



May 15, 2020

The Sedona Conference
301 East Bethany Home Rd, Suite C-297
Phoenix, AZ 85012
602-258-4910

Re: *The Sedona Conference Framework for Analysis of Standard-Essential Patent (SEP) and Fair, Reasonable, and Non-Discriminatory (FRAND) Licensing and Royalty Issues (Stage Two)*

To The Sedona Conference Working Group on Patent Damages and Remedies:

We respectfully submit this letter in response to the call for public comment on the November 2019 Public Comment Version of The Sedona Conference Framework for Analysis of Standard-Essential Patent (SEP) and Fair, Reasonable, and Non-Discriminatory (FRAND) Licensing and Royalty Issues (Stage Two) (the “Framework”). The Fair Standards Alliance (FSA) represents 47 global companies, large and small, and advocates fairer licensing of standardized technology, including in the development and rollout of the internet of things. Annually, the aggregate turnover of FSA members is more than USD 2.2 trillion, and in aggregate our members spend more than USD 152 billion on R&D and innovation. Alliance members have more than 500,000 patents, including SEPs, that are either granted or pending. We appreciate the work of The Sedona Conference and believe it serves a valuable and important purpose for litigants and courts alike.

The Framework, as written, clearly reflects substantial effort to achieve the “general approach” described in the Foreword: “to present the various positions that SEP licensors and that SEP licensees may argue for key disputed issues, . . . with a similar level of detail provided to each position.” Framework at iv. That approach undoubtedly has its merits in certain circumstances. However, as the Preface to the Framework acknowledges, the approach differs from Sedona’s traditional consensus approach: “The numerous ‘some may argue’ positions presented throughout this Framework may not represent the consensus of the group described, and implicitly do not represent the consensus of the full drafting team or all of WG9.” Framework at ii-iii.

Moreover, as the Foreword candidly recognizes, such an approach creates “‘false equivalency’ issues.” In other words, devoting equal space to both sides of every issue gives the impression that both sides’ arguments are equally supported by judicial decisions, when that is not the case as to many issues. Such a result undermines the Working Group’s stated goal of “present[ing] a framework for analysis” and runs contrary to the stated mission of The Sedona Conference: “to move the law forward in a reasoned and just way through the creation and publication of

nonpartisan consensus commentaries.” See <http://www.thesedonaconference.com>. Where issues truly are unsettled and the law is still developing, presenting both sides equally is the best way to fulfill that mission. But in circumstances where courts already have weighed in repeatedly and decisively on one side of the potential debate, or where no court has weighed in directly to support an argument, the most useful educational resource would be one that presents that imbalance as accurately as possible.

We recognize that given the intensely contested nature of SEP- and FRAND-related royalty issues, it may not be feasible for the Working Group to reach consensus as to the state of all relevant legal issues. If that is the case, we respectfully submit, it may ultimately be prudent for the Working Group to narrow its focus to those issues where consensus might be possible. We believe that a more targeted Framework that is consistent with The Sedona Conference’s typical approach would be more useful than a broader framework that creates known false equivalency issues. Absent such a narrowed approach, we are concerned that moving forward with issuing the Framework may lead to more confusion than clarity on the state of the law.

This submission is not intended to address every instance of false equivalence that appears in the Framework. Rather, we set forth below two examples of issues where the presentation in the Framework suffers most severely from the flaws inherent in this approach.

Patent holdup and patent holdout (Framework Section III.C.5, pp. 43-45)

This section creates a false equivalence between the concepts of patent holdup and patent holdout, which is not reflective of the state of U.S. law and misrepresents the underlying economics. U.S. courts, including the Federal Circuit, have recognized patent holdup—which occurs “when the holder of a SEP demands excessive royalties after companies are locked into using a standard”—as a genuine risk arising from the existence of SEPs. *Ericsson, Inc. v. D-Link Systems, Inc.*, 773 F.3d 1201, 1209 (Fed. Cir. 2014). By contrast, there is little to no support in U.S. law for the view that patent “holdout” is a significant problem in the context of SEPs and FRAND licensing.

