



Certainty and Continuity of Availability of Essential Patents in Standards for Licensing by “Newcomers”

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„Licensing to Newcomers“ - I

- FRAND – Individual or cumulative meaning?
- The problem of royalty stacking
- One-stop-shop („administrator“) for licensing to Newcomers (3rd parties) a “must“?

„Licensing to Newcomers“ - II

- Reasonable royalties in case of multiple patent protection considered in German Law concerning Inventions made by Employees (No. 19 of Guidelines for Calculating Invention Remuneration)
- In such calculation, maximum cumulative royalty dictated by marketability limit
- Such considerations could be the basis for „allowable“ cumulative FRAND conditions in Standards

Enforceability of FRAND Conditions

- „Orange-Book-Standard“ decision of German Federal Court of Justice (GFCJ), KZR 39/06, of May 6, 2009, important
 - ◆ Essential patents subject to compulsory licensing for competition law reasons
 - ◆ No injunctive relief if „newcomer“ pays royalties “as if already licensee”
 - ◆ Refusal to license in case of essential patents abuse of dominant position

Licensing into less/least developed Countries

- Patent system useful for incentive purposes
- Patent system useful for price differentiation
 - ◆ National/regional exhaustion a “must“?
- Modified international exhaustion possible solution
 - ◆ Patentees (owners of essential patents) would enjoy national/regional exhaustion only if licensing to less/least developed countries takes place under “adjusted”, i.e. more favourable conditions than in case of OECD newcomers