to be treated as enforcement of the punitive element in the same proportion as the punitive element bears to the compensatory element. But section 5 is silent on how to treat any such problem at the enforcement stage were it to exist, which it would on Motorola’s construction. If the English Court is asked to enforce a treble damages award of US\$3,000 against an asset worth US\$1,000, is it the enforcement of the compensatory element (US\$1,000) or the punitive element (US\$2,000) or is it to be treated, as it would be for clawback purposes under section 6, as part punitive and part compensatory so that only one third of US\$1,000 is recoverable as attributable to the compensatory element? Section 6(2) addresses this problem when it comes to clawback. Section 5 does not. The contrast strongly suggests that that is because for section 5 any such apportionment is unnecessary. No part of the multiple damages award, punitive or compensatory, is enforceable.
59. At the heart of Motorola’s submissions was the argument that the purpose of section 5 was to prevent the enforcement of foreign penal laws, and that such purpose was given effect to by preventing enforcement only to the extent that the judgment operated as a penalty, not insofar as it was compensatory. However, a prohibition on enforcement of any part of the multiple damages claim including the compensatory part gives effect to the statutory purpose in two ways. First, it acts as a discouragement to the claimant from seeking an award of multiple damages in the first place. Secondly, it ensures that the English courts are not lending their assistance to the enforcement of the penal element of a multiple damages award. In the example at [58] above, if the judgment creditor has already recovered US\$2,000 by enforcement abroad, could it contend that that was the punitive element and that it was only seeking to recover the compensatory element here? If so, the court would be assisting in the enforcement of the full US\$3,000 and thus the punitive element. Consider then the position if there had not yet been any enforcement abroad. The judgment creditor might argue that he was seeking to enforce only as to US\$1,000 which, as the first attempt at enforcement, should be treated as the compensatory element. But if the court acceded to that analysis, and the judgment creditor could subsequently enforce against US\$2,000 of assets elsewhere, the court would still be lending its assistance to the recovery of US\$3,000 and hence to the recovery of punitive damages. It is no answer to say, as Motorola suggested, that the

judgment debtor could then invoke section 6. There might not be any readily available assets of the judgment creditor against which to enforce section 6 rights. But in any event the policy of section 5 is to prevent the judgment debtor being put in that position in the first place.

*The authorities and textbooks*

60. Although there is no English authority directly deciding the point as a matter of *ratio*, our construction of section 5 is overwhelmingly supported by *dicta* in the authorities and by the leading textbooks. In particular it was the construction put upon it in the following passages:
  - i) Parker J at page 161E in *British Airways*. That analysis was approved by Lord Diplock in the House of Lords at page 85E-F ([1985] AC 58).
  - ii) Potter LJ at [41] in *Lewis v. Eliades* [2003] EWCA Civ 1758, [2004] 1 WLR 692 (*Lewis*), with whom Carnwath and Jacob LJ agreed (albeit that at [62] Jacob LJ made clear that the case did not decide the issue, which in the light of his agreement with the views of Potter LJ we take merely to be clarifying that he was treating the views on this issue with which he agreed as *obiter*).
  - iii) Lord Hodge at [38] in *Service Temps*.
  - iv) Cockerill LJ at [209]-[244] in *SAS*. Whilst we agree with Cockerill J's conclusion, we would not endorse all the aspects of her reasoning, and in particular her conclusion that section 5 is focused on *causes of action* which attract multiple or punitive damages. Section 5 is only concerned with multiple damages judgments, not those which otherwise involve a punitive or exemplary damages element. It is concerned with "judgments" not causes of action as such.
  - v) Mr Christopher Hancock KC, sitting as deputy judge of the High Court at [47] in *Hangzhou Juidang Asset Management Co Ltd v. Kei Kin Hung* [2022] EWHC 3265 (Comm), [2022] 2 CLC 919.
  - vi) Dicey, Morris and Collins on *The Conflict of Laws*, 16<sup>th</sup> edition at [14-222].
  - vii) Cheshire, North & Fawcett on *Private International Law*, 15<sup>th</sup> edition at page 554.
  - viii) Professor Adrian Briggs KC on *Civil Jurisdiction and Judgments*, 7<sup>th</sup> edition at [34.48].
61. The only case which is out of line with this is an *obiter* but reasoned analysis by Mann J in *Lucasfilm* at [224] to [231]. Mann J's analysis was also said by HHJ Purle QC, sitting as a deputy judge of the High Court, in *Pace Europe Ltd v. Dunham* [2012] EWHC 852 (Ch) to be compelling. Though HHJ Purle agreed with Mann J, he had no need to apply what he had said. The central core of Mann J's reasoning is expressed in [230]:

Imagine a case where the damages are subject to trebling but the claimant chooses not to avail himself of that option. There is no way in which the judgment in that case would fall within s.5. Then take a case like the present, where the claimant chooses to claim the benefits of multiplication. Why should that fact now deprive

him of enforcing the genuinely compensatory element? The only reason for doing so would be to express disapproval, to the extent of removing what was otherwise a plain entitlement. That would in my view smack of a penalty, and would require clearer words than appear in the statute to justify its imposition. I do not think that the wording is sufficiently clear. The purpose of the Act is plainly to prevent something in the nature of a penalty (the multiple damages); it is not at all plain that that should be at the expense of imposing another one. I hold that it does not do so.

62. We part company with Mann J's reasoning because we think that the wording of section 5 is indeed clear. Moreover, its purpose in depriving the judgment creditor of the whole of the judgment for multiple damages including the compensatory element is not merely one of disapproval, but gives effect to the purpose of section 5 in the two ways we have identified. It is not, in any sense, a penalty.