As the Framework recognizes, the leading case on the relevance of patent holdup to determining FRAND royalties is the Federal Circuit’s decision in *Ericsson*. 773 F.3d at 1209. The *Ericsson* Court described patent holdup as a “potential problem[] that could inhibit widespread adoption of [a] standard.” *Id.* Indeed, as the Court there noted, the potential for patent holdup is among the concerns that lead SDOs to “seek assurances from patent owners” that they will, for example, grant licenses on FRAND or RAND terms. *Id.* In other words, the risk of patent holdup is a direct result of the standard-setting process, and preventing patent holdup is a primary goal of SDOs in proliferating FRAND/RAND licensing standards. To be sure, *Ericsson* recognized that a “district court need not instruct the jury on hold-up . . . unless the accused infringer presents actual evidence of holdup[.]” *Id.* at 1234.

Ericsson is far from alone in recognizing the problem of patent holdup and the inherent connection between patent holdup and SEPs:

- “The very purpose of the RAND agreement is to promote adoption of a standard by decreasing the risk of hold-up.” *Microsoft Corp. v. Motorola, Inc.*, 795 F.3d 1024, 1052 (9th Cir. 2015).
- “Technical standardization also creates ‘lock-in’ effects and raises the specter of ‘patent hold-ups.’” *Lotes Co. v. Hon Hai Precision Indus. Co.*, 753 F.3d 395, 400 (2d Cir. 2014).
- “Many SSOs try to mitigate the threat of patent holdup by requiring members who hold IP rights in standard-essential patents to agree to license those patents to all comers on terms that are ‘reasonable and nondiscriminatory,’ or ‘RAND.’” *Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872, 876 (9th Cir. 2012).
- “In order to avoid ‘patent hold-up,’ many SSOs require participants to disclose and/or give up IPR covering a standard.” *Qualcomm Inc. v. Broadcom Corp.*, 548 F.3d 1004, 1010 (Fed. Cir. 2008).
- “Inefficiency may be injected into the standard-setting process by what is known as ‘patent hold-up.’ . . . To guard against anticompetitive patent hold-up, most SDOs require firms . . . to commit to licensing their technologies on FRAND terms.” *Broadcom Corp. v. Qualcomm Inc.*, 501 F.3d 297, 310, 313 (3d Cir. 2007).
- “This potential abuse is well-documented in judicial opinions discussing FRAND and is often referred to as ‘patent hold-up.’ The FRAND commitment, therefore, is designed to prevent patent holdup.” *Apple Inc. v. Qualcomm Inc.*, No. 317CV00108GPCMDD, 2017 WL 3966944, at *2 (S.D. Cal. Sept. 7, 2017) (citations omitted).
- “When a standard-setting organization like ETSI adopts a standard, the SEP holders potentially obtain leverage to demand more than the value of their specific patented technology. This leads to the potential for a ‘hold-up,’ or a situation in which an SEP holder demands more than the value of its patented technology and attempts to capture the value of the standard itself.” *TCL Commc’n Tech. Holdings, Ltd. v. Telefonaktiebolaget LM Ericsson*, No. SACV1400341JVSANX, 2015 WL 12805150, at *2 (C.D. Cal. Feb. 23, 2015).
- “[I]n order to prevent patent holdup, most SSOs require that companies that participate in the creation of the various standards declare any patents that they hold related to the standard, and whether they are, may be, or may become essential to the standard.” *InterDigital Commc’ns, Inc. v. ZTE Corp.*, No. 1:13-CV-00009-RGA, 2014 WL 2206218, at *1 (D. Del. May 28, 2014).
- “Generally, when a standard setting body incorporates patented technology into an industry-wide standard, the FRAND licensing commitment prevents patentees from

extorting their competitors or preventing competitors from entering the marketplace. Commentators have termed these problems ‘patent hold-up’ or ‘royalty stacking.’” *Golden Bridge Tech. v. Apple Inc.*, No. 5:12-CV-04882-PSG, 2014 WL 2194501, at *4 (N.D. Cal. May 18, 2014) (brackets, footnotes, and internal quotation marks omitted).

