

**Views from the Fair Standards Alliance
on the appeal proceedings before the Supreme Court of the United Kingdom
in *Unwired Planet vs. Huawei Technologies* and *Conversant Wireless Licensing vs. Huawei
Technologies and ZTE***

Key points:

1. *Making a FRAND undertaking does not entitle a SEP holder to insist on a global license to their entire portfolio of SEPs*
2. *The FRAND commitment to license on “non-discriminatory” terms is not limited to circumstances where the discrimination would give rise to competitive distortion*
3. *The Huawei v ZTE judgment prescribes mandatory steps that an SEP owner must follow before it is entitled to seek an injunction against a willing licensee*

Introduction

These appeals raise a number of issues of principle as to the enforcement of national patents that read on standardized technologies implemented in products distributed around the world, going beyond the telecommunications standards with which the parties to these appeals are concerned.

Companies that declare patents to be standard essential and provide a voluntary commitment to license them on fair, reasonable, and non-discriminatory (“FRAND”) terms limit their rights to enforce those patents. They do so in order to encourage the adoption of the standard (which gives the owners of patents essential to that standard monopoly power) and benefit from the widespread adoption of the standardized technology, for which they can seek royalties. Declaring a patent essential to a standard does not alleviate the burden on a patent holder to prove that their patents are valid and infringed. Nor can the patent owner’s declaration compel a potential licensee to forgo the right to challenge national patent rights in national court proceedings.

Merely by declaring a UK patent to be standard essential, a patent holder should not gain the right to insist that a potential licensee of that UK patent can be required to take a licence to the declarant’s entire portfolio of declared SEPs on a worldwide basis. Rather, to demand a license to any of the other patents in its portfolio, the patent holder should be required to show that those additional patents in its portfolio are themselves valid and infringed.

Three points bear mention on the approach of the High Court¹ and the Court of Appeal² in this case:

- First, it allows a single court – in this case, an English court, but potentially any court anywhere in the world – to set the royalty rate for a global portfolio of SEPs and insist that an

¹ <https://www.judiciary.uk/wp-content/uploads/2017/04/unwired-planet-v-huawei-20170405.pdf>

² <https://www.bailii.org/ew/cases/EWCA/Civ/2018/2344.html>

implementer pay that royalty rate, under threat of injunction in that jurisdiction. This represents an unjustified and exorbitant exercise of jurisdiction.

- Second, it ignores the practical reality that parties may conclude licenses that are limited in terms of geographic scope (and hence not global), and do seek to challenge patents in different jurisdictions where there is a good-faith basis to do so rather than engage in global licensing as a matter of course. Worldwide licensing should be achieved by consent, not by threat of an injunction.
- Third, it discourages the testing of patent (and essentiality) claims, which is necessary to address (and disincentivise) over-declaration of patents as being standard essential, which drives up prices and discourages innovation across a range of industries implementing standardized technologies.

If upheld, the earlier judgments in the High Court and the Court of Appeal would have significant adverse consequences. They would encourage a race to the court to obtain a worldwide royalty determination from whichever jurisdiction the licensor perceived to be most favourable.³ And by tipping the balance in favour of SEP owners, the judgments will impair the level playing field between patent owners and potential licensees and are liable to reduce output and innovation across a range of sectors, not just telecommunications. If uncorrected, the approach could deter companies from distributing products in the UK altogether, rather than face a UK court determining a global licensing rate, to the ultimate detriment of consumers in the UK.

Making a FRAND undertaking does not entitle a SEP holder to insist on a global license to their entire portfolio of SEPs

The Court of Appeal in *Unwired Planet* (“CA”) correctly recognized (at [52]) the following principles:

- A UK SEP has limited territorial scope and courts in this jurisdiction will generally only determine disputes concerning the infringement and validity of UK or EP UK patents.
- If a UK SEP is found valid and infringed, a UK court will only grant relief in respect of the infringement of that patent.
- The same applies to a claim for damages: damages will only be awarded for infringement of the SEP in issue in the proceedings.

The CA’s error was in going on to say (at [53]) that “[t]he position in relation to a FRAND undertaking is rather different.” In particular, the CA (at [55]) drew the wrong conclusion from its observation that “SEP owners and implementers will often negotiate a licence which best suits their respective needs in accordance with FRAND principles and further, that this licence will often be global or at least cover a number of different territories.”