*Materials referred to under the principles in Pepper v. Hart [1993] AC 593*

63. We were referred in the course of argument to passages in (i) speeches of Mr John Nott MP and Mr Norman Tebbit MP, the government ministers introducing the Bill (preceding the PTIA) in the House of Commons, and others during the course of the debate, and (ii) diplomatic exchanges between the UK and US Governments about the terms of the Bill.
64. We do not consider that these materials are admissible given that there is no ambiguity in the language of the statute. If they were, however, they would have supported the construction we have explained. The diplomatic exchanges, which were themselves referred to in the introduction of the Bill to the House, made clear that (i) section 5 was understood to be a bar on the recovery of the whole of a judgment for multiple damages including the compensatory element, and (ii) the US's objections to that aspect of it were rejected by the UK Government on the grounds that the UK Government regarded the need for a total bar as arising from the adverse impact of treble damages actions on international trade and the principle of refusing to enforce foreign judgments of a penal character.

*Motorola's arguments on section 5*

65. We have already addressed and rejected Motorola's argument based on the purpose of section 5. As to the language of section 5, Mr Sprange advanced a number of different suggested manipulations to the wording of section 5 during the course of his submissions, but none met the clear meaning of the words, or the difficulty that his construction is inconsistent with both the purpose of the section and with section 6.
66. He suggested first that the words "an amount" referred only to the multiplier, which he equated with the punitive element. That does not work for two reasons. First, because it ignores the fact that the judgment is defined by reference to "an amount arrived at" by the process of multiplication. Secondly, and in any event, the multiplier is not the punitive element so that even if one could somehow confine the "amount" to the language of the subsection which deals solely with the multiplier ("double, treble..."), it still would not work. Take a case of treble damages where the compensatory element is x, the multiplier is 3 and the total award is 3x, of which the punitive element is 2x. The punitive element of 2x is still not the multiplier. The multiplier is treble i.e. 3, not



2. It would treat the relevant part of the multiplier wording in section 5(3) as “double” when the only relevant wording in the multiplier part of s. 5(3) is “treble”. It would wrongly treat a treble damages claim as using a multiplier of double, not treble.
67. In the alternative, Mr Sprange suggested that the sense of section 5(3) involved inserting the words “to the extent that it is” after the second time the word judgment is used, so that section 5(3) is to be read as if it said “a judgment for multiple damages means a judgment *to the extent that it is* for an amount ...”. This was what the Court of Appeal treated as the correct interpretation in *Lewis*, when considering whether a judgment was unenforceable as to a compensatory award at common law by reason of it being a single money judgment which also included a multiple damages award under the US Racketeer Influenced and Corrupt Organizations Act (RICO). But applying the additional words in accordance with *Lewis* does not advance Motorola’s case for both the reasons identified above. The “amount arrived at” is still the product of the multiplication, including the compensatory element. The “extent” to which it is such a judgment covers the whole of the amount, including the compensatory element. Similarly, it cannot surmount the hurdle that the multiplier is not same as the punitive element, but, in our example at [66] above, greater by a factor of one, so that it includes the compensatory element.
68. *Lewis* itself does not assist Motorola’s argument. *Lewis* simply decided that, where there is a multiple damages award, and a separate compensatory damages award, the separate compensatory damages award is enforceable notwithstanding that none of the multiple damages award is enforceable, including the compensatory multiplicand. That is nonetheless so when there is a single judgment sum provided the separate constituents of the award can be identified.
69. Mr Sprange suggested that section 5 should be read as “an amount arrived at *or represented by* doubling, trebling etc”. This proposal introduces two alternative “amounts” into section 5(3) which, on its plain wording, only provides for one. It also fails to surmount the second difficulty identified above that the multiplier amount is different from the punitive element. The expression “represented by” would have to apply to the *relevant* part of the multiplier wording, which doesn’t work for Motorola’s construction because in a trebling case the multiplier is treble, whereas for Motorola’s construction to work it must capture the punitive element which is double, which is not used as the multiplier.
70. The next variation suggested was “... means a judgment ~~for~~ *to the extent to which the overall sum includes* an amount [etc]”. This suffers from the same problem as the first suggestion. The amount is still the amount arrived at as a result of the multiplication exercise including the compensatory element.
71. As an ultimate fall back, Mr Sprange submitted that words ought to be read into the end of section 5(3) so as to add “less the multiplicand”. That is simply not what it says, and, as we have explained, would be entirely inconsistent with the wording of section 6 and the purpose of the provision. Had the draftsman so intended they would have added the words which do appear in section 6, namely [to the extent that] “it exceeds the part attributable to compensation”.
72. Mr Sprange also relied on *Raulin v. Fischer* [1911] 2 KB 93 (*Raulin*). In *Raulin*, a French criminal court had dealt with both the criminal sanction and an ancillary civil

claim in the same proceedings. Hamilton J held that the English court would enforce the judgment for civil compensatory damages notwithstanding that it was pronounced by a court also exercising criminal jurisdiction. We cannot see that *Raulin* casts any light on the issue before us.