- “[O]ne of the primary purposes of the RAND commitment is to avoid patent hold-up, which occurs when the holder of a standard-essential patent demands excess royalties after standard implementers are already locked into using the standard.” *In re Innovatio IP Ventures, LLC Patent Litigation*, 2013 WL 5593609 (N.D. Ill. Oct. 3, 2013).
- “In the context of a dispute concerning whether or not a given royalty is RAND, a proper methodology used to determine a RAND royalty should therefore recognize and seek to mitigate the risk of patent hold-up that RAND commitments are intended to avoid.” *Microsoft Corp. v. Motorola, Inc.*, 2013 WL 2111217, at 12 (W.D. Wash. Aug. 5, 2013).
- “Once compliance with a particular standard is effectively required to compete in a particular market, the patentee gains disproportionate bargaining power and may extract unreasonably high royalties from suppliers of standard-compliant products and services. Requiring that the patent be licensed to all on FRAND terms prevents this type of patent ‘hold-up.’ *SK hynix Inc. v. Rambus Inc.*, No. C-00-20905 RMW, 2013 WL 1915865, at *19 (N.D. Cal. May 8, 2013) (citations and internal quotation marks omitted).

By contrast, the concept of “patent holdout” has not been widely recognized by U.S. courts as an actual problem associated with SEPs and FRAND licensing. For example, in *In re Innovatio*, 2013 WL 5593609, at *11—a case not addressed in this section of the Framework—the court considered and rejected the argument that SEPs present unique “holdout” (also called “reverse hold-up”) concerns: “[T]he court is not persuaded that reverse hold-up is a significant concern in general, as it is not unique to standard-essential patents. Attempts to enforce any patent involve the risk that the alleged infringer will choose to contest some issue in court, forcing a patent holder to engage in expensive litigation.” *See also id.* at *12 (“Although the court is aware that alleged infringers may force RAND-obligated patent holders into court to enforce their patents, therefore, this reality does not present significant concerns unique to the RAND context. The court will therefore not give the ability of alleged infringers to force a lawsuit any special consideration in the RAND analysis beyond what it receives in a typical patent case.”).

The scant recognition by courts of patent holdout as a significant issue affecting SEP licensing is reflected by the authority cited in the Framework—none of which remotely suggests that courts treat patent holdout as a risk equivalent to that of patent holdup.

For example, in *In re Qualcomm Litigation* (cited at Framework p. 44 n.201), the court simply **described a party’s argument** regarding holdout, without suggesting an endorsement of that argument, in the course of reaching a jurisdictional ruling. No. 3:17-cv-00108-GPC-MDD, Dkt. 1042, at 12-13 (S.D. Cal. Mar. 20, 2019).

In *Core Wireless Licensing S.a.r.l. v. LG Elecs., Inc.* (cited at Framework p. 44 n.200), a district court exercised its discretion to enhance damages against a defendant found to have engaged in willful patent infringement. No. 2:14-CV-912-JRG, 2016 WL 10749825, at *2 (E.D. Tex. Nov. 2, 2016). The opinion was based in part on a determination that the defendant had declined to “engage in serious, good faith negotiations” for a patent license, but the opinion notably makes *no* mention of the term “patent holdout,” reflecting the relatively small footprint of that concept. *Id.* at *1.

Finally, in *In re Certain 3G Mobile Handsets and Components Thereof* (cited at Framework p. 43 n.197), an Administrative Law Judge reached an *initial* determination, in an ITC investigation, that the asserted patents were infringed and that the public interest supported an exclusion order, in part on the ground that there was evidence of patent holdout. *In re Certain 3G Mobile Handsets and Components Thereof*, Inv. No. 337-TA-613, 2015 WL 6561709, at *36 (U.S.I.T.C. Apr. 27, 2015) (Initial Determination on Remand). Upon review, the ITC found no patent infringement and therefore had no occasion to address the public-interest issues, including the question of patent holdout. *In re Certain 3g Mobile Handsets & Components Thereof*, No. 337-TA-613, 2015 WL 13817114, at *27, *29 (Sept. 21, 2015) (Commission Opinion).