The CA was correct to recognize that SEP owners and implementers may often, voluntarily, *choose* to negotiate licenses on a global basis. But the critical issue in these appeals is whether an SEP owner

³ See, for example, the comments by various SEP holders in M. Klos, “Navigating the fog: SEP litigation in Europe,” *Juve Patent*, September 13, 2019, available at <https://www.juve-patent.com/news-and-stories/legal-commentary/navigating-the-fog/> (“We are currently deciding on a case-by-case basis in which court to file injunctive relief claims for infringement of an SEP” and “We always decide on a case-by-case basis where to claim the infringement of our SEPs, depending on various circumstances specific to the implementer”).

can *insist* on a global license for the entire portfolio in spite of the SEP owner’s commitment to license its SEPs on FRAND terms.

In holding (at [56]) that “*at least as a matter of principle, that there may be circumstances in which it would not be fair and reasonable to expect a SEP owner to negotiate a licence or bring proceedings territory by territory and that in those circumstances only a global licence or at least a multi-territorial licence would be FRAND*” (emphasis added), the CA misunderstood that the SEP owner’s FRAND undertaking limits the patentee’s behaviour when enforcing its SEPs; it does not confer on it special legal privileges.

A. The Respondents are urging U.S. courts not to adjudicate on foreign patents

Remarkably, at the same time as they are urging this Court to reject the argument that it is an exorbitant exercise of the English courts’ jurisdiction to insist on the Appellants’ paying a global portfolio royalty as a condition for avoiding an injunction on UK SEPs, the Respondents (specifically, Unwired Planet’s parent company, Optis, and Conversant) are urging the United States District Court for the Northern District of California to reject a complaint by Continental Automotive Systems on the ground that the U.S. District Court “*does not have jurisdiction to dictate terms and conditions of a license where many of the patents at issue are granted by foreign jurisdictions*”.⁴

Indeed, Optis and Conversant state specifically that “*adjudication of foreign patent infringement claims should be left to the sovereigns that create the property rights in the first instance*”, citing *Voda v. Cordis Corp.*, 476 F.3d 887, 902 (Fed. Cir. 2007).

There is simply no principled basis on which the Respondents can maintain that they are entitled to insist on a global portfolio licence when licensing UK SEPs while denying in the United States that national courts should adjudicate on foreign infringement claims.

B. SEPs should not be immune to challenge

The effect of the judgments in the High Court and the Court of Appeal is effectively to render SEPs immune to good-faith challenge where they form part of a portfolio alongside UK SEPs in respect of which the patent owner is seeking injunctive relief.

The parties to these appeals all accept that patents are individual assets, which are jurisdictional in nature (see the CA judgment at [52], cited above). “*Bundling*” or “*tying*” of patents to each other or to other assets – whereby a patent holder refuses to grant licences to one patent absent the licensee also agreeing to purchase rights to another asset owned by the patent holder – has been looked upon with great scepticism by courts and competition authorities.⁵ Indeed, *Birss J* said at first instance in

⁴ *Continental Automotive Systems, Inc. v. Avanci, LLC, et. al.* (5:19-cv-02520), District Court, N.D. California, Defendants’ Notice of Motion and Motion to Dismiss First Amended Complaint, 30 August 2019, available at <https://www.courtlistener.com/recap/gov.uscourts.cand.341955/gov.uscourts.cand.341955.162.0.pdf>

⁵ Commission Decision in Case AT.39985 – *Motorola - Enforcement of GPRS Standard Essential Patents* C(2014) 2892 final, 29 April 2014, recital 386 (“*In the Der Grüne Punkt – Duales System Deutschland GmbH (“DSD”) case, the Union Courts held that it was abusive for a dominant undertaking to require a royalty payment for the use of a trade mark when the licensee was not actually using the service denoted by the trade mark. In the same vein, in this case, Motorola’s seeking of royalty payments for the use by the iPhone 4S of SEPs that Apple may not be infringing, amounts to Motorola requesting the payment of potentially undue royalties, without Apple being able to challenge such infringement*”); *Microsoft Mobile Inc. v. Interdigital, Inc.*, Civ. No. 15-723-RGA, 2016 WL 1464545, at *1 (D. Del. Apr. 13, 2016)

Unwired Planet (at [787]) that “I am in no doubt that a patentee subject to a FRAND undertaking cannot insist on a licence which bundles SEPs and non-SEPs together”. The same is true for a patentee that bundles UK SEPs and non-UK SEPs together. No party should be forced to take a portfolio licence. Rather, where there are disputes, traditional patent laws and burdens remain applicable.