73. Another part of Motorola's argument was advanced by Ms Gayatri Sarathy. She submitted that Motorola's construction of section 5 was dictated by the principle of construction against doubtful penalisation, namely that it is a principle of legal policy that a person should not be penalised except under clear law (Bennion, Bailey & Norbury on *Statutory Interpretation* 8<sup>th</sup> edition at [26.4]). The short answer is that the wording of section 5 is, as we have said, entirely clear.
74. Ms Sarathy also argued that the compensatory damages award was an entitlement to possession of property akin to a debt, deprivation of which would be contrary to Article 1 Protocol 1 of the European Convention on Human Rights (A1P1). There are two short answers to this proposition. First, Motorola has not been deprived of possession of any property. The property right must have a basis in national law. The PTIA makes clear that there is no debt or equivalent right recognised as entitled to enforcement. There is no property right to engage A1P1. Secondly and alternatively, the interference with any such right would serve a legitimate aim and would not be disproportionate in an area in which the legislature has a wide margin of appreciation.

#### *Motorola's additional argument*

75. Motorola advanced an alternative argument that if, contrary to its primary case, section 5 barred enforcement of the DTSA compensatory damages, the fees and costs (but not the interest) were recoverable. This was not on the basis that an identifiable part of them could be attributed solely to the Copyright Act compensatory damages. Rather, Mr Sprange argued that section 5 only barred enforcement of judgments for multiple damages themselves, not awards of interest, fees or costs which were ancillary to such judgments for multiple damages. The amount of the fees and costs fell outside section 5(3) because they were not arrived at by a multiplying exercise. This would have the remarkable consequence, as Mr Sprange recognised, that section 5 would enable a creditor to enforce a judgment to recover the costs of securing an unenforceable judgment (and indeed even to the extent of fees exclusively referable to the punitive element). Unsurprisingly, therefore, the language of section 5 makes clear that that is not what it provides for. Section 5(1) precludes enforcement of "any sum payable under" a judgment for multiple damages, which is clearly wide enough to catch ancillary awards of fees and disbursements incurred in obtaining such a judgment.

#### *The amendment application*

76. Mr Rubin submitted that the history showed that Motorola had made a clear and conscious decision not to pursue a claim for the DTSA compensatory damages at the trial, and that to allow them to do so now would be an abuse under the principles enunciated in *Henderson v. Henderson* (1843) 3 Hare 100 and also contrary to the principles governing late amendments. We do not need to address those arguments because, for the reasons we have identified, any such claim would be barred by section 5.

#### *Conclusion on the first appeal*

77. For these reasons, which are similar to those given by the judge but which we have preferred to express in our own language, we dismiss the first appeal.

### **The Second Appeal (Revocation of the English Judgment)**

#### *Introduction to the second appeal*

78. Motorola's central contention was that the deputy judge had been mistaken to say the following about the relevance of the finality of the English Judgment at [74]:

In this context, it does seem to me that cases like the present are genuinely exceptional. I cannot see that setting aside an English judgment could sensibly be said to offend the principle of finality, on the special facts of this case. It in no way offends the principle of finality for a foreign judgment to be subject to appeal in accordance with the proper procedure in that jurisdiction. This is a peculiar situation where finality is not really relevant.

79. Motorola referred to a series of authorities showing that it was very rare for a judgment to be revoked or set aside under CPR Part 3.1(7). Exceptional circumstances were required. The cases included *Roult v. North West Strategic Health Authority* [2009] EWCA Civ 444, [2010] 1 WLR 487 (*Roult*), *Tibbles v. SIG plc (trading as Asphaltic Roofing Supplies)* [2012] EWCA Civ 518, [2012] 1 WLR 2591 (*Tibbles*), *Terry v. BCS Corporate Acceptances Ltd* [2018] EWCA Civ 2422 (*Terry*), *Vodafone Group Plc v. IPCom GmbH & Co KG* [2023] EWCA Civ 113, [2023] RPC 10 (*Vodafone*), and *UniCredit Bank GmbH v. RusChemAlliance LLC* [2025] EWCA Civ 99, [2025] 1 WLR 2321 (*UniCredit*).

80. Motorola submitted that the deputy judge's judgment made it routine for final judgments granted to recognise and enforce foreign judgments to be set aside under CPR Part 3.1(7), whenever they were reversed on appeal. That was a violation of the common law principle of finality.

81. Motorola put the matter as follows in their single ground of appeal:

[the deputy judge] erred in law (and/or in the application of his discretion to the facts of this case) in determining that an English enforcement judgment was susceptible to revocation under [CPR Part 3.1(7)] solely on the ground that the underlying foreign enforcement judgment had been set aside, varied or revoked by the appellate division of the foreign court.

82. Hytera supported the deputy judge's decision and reasoning, arguing, in essence, as had been encapsulated in [74]-[76] of the deputy judge's judgment that: (i) it was genuinely exceptional when a foreign judgment was reversed on appeal, (ii) revocation could not possibly, on the special facts of this case, offend the principle of finality, (iii) setting aside the English Judgment did not cut across the concept of an appeal, (iv) a successful appeal abroad could amount to a material change of circumstances, and (v) it was hard to think of a more fundamental change of circumstances.

83. In the course of oral argument, however, Mr Kabir Bhalla, for Motorola, adjusted the focus of Motorola's attack on the deputy judge's reasoning. He explained that, in past times, a defendant in Hytera's position would have been able to avail itself of a writ of

*auditâ querelâ defendantis* (the complaint of the defendant having been heard) (normally shortened to “*auditâ querelâ*” with or without the circumflexes). That appears from page 16 of Lord Bramwell’s judgment in *Nouvion v. Freeman* (1889) 15 App Cas 1 (*Nouvion*). When *auditâ querelâ* was abolished in or about 1875, it was replaced by Order XLII (27) of the Rules of the Supreme Court 1883 which provided as follows:

No proceeding of *auditâ querelâ* shall hereafter be used; but any party against whom a judgment has been given may apply to the Court or a judge for a stay of execution or other relief against such judgment, upon the grounds of facts which have arisen too late to be pleaded; and the Court or judge may give such relief and upon such terms as may be just.