Those are the only three authorities identified in the Framework as even obliquely supporting arguments in favor of the significance of holdout. That is not the product of oversight: advocates of equating holdout with holdup surely searched for the most supportive authority. Nor are we aware of any other federal-court precedent that embraces the concept of holdout as a significant issue for SEP licensing. Indeed, the fact that the above authorities were judged to most strongly support the concept of holdout demonstrates the stark difference between courts’ treatment of holdout versus their widespread recognition of the risks of patent holdup. By nonetheless granting equal space to the potential arguments in favor of holdout as that given to arguments regarding holdup, the Framework creates the very form of “false equivalency” of which it aptly warns in the Introduction.

Hold-up is also of much greater concern than assertions of hold-out because patent law already supplies remedies, such as attorney’s fee awards and enhanced damages, if a potential licensee improperly declines to take a license. *See* 35 U.S.C. §§ 284-285. In contrast, there is no patent law remedy against the harm from an improperly threatened or issued injunction. The only safeguard is the limits on granting an injunction under the *eBay* factors in the first instance.

Moreover, in equating concerns regarding holdup with purported concerns regarding holdout, the Framework overlooks the numerous cases that have recognized that SEP holders have no right to a portfolio license and that potential licensees are under no legal obligation by virtue of the SEP holder’s commitment to license on FRAND terms. In other words, SEP holders and potential licensees are not similarly situated—SEP holders are bound by contractual commitments for their SEPs, while potential licensees are not. For example, in *Apple Inc. v. Qualcomm Inc.*, the court made clear that Apple, the licensee, was “not obligated to accept a worldwide FRAND license from Qualcomm,” the licensor. 2017 WL 39666944, at *12. The court further explained: “Whereas Qualcomm’s negotiations with Apple are constrained by its contractual obligations to ETSI, Apple is free to decline or accept Qualcomm’s offer regardless of whether it

complies with FRAND.” *Id.* at *10. Similarly, in *Apple Inc. v. Telefonaktiebolaget LM Ericsson, Inc.*, another court held that “there exists no legal basis upon which [the potential licensee] may be compelled to take a license for [the licensor]’s patents on a portfolio-wide basis, as much as [the licensor] may be able to point to business realities that make such an outcome unlikely, imprudent or uneconomical on [the licensee]’s part.” *See also InterDigital Communications*, 2014 WL 2206218, at *3 (dismissing counterclaims seeking a finding that SEP holder did not offer a FRAND rate during negotiations and asking the court to set a FRAND rate, in part because the court did not believe it “could actually enforce such a ruling”); *Core Wireless Licensing S.a.r.l. v. Apple Inc.*, No. 6:12-CV-100-JRG, 2015 WL 4775973, at *2 (E.D. Tex. Aug. 11, 2015) (plaintiff had failed to provide adequate evidence to support its claim that potential licensee “was obligated to ‘negotiate a FRAND royalty in good faith’ on the patents that [the plaintiff] declared standards-essential”).

Given the dearth of precedent suggesting otherwise, and the voluminous authorities describing the direct connection between SEPs and the risk of patent holdup, it is clear that arguments as to the two concepts stand on very different footing. Suggesting otherwise, as the Framework does, creates a false equivalency.

Injunctive Relief (Framework Section IV, pp. 46-54)

This section of the Framework correctly identifies the applicable four-factor test when a plaintiff seeks an injunction regarding a FRAND-committed SEP. *See eBay Inc. v. MercExchange, LLC*, 547 U.S. 388 (2006) (“a plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.”). Unfortunately, the section does not fairly represent the state of the law regarding how courts apply that test.