SEP owners are not entitled to special legal privileges different than what is afforded to other patent owners not subject to a FRAND obligation. SEP owners should always comply with traditional legal rules and burdens, such as the obligation to demonstrate in each jurisdiction use of particular patents it seeks to license and the value of such patents and to withstand challenges such as invalidity, unenforceability, licence and exhaustion as a condition for obtaining compensation for a SEP.⁶

In a SEP situation, as compared to a non-SEP situation, the only thing that has changed is that the owner of the patent has unilaterally claimed that the patent is a SEP. But such unilateral declarations do not imply that the content of the declaration cannot or should not be challenged; according to recent studies commissioned by the European Commission, between 50% and 90% of declared SEPs are not actually essential to the standard (*i.e.*, not actually SEPs).⁷ It should therefore not be assumed that a licence to a particular patent is required simply because the patent owner claims that the patent is a SEP, and a putative licensee cannot be required to accept a portfolio licence to all global patents (including disputed patents) unless it is determined that the licensee actually needs a licence to those particular disputed patents contained therein. Declaring a patent to be a SEP does not shift the relevant burdens of proof, or impact the potential licensee’s rights to assert claims and defences.

Where negotiating parties dispute whether some portion of the offered portfolio includes actual, valid SEPs, the parties have various options to seek to address the disputes. For example, the parties may agree to negotiate a portfolio licence, but make adjustments to the pricing to account for the particular disputed patents. Or in some instances the parties may agree upon assumptions or estimates regarding portfolio quality and adjust pricing to reflect those assumptions, without undertaking a more detailed technical review. Alternatively, the parties may mutually and voluntarily agree to alternative dispute resolution, or instead retain the right to pursue traditional claims and defences in the national courts.

Public policy considerations imply that potential licensees are not just permitted – but *encouraged* – to mount good-faith patent challenges. For example, the United States Supreme Court in *Lear, Inc. v. Adkins*, 395 U.S. 653 (1969) emphasized (at 670) that there is an “*important public interest*” in patent challenges because “[i]f [challenges] are muzzled, the public may continually be required to pay tribute to [the patentee] without need or justification.” Likewise, in *Blonder-Tongue Labs., Inc. v. University of Ill. Foundation*, 402 U.S. 313 (1971) the U.S. Supreme Court cautioned (at 349-350) that “*the holder*

(denying motion to dismiss antitrust claims where plaintiff had alleged that defendant had, *inter alia*, tied SEP licenses to non-essential patent licenses).

⁶ For a more comprehensive discussion of these and other principles relevant to the licensing of SEPs, see CEN-CENELEC CWA, “Core Principles and Approaches for Licensing of Standard Essential Patents” (“CWA2”), June 2019, available at ftp://ftp.cencenelec.eu/EN/News/WS/2019/CWA_SEP/CWA95000.pdf. These principles were developed and approved by more than 20 companies and organisations, including the FSA, and supported by more than 30 other companies and organisations.

⁷ Communication of the Commission: Setting out the EU approach to Standard Essential Patents COM(2017) 712 final, 29 November 2017, sec. 1.2.2, fn. 19 (“[a] number of studies on various key technologies suggests that when rigorously tested, only between 10% and 50% of declared patents are essential (CRA, 2016 and IPlytics, 2017)”).

of a patent should not be insulated from the assertion of defenses and thus allowed to exact royalties for the use of an idea that is not in fact patentable or that is beyond the scope of the patent monopoly granted..." For similar reasons, the European Commission has argued in its Guidelines on the application of Article 81 of the EC Treaty to technology transfer agreements [2004] OJ C101/2, para. 112, that there should be no "*safe harbour*" for non-challenge clauses in licence agreements.

C. Owners of disputed SEPs should not refuse to license other SEPs

In all circumstances, a licensee should be able to request and obtain FRAND licence terms for the agreed portion of the portfolio while both parties retain the right to pursue claims and defences as to all other patents that the patent holder alleges to be SEPs. In negotiations, no licensee should be required to pay for a licence to patents that it does not agree are relevant to its products. A licensee's unwillingness to pay for a licence to patents that it does not believe to be actual, valid SEPs requiring payment should not make the licensee an "*unwilling licensee*."

Where there are disputes over certain patents, a SEP holder should not be permitted to force the licensee to accept the entire portfolio licence, or seek – via its unilateral claims of essentiality – to change the burden of proof so that the licensee must thereafter prove that the patent is not essential, valid, and infringed. Allowing a SEP holder to *require* a potential licensee to take a licence to its entire SEP portfolio as a condition for licensing any one of its SEPs – which is the effect of the earlier judgments in the High Court and the Court of Appeal – would enable the SEP holder to exploit the market power that has been conferred by the inclusion of its patent(s) into the standard, and to extract terms and conditions that are non-FRAND.