This rule derived from Order XLII (22) of the Schedule of Rules and Forms published in 1875, which was in the same form.

84. The modern equivalent of Order XLII (27) of the Rules of the Supreme Court 1883 is CPR Part 40.8A, which provides (in remarkably similar form) as follows:

Without prejudice to rule 83.7(1), a party against whom a judgment has been given or an order made may apply to the court for—

- (a) a stay of execution of the judgment or order; or
- (b) other relief,

on the ground of matters which have occurred since the date of the judgment or order, and the court may by order grant such relief, and on such terms, as it thinks just.

85. Accordingly, Mr Bhalla submitted that CPR Part 3.1(7) was inappropriate here as applying only to case management decisions, that any application for revocation of the English Judgment ought to have been made under CPR Part 40.8A, but that, even if that had been done, it would not have been appropriate to do more than stay the English Judgment pending the Assessment by the US Court, leaving the \$20 million in court.
86. Hytera did not suggest that Mr Bhalla’s historical argument was wrong, only that the two powers in CPR Parts 3.1(7) and 40.8A were interchangeable, and that the judge had been right to revoke the English Judgment and to order the return of the US\$20 million. In post-hearing submissions, Hytera said that reference to CPR Part 40.8A would only have made the judge’s route to his conclusion more straightforward: “by removing the need to consider whether CPR 3.1(7) could properly be used to revoke a final order”.
87. As already mentioned at [13] above, we have decided that Motorola’s appeal must be allowed. We take the view that Hytera’s application ought to have been made under CPR Part 40.8A, not 3.1(7), and that, **at least** until the Assessment is delivered, it was inappropriate to revoke the Judgment, and that the US\$20 ought to remain in court. We will deal with our reasons in this section of our judgment under the following headings: (i) relevant provisions of the CPR, (ii) authorities relevant to the second appeal, and (iii) discussion of the second appeal.

*Relevant provisions of the CPR*

88. We have already set out CPR Part 40.8A and its derivation. We will return to its relevance to our case at [110]-[115] below.
89. CPR Part 3 is entitled “The Court’s Case Management Powers”. CPR Part 3.1 is in a section entitled “Case Management”. The other two sections of CPR Part 3 are entitled “Cost Management” and “Cost Capping”. CPR Part 3.1 is itself entitled “The court’s general powers of management”. CPR Part 3.1 includes the following provisions:
- (1) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.
  - (2) Except where these Rules provide otherwise, the court may –
    - (a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired); ...
    - (g) stay the whole or part of any proceedings or judgment either generally or until a specified date or event; ... and
    - (p) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective, including hearing an Early Neutral Evaluation with the aim of helping the parties settle the case.
  - (3) When the court makes an order, it may –
    - (a) make it subject to conditions, including a condition to pay a sum of money into court; and ...
  - (5) The court may order a party to pay a sum of money into court if that party has, without good reason, failed to comply with a rule, practice direction or a relevant pre-action protocol.
  - (6) When exercising its power under paragraph (5) the court must have regard to –
    - (a) the amount in dispute; and
    - (b) the costs which the parties have incurred or which they may incur.
  - (6A) Where a party pays money into court following an order under paragraph (3) or (5), the money shall be security for any sum payable by that party to any other party in the proceedings.
  - (7) A power of the court under these Rules to make an order includes a power to vary or revoke the order.
  - (8) The court may contact the parties from time to time in order to monitor compliance with directions. The parties must respond promptly to any such enquiries from the court.

90. CPR Part 83 is entitled “Writs and Warrants – General Provisions”. CPR Part 83.7(1) is, of course, mentioned in CPR Part 40.8A itself. CPR Part 83.7 provides as follows:

(1) At the time that a judgment or order for payment of money is made or granted, or at any time thereafter, the debtor or other party liable to execution of a writ of control or a warrant may apply to the court for a stay of execution. ...

(4) If the court is satisfied that—

(a) there are special circumstances which render it inexpedient to enforce the judgment or order; or

(b) the applicant is unable from any reason to pay the money,

then, notwithstanding anything in paragraph (5) or (6), the court may by order stay the execution of the judgment or order, either absolutely or for such period and subject to such conditions as the court thinks fit. ...

*Authorities relevant to the second appeal*

91. In considering the relevant authorities chronologically, it is well to bear in mind that only one case (*Nouvion*) actually considered the question at issue here, namely what power existed to revoke a judgment in England granted to enforce a foreign judgment. The other cases deal with quite different situations. It was for that reason, no doubt, that the deputy judge thought that finality was irrelevant in this particular situation. We take a rather more nuanced view, but we can understand the point he was making.
92. This court recently reviewed many of these authorities in *UniCredit*, where the claimant applied to discharge an anti-suit injunction that it had itself obtained. The Master of the Rolls said at [18] that the court had to keep its “focus on the position where there [was] a final order for an anti-suit injunction, since that situation may raise different considerations from those adumbrated in the existing authorities”. The same point can be made, with equal force, here in relation to final orders enforcing foreign judgments. For that reason, we will be forgiven for treating the authorities dealing with quite different subject-matters briefly.