For example, in discussing the requirement that a plaintiff demonstrate it would suffer irreparable harm absent an injunction, the Framework correctly notes that the Federal Circuit has held that “[a] patentee subject to FRAND commitments may have difficulty establishing irreparable harm.” *Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1332 (Fed. Cir. 2014), *overruled on other grounds by Williamson v. Citrix Online, LLC*, 792 F.3d 1339 (Fed. Cir. 2015). This is because such a patentee by definition has agreed to allow all potential users to license the SEP for FRAND royalties, thereby undermining any argument that the patentee would suffer significant harm if any particular defendant were not enjoined from using the SEP. *See Microsoft Corp.*, 696 F.3d at 884 (“Implicit in such a sweeping promise is, at least arguably, a guarantee that the patent-holder will not take steps to keep would-be users from using the patented material, such as seeking an injunction, but will instead proffer licenses consistent with the commitment made.”); *id.* at 885 (“[H]owever the RAND rate is to be determined under the ITU standards, injunctive relief against infringement is arguably a remedy inconsistent with the licensing commitment.”); *Apple, Inc. v. Motorola Mobility, Inc.*, No. 11-CV-178-BBC, 2012 WL 5416941, at *15 (W.D. Wis. Oct. 29, 2012) (“[I]n most situations owners of declared-essential patents that have made licensing commitments to standards-setting organizations should be

precluded from obtaining an injunction or exclusionary order that would bar a company from practicing the patents.”).

The Framework goes on to say, however, that “the patent holder may argue that past licensing history itself may show that there would be irreparable harm in the absence of injunctive relief”—seemingly suggesting that such an argument is supported by case law or would otherwise stand a good chance of success.

The cases cited in the Framework do not support such a view. In *Apple Inc. v. Samsung Elecs. Co.* (cited at Framework p. 49 nn. 224-225), a case **not involving SEPs**, the Federal Circuit found the plaintiff’s past licensing behavior inconclusive as to the propriety of an injunction, because it showed only that the plaintiff was “willing to license the asserted utility patents in some circumstances,” and that the plaintiff was “willing to license some patents to” the defendant. 735 F.3d 1352, 1370 (Fed. Cir. 2013). This analysis clearly does not apply to the holder of a FRAND-committed SEP, which typically will have professed a willingness to license the patent-at-issue to all comers. Indeed, even outside of the SEP context, courts routinely deny injunctions where a plaintiff’s licensing history is sufficiently extensive. *See, e.g., ActiveVideo Networks, Inc. v. Verizon Commc’ns, Inc.*, 694 F.3d 1312, 1339 (Fed. Cir. 2012) (“ActiveVideo sought to broadly and extensively license this technology (Cablevision, Grande, and TV Guide) including a campaign to secure a license from Verizon itself, which started in 2004. In light of the record evidence including ActiveVideo’s past licensing of this technology and its pursuit of Verizon as a licensee, no fact finder could reasonably conclude that ActiveVideo would be irreparably harmed by the payment of a royalty (a licensing fee.)”); *Johnson & Johnson Vision Care, Inc., v. CIBA Vision Corp.*, 712 F. Supp. 2d 1285, 1289 (M.D. Fla. 2010) (“Looking at CIBA’s licensing behavior and the specific facts of this case, the Court, as it did at the preliminary injunction stage, finds compelling that CIBA has been willing to share the Nicolson patents with so many of its competitors (again, including J&J itself). This conduct, taken in its totality, is inconsistent with CIBA’s assertion that only enforcement of its right to exclude J&J from using the Nicolson patents will redress the harm that CIBA will suffer in the future on account of J&J’s infringement.”).

Similarly, *Celsis In Vitro, Inc. v. CellzDirect, Inc.* (cited at Framework p. 49 n.227), in which the Federal Circuit recognized “price erosion, damage to ongoing customer relationships, loss of customer goodwill (e.g., when an effort is later made to restore the original price), and loss of business opportunities” as examples of potential irreparable harm in patent cases, also **did not involve SEPs**. 664 F.3d 922, 930 (Fed. Cir. 2012). Given that a FRAND-committed SEP holder already has the business expectation that all potential licensees will be able to use its patents, there is no reason to conclude that such a patentee would be at risk for price erosion or any of these other harms if an accused infringer were allowed to continue using the SEP. The Framework suggests (at p. 49) that “the patent holder may allege there has been reputational harm or lost opportunities based on that refusal to negotiate, which extends beyond financial injury.” But such an argument at most could establish **past** nonmonetary harm, and not ongoing irreparable harm that can be remedied only by an injunction.