SEP holders may, for example, seek to bundle a small number of "*high quality*" patents in one jurisdiction with a large number of "*poor quality*" patents in various other jurisdictions (*e.g.*, patents that, if they were examined in detail in negotiations or an adjudication, would not be found to be valid, infringed and essential – that is, not actual SEPs) to increase the perception of portfolio size and thus improperly drive up licensing costs – to the detriment of the entire ecosystem and eventually the consumer. By way of example, around 80% of information and communications technology patents examined by the German Federal Patent Court (in 392 judgments) and the German Federal Court of Justice (in 173 judgments) between 2010 and 2013 were found to be fully or partially invalid.⁸

To avoid such concerns, a holder of a FRAND-encumbered SEP should not be able to condition the granting of a FRAND licence to the SEP on a requirement for a potential licensee to (i) take licences to patents that are not essential to the standard, that are invalid or not infringed by the potential licensee, or that are already licensed or exhausted; or (ii) grant a licence to the potential licensee's patents that are not essential to the standard. This includes situations where parties dispute whether patents are valid, infringed or essential. A patent holder cannot simply unilaterally claim that all of its patents are SEPs, claim they are of equal value or importance, and then force a potential licensee to pay for licences to all of them as a condition to licensing any.

For all these reasons, a potential licensee should not be compelled to participate in worldwide FRAND adjudication (*i.e.*, a rate-setting exercise for a broad portfolio licence) under threat of an injunction if

⁸ P. Hess, T. Müller-Stoy, and M. Wintermeier, "Are Patents merely "Paper Tigers"?", translation of "Sind Patente nur "Papiertiger"?", MitttdtschPatAnw 2014, 439–452, available at https://www.bardehle.com/fileadmin/Webdata/contentdocuments/broschures/Patent_Papiertiger.pdf.

the licensee insists on exercising its right of access to the national courts consistent with national patent law.

D. Granting an injunction in such circumstances is disproportionate

Article 3 of the IP Enforcement Directive⁹ requires that remedies for violation of IP rights must always remain equitable and proportionate. This is recognized in English law.¹⁰

In determining whether the granting of an injunction would be proportionate, it is submitted that the factors the courts should consider include the following:

- *Whether the patent holder brings to market products that implement the protected technology.* Injunctive relief provides the patent holder with an assurance that it can be the sole entity entitled to market and to generate profit with its products containing the protected technology. When the patent holder does not bring to market any products using the protected technology, however, the patent holder's monopoly right is not used to foster innovation or to bring innovative products to the market but rather to maximise the financial benefit of the patent holder. Patent holders that do not produce or market a competing implementation, such as Unwired Planet and Conversant, do not suffer a competitive disadvantage from the sale of products infringing the patent and are unlikely to suffer irreparable harm from infringement of their patents. Alternative remedies available at law, such as monetary damages, will almost always be adequate and proportionate to compensate for any harm resulting from use of the technology.
- *The value of the patent protected technology in the product.* When the value of a product is closely associated with a single patented invention or a small number of patented inventions, the value affected by an injunction – namely the sales value of the product – is close to or identical with the value of the small number of patents that the product implements. In that situation, an injunction sought by the patent holder may be more likely to be a proportionate remedy. But in the circumstances at issue, where injunctive relief for the use of any one single SEP may prevent the sale of an entire smartphone or automobile, or a crucial component for any such products, each of which contains thousands of other innovations, allowing the holder of a single patent to threaten to remove third-party products from the market generally is not proportionate and impedes innovation.
- *The public interest (including the impact on customers of the alleged patent infringer, on jobs, and on the underlying ecosystem).* When deciding on injunctive relief, apart from the interest of the patent holder, the impact on the general public should also be considered. More specifically, courts should consider the impact of an injunction on the customers of the alleged patent infringer, as well as the impact on jobs and the underlying ecosystem. Granting injunctive relief for SEPs may result in manufacturers having to discontinue production or lay off employees because they are unable to pay excessive, non-FRAND royalties demanded by the SEP owner and cannot find any workaround to the SEP. It is likely that not just the producer would be affected by this, but their suppliers as well.

⁹ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights [2004] OJ L195/16.

¹⁰ *Vestergaard Frandsen A/S v Bestnet Europe Ltd* [2011] EWCA Civ 424 at [56].