*Nouvion* (1889)

93. In *Nouvion*, the House of Lords (Lords Herschell, Watson, Bramwell and Ashbourne) upheld the Court of Appeal’s decision to refuse to allow an English action to be brought to enforce a Spanish *remate* judgment, which did not itself finally and conclusively establish the existence of the debt in Spain.
94. Lord Herschell held at page 10 that a foreign judgment could only be enforced where a “final adjudication has been given that a debt or obligation exists which cannot thereafter in that Court be disputed, and can only be questioned in an appeal to a higher tribunal” (see also Lord Watson at pages 12-13). Lord Bramwell agreed, but considered at page 16 whether allowing *Nouvion* to enforce his judgment in England would put him in a better position than he was in in Spain, where his *remate* judgment was liable to be reviewed or defeated. He said the following:

If a judgment in a foreign court were reversed upon error, and an action upon the judgment had been brought in an English court and judgment given in that action on the judgment, then afterwards, when the original judgment was reversed upon error, I suppose there would, in such a case as that, be some remedy for the defendant who had got rid of the first judgment against him. The remedy of *auditâ querelâ* is now abolished, but there is a rule which says that the Court may give relief (I should suppose that would mean that they must give relief) where the defendant would have got relief upon *auditâ querelâ*. But the answer is, it is not the same thing. He would have a judgment against him in the Spanish Court which he would have to get rid of; and then he would have to come to England to get rid of the judgment here by proceedings in the nature of the old-fashioned *auditâ querelâ*. I think, therefore, he would be worse off if judgment were given against him, as is prayed in this action, than he is at present by the proceedings in Spain. ...

### *Roult*

95. *Roult* concerned the court's power to reopen a settlement agreement. Hughes LJ (with whom Smith and Carnwath LJJs agreed) held at [15] that CPR Part 3.1(7) could not constitute a "power in a judge to hear an appeal from himself in respect of a final order". He held that CPR Part 3.1(7) was not, on its terms, confined to procedural orders, and that he would not "attempt any exhaustive classification of the circumstances in which it may be proper to invoke it". Hughes LJ continued:

It may well be that, in the context of essentially case management decisions, the grounds for invoking the rule will generally fall into one or other of the two categories of (i) erroneous information at the time of the original order or (ii) subsequent event destroying the basis on which it was made. ... There may possibly be examples of non-procedural but continuing orders which may call for revocation or variation as they continue — an interlocutory injunction may be one. But it does not follow that wherever one or other of the two assertions mentioned (erroneous information and subsequent event) can be made, then any party can return to the trial judge and ask him to reopen any decision. In particular, it does not follow, I have no doubt, where the judge's order is a final one disposing of the case, whether in whole or in part. And it especially does not apply where the order is founded upon a settlement agreed between the parties after the most detailed and highly skilled advice. The interests of justice, and of litigants generally, require that a final order remains such unless proper grounds for appeal exist.

### *Tibbles*

96. In *Tibbles*, CPR Part 3.1(7) was unsuccessfully invoked to vary an interim order in a personal injury claim after the trial judgment had been handed down. Rix LJ (with whom Etherton and Lewison LJJs agreed) said at [39] that CPR Part 3.1(7) was apparently broad and unfettered: "but considerations of finality, the undesirability of allowing litigants to have two bites at the cherry, and the need to avoid undermining the concept of appeal, all push towards a principled curtailment of an otherwise apparently open discretion". The jurisprudence had laid down firm guidance as to the primary circumstances in which the discretion might, as a matter of principle, be appropriately exercised, namely normally only (a) where there has been a material

change of circumstances since the order was made, or (b) where the facts on which the original decision was made were (innocently or otherwise) misstated. Successful invocation of the rule was rare, and “exceptional” was a dangerous and sometimes misleading word.

*Michael Wilson & Partners Ltd v. Sinclair (No.2)* [2017] EWCA Civ 55; [2017] 1 W.L.R. 3069 (*Michael Wilson*)

97. The White Book commentary on CPR 40.8A cites *Michael Wilson* as demonstrating that the power in CPR Part 40.8A is an example of where the CPR is providing a power to stay otherwise than under CPR Part 3.1(2)(g) (see [84] above).
98. McCombe LJ (with whom Briggs LJ agreed) lifted a stay that had been granted by Whipple J at first instance. McCombe LJ held, at [13], that CPR Part 83.7 was the relevant power to grant a stay in that case and that it was not necessary for there to have been any writ of control or other warrant issued for the power to be exercised. At [18], McCombe LJ held that Whipple J had been wrong to apply CPR 3.1(2)(g). She should have held that the court’s discretion arose under CPR 83.7, so that “special circumstances which [rendered] it inexpedient to enforce the judgment or order” had to be shown.
99. The parties also referred to *Raja v. Van Hoogstraten and others* [2018] EWHC 3261 (Ch) in this context. That case is also referred to in the notes to CPR Part 40.8A, but we have gained little assistance from it.

*Terry*

100. In *Terry*, there was a default judgment in claims for breach of contract and misrepresentation. The defendants unsuccessfully applied under CPR Part 3.1(7) to strike out the claims, set aside the judgment and a post-judgment freezing order on the basis that the claim was “wholly fraudulent”.
101. Hamblen LJ (with whom Sir Geoffrey Vos C and Mr Justice Henry Carr agreed) said at [75] that:

In summary, the circumstances in which CPR 3.1(7) can be relied upon to vary or revoke an interim order are limited. Normally, it will require a material change of circumstances since the order was made, or the facts on which the original decision was made being misstated. General considerations such as these will not, however, justify varying or revoking a final order. The circumstances in which that will be done are likely to be very rare given the importance of finality. An example is provided by cases involving possession orders made when the defendant did not attend the hearing where CPR 39.3 may be relied upon by analogy – see *Hackney London Borough Council v Findlay* [2011] EWCA Civ 8, [2011] HLR 15. Another example is the use of powers akin to CPR 3.1(7) to vary or revoke financial orders made in family proceedings in relation to which there is a duty of full and frank disclosure and the court retains jurisdiction – see, for example, *Sharland v Sharland* [2015] UKSC 60, [2016] AC 871 and *Gohil v Gohil (No 2)* [2015] UKSC 61, [2016] AC 849.