The Framework also cites *Apple v. Motorola* (Framework p. 49, nn. 226, 229-230) for the proposition that “an injunction may be justified where an infringer unilaterally refuses a FRAND royalty or unreasonably delays negotiations to the same effect.” 757 F.3d at 1332. But the Court made this statement when embracing the applicability of the four-part *eBay* test for injunctions in the SEP context. Thus, in context, such circumstances may support the issuance of an injunction only if the four *eBay* factors are otherwise met. Those factors include a showing of irreparable harm, as well as a showing that the remedies available at law are inadequate to compensate for the injury. And, in fact, the *Apple v. Motorola* case itself found those factors not met and held that the plaintiff was not entitled to an injunction, in part because the plaintiff had “agreed to add as many market participants as are willing to pay a FRAND royalty.” *Id.*

Within this same section, the Framework states (with no supporting authority) that a patent holder may argue “that its past willingness to license the SEP should only be considered in connection with the second *eBay* factor relating to the adequacy of monetary damages to compensate for infringement” and should not relate to irreparable harm. Framework at 49. This argument runs directly contrary to the Federal Circuit’s decision in *Apple v. Motorola*, which links FRAND commitments to a likely difficulty in establishing irreparable harm. Moreover, such an argument would be irrelevant to the question of whether an injunction should issue. Regardless of which factor is in play, the fact remains that a patentee’s committing to license its SEPs on FRAND terms to all potential licensees severely undercuts any argument that the patentee requires an injunction to be made whole. See *Microsoft Corp. v. Motorola, Inc.*, 795 F.3d 1024, 1046 (9th Cir. 2015) (“Here, had Motorola accepted the RAND rates, it would then be fully compensated for Microsoft’s infringing use. The jury could have inferred, from that circumstance, that the injunctive actions were not motivated by a fear of irreparable harm, as payment of the RAND rate would eliminate any such harm.”).

And, indeed, the Framework’s discussion of the second *eBay* factor further demonstrates that a FRAND licensing commitment severely undercuts a patentee’s likelihood of obtaining an injunction. The Framework again cites the non-SEP case of *Apple v. Samsung*, this time for the point that “a defendant’s ability to pay a judgment does not defeat a claim that an award of damages would be an inadequate remedy.” Framework at 50 n.231 (quoting *Apple*, 735 F.3d at 1369). But even if the defendant could afford to pay the money damages, the Framework does not address the question of why such damages *are* inadequate to compensate the holder of a FRAND-committed SEP for its injuries. The only potential answer the Framework suggests to this question is that injunctions may be necessary to combat “patent holdout.” But, as discussed above, *supra* pp. 4-5, courts have not widely recognized patent holdout as a significant problem in the SEP context, and so there is no reason to conclude that courts would freely grant injunctions based on such an argument.

The only situation the Framework identifies in which the second factor might favor the plaintiff is one in which the defendant is *unable* to pay a judgment. Framework p. 50 & n.236 (citing *Apple*, 735 F.3d at 1369). Absent such a circumstance, wherein a judgment for damages actually might not be paid, there simply is no reason that such a judgment would not suffice to compensate a FRAND-committed SEP holder. See *Realtek Semiconductor Corp. v. LSI Corp.*, 946 F. Supp. 2d 998, 1008–09 (N.D. Cal. 2013) (“Unless and until Realtek were to refuse a



license under the court’s-determined RAND terms (which Realtek indicates it will not do), then any exclusion order or injunctive relief is inconsistent with [the patentees’] RAND obligations.”).