- *The fact that the patent holder has voluntarily provided a FRAND commitment for its SEP.* By making a FRAND commitment, the patent holder voluntarily agrees to support the promulgation of the standard via licensing to third parties, rather than seeking to restrict the use of the standard by eliminating some market participants via injunctive remedies. While a FRAND commitment does not imply that a SEP holder has foregone its right to enforce its patents against unlicensed use, seeking an injunction against a party from whom FRAND compensation can be obtained would be incompatible with the commitment.

The impact of an injunction on a potential licensee can be significant. For example, a telecom operator might have to shut down its network, a networking manufacturer might be forced to halt its supply to telecom operators around the world that are building next-generation networks, or a car manufacturer might be required to shut down sales of its vehicles in a given country or switch off its connected vehicle applications. By contrast, for a non-practicing entity (“NPE”) like Unwired Planet, the only harm is a delay in receiving a royalty if the patent is found to be valid and infringed, and the NPE will be compensated for that delay by interest on any damages paid by the licensee.

The drastic remedy of an injunction is not necessary to ensure that potential licensees negotiate reasonably and forthrightly. Potential licensees have strong incentives to negotiate FRAND licenses, including: risks in litigation that the judge or jury may order a FRAND rate higher than the one the parties might negotiate outside of litigation, supplemented by interest well above market rates for past use; substantial litigation costs, including the imputed costs of distracting key personnel; the costs of compensating the SEP holder for its legal fees if the SEP holder prevails; and the uncertainty associated with litigation, making business decisions more difficult.

From a policy perspective, the injunction granted by the High Court against Huawei unless it accepted a global licence was therefore a disproportionate remedy, in breach of the IP Enforcement Directive.

The FRAND commitment to license on “non-discriminatory” terms is not limited to circumstances where the discrimination would give rise to competitive distortion

The voluntary commitment an SEP owner makes to license on FRAND terms requires granting licenses on non-discriminatory terms. There is nothing in the ETSI rules (the rules of the standard setting organisation at issue in this case) or the FRAND commitment that requires evidence of distortion of competition, and the contractual meaning of FRAND therefore imposes a stronger obligation of non-discrimination than competition law (unlike the ETSI Rules, competition law also requires that trading parties be placed at a “competitive disadvantage” by the discrimination).¹¹

The effect of substantially constraining the obligations under the “non-discriminatory” limb of FRAND would entail the kind of discrimination that the High Court (at [175]) described as inappropriate under FRAND – namely “*for a small new entrant to the market to have to pay a higher royalty rate than an established large entity.*” Specifically, the lack of transparency of SEP licenses and ancillary agreements would allow SEP owners to unfairly burden potential licensees that may not have the financial and legal resources to institute litigation challenging an SEP holder’s license offer as giving

¹¹ Article 102 TFEU (“Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States. Such abuse may, in particular, consist in: [...] (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage”).

rise to competitive distortion. In Germany, for example, SEP holders are required to provide full transparency of all relevant licensing agreements in patent litigation, but SEP holders can choose to evade such scrutiny by bringing proceedings in other jurisdictions where disclosure of such agreements is not mandatory.

The CA saw “no reason why the authors of the undertaking should have been concerned to constrain the ability of the SEP owner to grant licences at lower rates if these cause no competitive harm” (at [200]). One reason to exclude a competitive harm requirement is to provide a level playing field for all industry participants implementing the standard by removing the high hurdle of proving competitive distortion; in other words, to prevent discrimination from occurring rather than to fix it once the damage is done.

The approach adopted in the Judgments makes it far harder for any potential licensee to ensure that it is not discriminated against. As noted by the Court of Justice in *Huawei v ZTE*, “in the absence of a public standard licensing agreement, and where licensing agreements already concluded with other competitors are not made public, the proprietor of the SEP is better placed to check whether its offer complies with the condition of non-discrimination than is the alleged infringer.”¹²

This problem is exacerbated by the frequent failings of SEP owners in complying with transparency requirements.¹³ If a potential licensee cannot access basic information about a patent holder’s existing licenses, it may be impossible for that potential licensee to determine whether or not the license terms proposed to them by such patent holder are non-discriminatory, especially if they are required to prove competitive distortion as well.