102. At [78], Hamblen LJ described the setting aside of a final judgment under CPR Part 3.1(7) as a “wholly exceptional course”. At [79], Hamblen LJ noted that the existence of a specific procedure for setting aside default judgments in CPR Part 13.3 presented a further hurdle to using a general power such as CPR Part 3.1(7). Hamblen LJ’s comment is seemingly equally applicable in this case.

*AIC Ltd v. Federal Airports Authority of Nigeria [2022] UKSC 16, [2022] 1 WLR 3223 (AIC).*

103. In *AIC*, the UK Supreme Court considered the relationship between the principle of finality and the power in CPR Part 3.1(7) in the context of an application to stay the enforcement of a Nigerian arbitration award pending a court challenge to it in Nigeria. The change of circumstance relied upon was the late provision of the required security between the judgment ordering enforcement and the order being drawn. The Supreme Court set aside the enforcement order under CPR Part 3.1(7).
104. Lord Briggs and Lord Sales held at [32] that, in view the importance of finality, “on receipt of an application by a party to reconsider a final judgment and/or order before the order has been sealed, a judge should not start from anything like neutrality or evenly-balanced scales”. At [35], Lord Briggs and Lord Sales held that “[t]he weight to be given to the finality principle will inevitably vary, depending in particular upon the nature of the order already made, the type of hearing at the end of which it was made and the type of proceedings in which it was made”. Finality was likely to be at its highest importance in relation to orders made at the end of a full trial [35], but an evaluative judgment had to be made in each context [36]. Lord Briggs and Lord Sales held that they could remake the decision made by the judge on the basis that the decisions of both the judge and the Court of Appeal were vitiated by legal error [49].

*Moss v. Martin [2022] EWHC 3258 (Comm) (Moss)*

105. Both parties relied on HHJ Russen KC’s judgment in *Moss*. We are not sure that HHJ Russen’s careful analysis of the different circumstances of that case is of great assistance in this case, but we note that he was well aware of the powers in both CPR Parts 40.8A and 83.7 (see [36ff]). Ultimately, he decided not to stay the English judgment pending an appeal of the Texas judgment on which it was based because there were no “special circumstances [rendering] it inexpedient to enforce the judgment” under CPR Part 83.7(4)(a) (see [51] and [57]-[59]).

*Vodafone*

106. Likewise, in *Vodafone*, Lewison LJ (with whom Asplin and Arnold LJJ agreed) held that CPR Part 3.1(7) could not be used to vary a costs order made in patent infringement proceedings where the underlying patent had been revoked. The existence of an alternative procedure in CPR Part 52.30 left little, if any, room to exercise CPR Part 3.1(7) (see [45]). Lewison LJ concluded at [54]-[56] that CPR Part 3.1(7): “cannot or should not be used to discharge a sealed final order. The only limited exception thus far even contemplated in civil proceedings is the case of a continuing order (such as a final injunction).”

*UniCredit*

107. In *UniCredit*, Sir Geoffrey Vos MR (with whom Asplin and Phillips LJ agreed), held that the court had power to revoke or vary a final anti-suit injunction under CPR Part 3.1(7). It may be noted at once that, in *UniCredit*, the party that had applied for the injunction was applying to revoke the order. Accordingly, CPR Part 40.8A was not an available option because it requires the application to be made by “a party against whom a judgment has been given or an order made”.
108. At [23]-[26], Vos MR gave a number of reasons for holding that the power existed in that case. The specific anti-suit injunction in question was only *final* because the judge had ordered a speedy trial of a Part 8 claim. The distinction between an interim and a final order was not as strong in relation to anti-suit injunctions as in other contexts. It would have been strange if the ‘losing’ party could not subsequently ask for its injunction to be discharged even if it were an order made after a trial.

*Discussion of the second appeal on revocation*

109. The resolution of the second appeal requires consideration of the following four issues: (i) whether the deputy judge was right to think that the court’s power to revoke the English Judgment was under CPR Part 3.1(7), (ii) if not, whether the deputy judge’s decision can stand if the appropriate power was under CPR Part 40.8A, (iii) if not, whether the judge’s decision should be remade or remitted to the Commercial Court, and (iv) if the decision is to be remade, how should it be remade?