Moreover, the same analysis applies to the third *eBay* factor—the balance of harms between the plaintiff and the defendant. The Framework even recognizes as much: “This factor would ordinarily favor the defendant if it is willing to pay a court-ordered FRAND royalty. On the other hand, this factor may favor the patent holder if the defendant refuses or is unable to pay a court-ordered FRAND royalty.” Framework at 52. Unfortunately, that accurate summation of the analysis is placed at the end of a paragraph in the middle of the section. If the section is rewritten, it should be moved to the head of the section for appropriate framing.

In sum, a close reading of the arguments set forth in this section and the cases cited therein reveals that, absent exceptional circumstances, courts are very unlikely to grant injunctions in favor of FRAND-committed SEP holders. The section thus makes an unbalanced issue appear balanced, to the detriment of the framework as a whole.

* * *

Once again, the above provides only two examples of the legal issues whose presentation is most skewed by the Working Group’s effort to give equal space to the parties on both sides of an argument. In order to provide a reasoned and just framework for analysis of SEP- and FRAND-related issues, the general approach of the Framework likely will have to shift. Absent such a shift, the Framework will leave the misleading impression that certain competing points of view have found equal acceptance by courts. We respectfully ask that the Working Group consider narrowing the focus of the Framework to issues where a true consensus in the tradition of the Sedona Conference can be reached. If the Working Group does not undertake such a narrowing, the undersigned fear that issuing the Framework will lead to more confusion than clarity in this important area.

Very truly yours,

Robert Pocknell

Chair, Fair Standards Alliance



About the Fair Standards Alliance:

The Fair Standards Alliance is a European based association that has been incorporated to promote a number of key principles regarding the licensing of standards-essential patents (SEPs) on a fair and reasonable, and non-discriminatory (FRAND) basis.

Standards are important enablers for competitive and dynamic markets where innovation and interoperability go hand in hand. In order for standards to be successful and widely taken up by the market, the Alliance believes that it is important to ensure that SEP licensing occurs in a fair, balanced, and rational manner.

Our membership is broad and diverse, ranging in size from multinationals to SMEs, and coming from different levels of the value chain across a diversity of industry sectors. Our members significantly contribute to global innovation. Annually, the aggregate turnover of FSA members is more than USD 2.2 trillion, and in aggregate our members spend more than USD 150 billion on R&D and innovation. Alliance members have more than 500,000 patents, including SEPs, that are either granted or pending.

For further information, see <http://www.fair-standards.org/>.

Current members of the Fair Standards Alliance include:¹

<i>AirTies</i>	<i>Apple</i>	<i>BMW</i>
<i>Bullitt</i>	<i>Bury</i>	<i>Cisco</i>
<i>Continental</i>	<i>Crosscall</i>	<i>Daimler</i>
<i>Dell</i>	<i>Denso</i>	<i>Emporia</i>
<i>Fairphone</i>	<i>Ford</i>	<i>Freebox</i>
<i>Google</i>	<i>Gramm, Lins & Partner</i>	<i>Harman</i>
<i>Hitachi</i>	<i>Honda</i>	<i>HP</i>
<i>Hyundai</i>	<i>Intel</i>	<i>Juniper</i>
<i>Kamstrup</i>	<i>Landis+Gyr</i>	<i>Lenovo</i>
<i>Microsoft</i>	<i>Molex</i>	<i>N&M Consultancy</i>
<i>Nordic Semiconductor</i>	<i>Pearl Cohen</i>	<i>Sagemcom</i>
<i>Sequans</i>	<i>Sierra Wireless</i>	<i>Sky</i>
<i>Tech Law Associates</i>	<i>Deutsche Telekom</i>	<i>Telit</i>
<i>Tesla</i>	<i>TomTom</i>	<i>Toyota</i>
<i>U-blox</i>	<i>Valeo</i>	<i>Visteon</i>
<i>Volkswagen</i>	<i>Wiko</i>	

¹ The positions presented in this statement are those of the FSA, and do not necessarily reflect the detailed individual corporate positions of each member.