The Huawei v ZTE judgment prescribes mandatory steps that an SEP owner must follow before it is entitled to seek an injunction against a willing licensee

In finding that Unwired Planet did not violate the procedure laid down in *Huawei v ZTE*, the High Court held that “the information Huawei had by March 2014 was sufficient for it to understand that the issuing of proceedings for an injunction against it did not represent a refusal to license its SEP portfolio; quite the reverse: [...]. Furthermore, the fact that an injunction was being claimed did not prevent the parties negotiating and that is what they proceeded to do” (CA at [258]). This overlooked, however, the harm caused merely by the issuing of proceedings for an injunction, which immediately distorts licensing negotiations to the detriment of a reasonable potential licensee. It was this harm that the mandatory procedure in *Huawei v ZTE* was designed to avoid.¹⁴ As, for example, Qualcomm acknowledged when seeking a partial stay of an injunction requiring it to renegotiate a number of

¹² *Huawei v ZTE*, Case C-170/13, ECLI:EU:C:2015:477, at [64].

¹³ See Communication from the Commission: Setting out the EU approach to Standard Essential Patents, COM(2017) 712 final, 29 November 2017, sec. 1 (“Information on the existence, scope and relevance of SEPs is vital for fair licensing negotiations and for allowing potential users of a standard to identify the scale of their exposure to SEPs and necessary licensing partners. However, currently the only information on SEPs accessible to users can be found in declaration databases maintained by SDOs which may lack transparency. This situation makes licensing negotiations and the anticipation of risks related to SEPs particularly difficult to navigate for start-ups and SMEs”).

¹⁴ See *Huawei v ZTE*, Case C-170/13, ECLI:EU:C:2015:477, at [55] (“in order to prevent an action for a prohibitory injunction or for the recall of products from being regarded as abusive, the proprietor of an SEP must comply with conditions which seek to ensure a fair balance between the interests concerned”) (emphasis added).

license agreements, “*If this Court does not grant a stay, Qualcomm will be forced to negotiate under the cloud of an injunction requiring it to accept terms to which it would not otherwise agree.*”¹⁵

Where a court finds that a licensee has wilfully infringed SEPs it may be appropriate for a patent owner to seek from the court monetary compensation for harm caused by the licensee’s misbehaviour – such as back royalties, interest and costs. Monetary compensation is better aligned with FRAND principles and approaches than the licensor seeking market exclusion via an injunction.¹⁶ Given the FRAND promise to license (*i.e.*, to accept royalties in lieu of a right to exclude), monetary compensation is usually an adequate remedy for SEPs.

A SEP holder ought, therefore, not to threaten, seek or enforce an injunction (or similar *de facto* exclusion processes) except in exceptional circumstances and only where FRAND compensation cannot be addressed via an adjudicative procedure. Specifically, parties should seek to negotiate FRAND terms without any unfair “*hold up*” leverage associated with injunctions or other *de facto* market exclusion processes. Such scare tactic proceedings may be particularly improper where, for example, there has not yet been a court adjudication of infringement of the SEP in the country in which the *de facto* proceeding is sought, or where there are pending invalidity proceedings relating to the alleged SEP or its family members.

NOTE: The positions and statements presented in this paper do not necessarily reflect the detailed individual corporate positions of each member.

¹⁵ *Federal Trade Commission v Qualcomm*, Case: 19-16122, United States Court of Appeals for the Ninth Circuit, Motion for Partial Stay of Injunction Pending Appeal, July 8, 2019, available at <https://www.qualcomm.com/media/documents/files/motion-for-partial-stay-of-injunction-pending-appeal-united-states-court-of-appeals-for-the-ninth-circuit-7-8-19.pdf>.

¹⁶ In *Motorola - Enforcement of GPRS Standard Essential Patents*, the Commission rejected arguments that the courts could not adequately protect a patent holder’s interest in seeking monetary compensation, and found instead that damages actions focused on specific patents were sufficient to protect a patent holder’s commercial interests. See Commission Decision in Case AT.39985 – *Motorola - Enforcement of GPRS Standard Essential Patents* C(2014) 2892 final, 29 April 2014, recital 519 (“*Motorola claims that damages actions do not adequately protect its commercial interests as such actions are slow, expensive and generally only retrospective, due to the fact that they need “to be conducted on a patent-by-patent basis and can therefore only be brought with respect to a handful of patents”. Regarding the need to conduct damages actions on a patent-by-patent basis, as a matter of patent law, injunction proceedings also have to be conducted on a patent-by-patent basis. As for the allegedly slow, costly and retrospective nature of damages actions, the fact that Motorola is seeking damages and rendering of accounts from Apple in Germany shows that Motorola nonetheless considers that such actions do provide it with a certain level of protection of its commercial interests*”).