*Was the deputy judge’s decision made under the correct power?*

110. It is now close to common ground that the question of revocation of the English judgment ought to have been considered under CPR Part 40.8A, which provides expressly that “a party against whom a judgment has been given or an order made” may apply for a stay or other relief “on the ground of matters which have occurred since the date of the judgment or order”. In such a case, the court may “grant such relief, and on such terms, as it thinks just”.
111. CPR Part 40.8A is a very different power from the case management power in CPR Part 3.1(7), which simply provides that “[a] power of the court under these Rules to make an order includes a power to vary or revoke the order”. The CPR Part 3.1(7) power is circumscribed by the authorities we have summarised at [95]-[108] above and does not specifically provide when it may be exercised. It has been repeatedly said that it will only rarely be used to revoke a final order.
112. So far as a stay is concerned, CPR Part 3.1(2)(g) expressly provides that the power to “stay the whole or part of any proceedings or judgment either generally or until a specified date or event” applies “[e]xcept where these Rules provide otherwise”. It is, therefore, clear that the power to stay under CPR Parts 87.3 and 40.8A ought to be used (where those rules are applicable) rather than the power under CPR Part 3.1(2)(g). In this case, of course, Hytera applied for a stay in the alternative to revocation. CPR Part 3.1(7) has been held to allow revocation (see *UniCredit* at [107] above) in an exceptional case, but is not limited by the words “[e]xcept where these Rules provide otherwise” which only precede CPR Part 3.1(2), not CPR Part 3.1(7). In theory, therefore, both powers were available for the revocation application.

113. In our judgment, even though CPR Part 3.1(7) is not prefaced by the words “[e]xcept where these Rules provide otherwise”, it should not, in normal circumstances, be taken to be a power to revoke final orders, where CPR Part 40.8A is applicable. CPR Part 40.8A is a compendious power which is, on its terms, specifically intended to be used where “matters ... have occurred since the date of the judgment or order”. The authorities we have cited concerning CPR Part 3.1(7) are not, therefore, directly applicable to the exercise of the court’s power under CPR Part 40.8A. But they do, quite rightly and relevantly, emphasise the importance of the finality of orders of the court, the rare occasions on which it will be appropriate to revoke them and the undesirability of allowing final orders to be re-opened unless there are exceptional circumstances requiring that to be done.
114. We accept that the revocation of a foreign judgment on which an English judgment is based is indeed one circumstance in which it may be appropriate to revoke or vary a final order. As we have said, however, when CPR Part 40.8A is applicable, that is the power under which any such application should routinely be made.
115. The deputy judge was asked to consider Hytera’s application for revocation under CPR Part 3.1(7). That can now be seen to have been a mistake. Accordingly, it is clear in our judgment that the deputy judge was wrong to think that it was appropriate to revoke the English Judgment under CPR Part 3.1(7). As we have explained, CPR Part 3.1(7) is a case management power that can only be applied to final orders in rare and exceptional circumstances where no other power exists to allow the court to achieve the Overriding Objective of dealing with cases justly under CPR Part 1.1(1). The deputy judge correctly pointed out at [77] that there was nothing that Hytera could realistically have done to avoid ending up in this position. There is nothing rare or particularly unusual or exceptional about foreign judgments being reversed on appeal, even when enforcement proceedings have resulted in judgments in this jurisdiction.
116. Since the deputy judge exercised the wrong power, we come to the next question we have posed.

*Can the deputy judge’s decision stand when the appropriate power was under CPR Part 40.8A?*

117. In our judgment, the simple answer to this question is that the deputy judge’s decision cannot stand. It was made on the wrong jurisdictional foundation. The wording, derivation and purpose of CPR Parts 3.1(7) and 40.8A are quite different. The fact that CPR Part 3.1(7) has been the subject of very limited extensions beyond the case management situations for which it was intended, does not mean that it can or should be taken to be of general application to final orders. Moreover, CPR Part 40.8A is historically the correct power to use in the situation presented by this case. As Mr Bhalla explained to us, it derives seamlessly from the ancient, and now obsolete, writ of *audita querelâ*.
118. CPR Part 40.8A also provides precisely for the circumstances in which it can be exercised, namely: (i) the party against whom the judgment has been given or an order made may apply, (ii) that party may apply for a stay or other relief in respect of a final judgment or order, (iii) the application can be made “on the ground of matters which have occurred since the date of the judgment or order”, and (iv) the court may grant such relief, on such terms, as it thinks just.

119. We note that the stay, but not the revocation, was applied for here under CPR Part 83.7(4) (see [90] above) which permits a stay where there are “special circumstances which render it inexpedient to enforce the judgment or order”. We need not dwell upon the distinctions between CPR Parts 83.7 and 40.8A because the deputy judge did not seek to exercise any stay jurisdiction, save pending appeal.
120. We reject Hytera’s argument that the court should, in effect, simply ignore the fact that the judge proceeded on the wrong jurisdictional basis, because the two powers are “interchangeable”. They are certainly not interchangeable. The fact that CPR Part 3.1(7) has far **more limited** application to final orders than CPR Part 40.8A is not a justification for allowing the deputy judge’s order to stand. If we did so, we would be, by implication, unjustifiably extending the circumstances in which CPR Part 3.1(7) can apply to final orders. An application under CPR Part 40.8A is not about circumventing what Lord Briggs and Lord Sales described in *AIC* at [39] as the “deadweight of the finality principle”. It is about making sure that a defendant is not unjustly the subject of an immediately enforceable final judgment, which ought instead to be stayed, revoked or otherwise ameliorated.
121. Hytera’s argument post-judgment that the deputy judge’s decision should not be set aside because he would have made the same decision under CPR Part 40.8A cannot succeed for the same reasons.
122. In these circumstances, we are clear that the deputy judge’s decision cannot stand. He exercised the wrong power. We would make clear, however, that he did so through no fault of his own. The parties ought to have drawn his attention to the appropriate power in CPR Part 40.8A.

*Should the deputy judge’s decision be remade or remitted to the Commercial Court?*

123. Both parties were ultimately neutral about whether this court should remake the deputy judge’s decision or remit the matter to the Commercial Court. It seems to us that we would simply be increasing the costs to force the parties to argue again what has already been argued at length before us. Nobody suggested we did not have the materials necessary to remake the decision. We are sure we do. In the circumstances, we will now proceed to remake the deputy judge’s decisions on stay and revocation under the correct power in CPR Part 40.8A.

*Remaking the deputy judge’s decision*

124. We intend to remake the decision as to (i) revocation of the English Judgment, (ii) alternatively, a continuing stay, and (iii) what should happen to the US\$20 million in court, on the basis of the facts and circumstances now prevailing.
125. As to revocation, we are clear that the English Judgment should not be revoked at this still interim stage in the US proceedings. The finality of judgments is important even in this context. The USCA overturned the award of US\$136.3 million. The Assessment is due to be produced relatively soon, and we do not know what will happen thereafter. It looks now as if the maximum award of Copyright Act damages under the Assessment will be US\$14.5 million plus interest and costs, but we do not know whether the Assessment will itself be appealed. There could even theoretically be further hearings beyond the Assessment and more than one appeal.

126. We have to consider whether, in these circumstances, revocation is the correct option **now**. We do not doubt that revocation will eventually be appropriate under CPR Part 40.8A.
127. In our judgment, revocation is not now appropriate for these reasons.
128. First, it is undesirable in the context of this hotly contested litigation, which has already been the subject of multiple appeals here and in the US, to repeatedly grant and revoke final judgments. The rapidly changing circumstances of litigation of this kind are better catered for by the grant of appropriate stays under CPR Part 40.8A, if necessary on terms as to security, designed to avoid injustice to either party. It will be soon enough, when Motorola's entitlements under US judgments are clear, for the English Judgment to be revoked and replaced with a final judgment in the appropriate amount.
129. Secondly, this is not, as we have said, an unusual or exceptional situation. Our law entitles foreign judgment creditors, holding a final first instance judgment, to enforce it in England & Wales, even whilst it is under appeal. It is undesirable, in this relatively commonplace situation, for the English Court to have to react, in terms of final judgments, to the twists and turns of the foreign judicial process. There are better ways of achieving just interim solutions.
130. Thirdly, we do not underestimate the commercial consequences for any commercial entity, including Hytera in this case, of having large judgments stand against them, when they are likely eventually to need to be revoked or varied. But that is the consequence of our private international law that allows final foreign first instance judgments to be enforced whilst under appeal abroad, subject only to a stay in appropriate circumstances. Any interested observer can have the situation fully explained. This judgment will serve that purpose for Hytera's trading partners. It is not indicative of requiring, as we have now said twice, the English court to repeatedly grant and revoke final judgments, which have been granted, in the first place, only for the purpose of enforcement.
131. In these circumstances, we think it appropriate, as matters stand, to decline now to revoke the English Judgment, but to grant a stay of that judgment giving both parties liberty to apply to the Commercial Court, on the basis of new events and new evidence, to revoke the English Judgment and to lift or vary that stay or the terms on which it is granted.

*On what terms should the stay be granted?*

132. Finally, we have to decide whether to order the US\$20 million or any other sum to remain in court pending the Assessment and other future developments.
133. The deputy judge ordered that the US\$20 million (actually when it was US\$25 million) should be repaid on the basis that he was revoking the English Judgment. His reasoning at [33]-[39] in his 4 February 2025 ruling concerning the temporary stay that he was granting pending this appeal was, in summary as follows: (i) The deputy judge said that he was considering the request for a stay on the counterfactual basis that he should **not** have set aside the English Judgment (which is what we have now decided). (ii) On that basis, the deputy judge said that he might have had no proper justification for disturbing the balance struck by Jacobs J when ordering the stay of execution. (iii) On the basis of

the material put before the deputy judge, he thought that the balance of prejudice was “so one-sided as to mean that Motorola would suffer irremediable harm if no stay [were] granted”. (iv) It was obvious to the deputy judge that, whilst having \$20 million tied up was disadvantageous to Hytera, it was not causing it any specific problem, beyond temporary inconvenience. (v) There were solid grounds for granting a stay.

134. The deputy judge alighted on the figure of US\$20 million for reasons that he gave at [44] of his ruling of 4 February 2025. The US\$20 million represented the “justice of the case more generally”, because Hytera’s calculation of the interest that might be awarded on the Assessment was realistic. He said that the amount retained should not be reduced below “that which might realistically be awarded in respect of the Copyright Act damages, including interest” (which was, in effect, US\$14,674,823 plus pre-judgment and post-judgment interest of about US\$5 million (see [20] of the ruling) – possibly with some allowance for costs).
135. Having allowed the appeal against the deputy judge’s decision to revoke the English judgment, we see no reason to interfere with the reasoning that led the judge to assess the appropriate amount to stay in court at US\$20 million. When that evaluation was made, the Assessment was expected soon. It is still expected soon. No other factors have been advanced that affect the current dynamic. It will be open to both sides to apply for further variation in the stay, the terms of the stay and, also possibly, for revocation or variation of the English Judgment, once the Assessment has been delivered and the future course of the litigation can be better predicted as a result.

*Conclusion on the second appeal*

136. Accordingly, the second appeal is allowed. The revocation of the English judgment is reversed, and the stay granted by the deputy judge pending appeal is continued on the same terms with the parties having liberty to apply to the Commercial Court after the Assessment and/or on any other change of circumstances.

Conclusions

137. For the reasons we have given, we will dismiss the first appeal against the decision of the judge, but will allow the second appeal against the decision of the deputy judge.