

Standard-Essential Patents and Pooling

October - December 2014 Developments

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U.S. Litigation

1. Ericsson v. D-Link

Federal Circuit holds that jury instructions on damages should only concern *Georgia Pacific* factors relevant to the case at issue, and should properly inform the jury on the actual RAND commitments at issue and the proper apportionment of the value of the invention apart from the value of the standard: December 4, 2014: The Federal Circuit affirmed a district court's denial of defendants' motion for a new trial based on an alleged violation of the "entire market value rule." But the court vacated the jury's determination of \$10 million in damages, and remanded the case on the grounds that the district court committed prejudicial error in instructing the jury to consider multiple irrelevant or misleading *Georgia Pacific* factors in determining Ericsson's RAND obligations. Ericsson sued D-Link, Toshiba, Netgear, Belkin, and other defendants for infringement of various standard-essential patents. Following a jury verdict of infringement and a bench trial on RAND-related issues, the defendants appealed. The court held that evidence of licenses based on the entire value of licensed, multicomponent products including unpatented components is admissible, and that the lower court violated no substantive legal rule or evidentiary standard by admitting expert testimony on the same. However, the court concluded that the district court committed prejudicial legal error when it failed to adequately instruct the jury on the actual RAND commitments at issue, the proper apportionment of the value of the invention apart from the value of the standard, and the *Georgia-Pacific* factors relevant to the case at issue. The case was remanded for further proceedings. *Ericsson, Inc. v. D-Link Sys., Inc.*, Nos. 13-1625, -1631, -1632 & -1633 (Fed. Cir. Dec. 4, 2014)

2. ChriMar v. Cisco

Court grants plaintiff's motion for judgment on the pleadings, dismissing defendants' monopolization, attempted monopolization and unfair competition counterclaims: October 29, 2014: A district court granted plaintiff ChriMar's motion for judgment on the pleadings regarding antitrust and unfair competition counterclaims filed by defendants Cisco, HP and others. ChriMar, a patent holding company, sued the defendants for injunctive relief and damages based on the alleged infringement of its patent related to Power-over-Ethernet technology. The defendants counterclaimed, asserting, among other causes of action, violation of federal antitrust laws and California's Unfair Competition law. The court concluded that the defendants had failed to allege facts sufficient to define the relevant market, which they argued constituted technologies that competed to perform the functions of the "Power over Ethernet" standards allegedly covered by the patent-at-issue. The court also held that the defendants had failed to sufficiently allege market power, explaining that they had failed to allege that the standard-setting organization would have adopted an alternative standard had it know about the patent-at-issue and of the plaintiff's belief that the patent was essential. The court also found that the defendants had not pled sufficient facts to demonstrate antitrust injury. The court provided defendants leave to amend. *ChriMar Systems Inc. et al. v. Cisco Systems Inc. et al.*, No. 4:13-cv-01300 (N. D. Ca. 2014)

3. InterDigital v. ZTE

Jury issues verdict finding defendant ZTE liable for infringement of InterDigital's patents: October 28, 2014: A jury found that defendant ZTE's accused phones infringed InterDigital's patents and against ZTE's claim that the asserted patent claims were invalid. The jury trial was limited to patent liability issues. Damages and ZTE's RAND-related counterclaims, which were bifurcated from the patent liability issues by a joint stipulation of the parties, will be determined in a subsequent phase

of the litigation. *InterDigital Communications Inc. et al. v. ZTE Corp. et al.*, No. 1:13-cv-00009 (D. Del. 2014)

4. GPNE v. Apple

Jury finds that Apple's accused products did not infringe GPNE's standard-essential patents: October 20, 2014: A jury issued a verdict unanimously finding that Apple's accused products did not infringe GPNE's patents essential to the GPRS and LTE standards. However, the jury found that none of the asserted patent claims were invalid. The jury also rejected GPNE's claim for \$93.7 million in damages. *GPNE Corp. v. Apple Inc.*, No. 5:12-cv-02885 (N. D. Ca. 2014)

Settlements of Litigation

1. Fujitsu v. Tellabs

Fujitsu and Tellabs announce settlement following a jury verdict finding that Fujitsu breached its RAND obligations by failing to offer a RAND license for SEPs before suing for injunctive relief: December 11, 2014: A district court issued an order announcing settlement between Fujitsu and Tellabs following a jury verdict finding that plaintiff Fujitsu breached its RAND obligation by failing to offer a RAND license and suing defendant Tellabs for injunctive relief based on alleged infringement of a standard-essential patent. The settlement mooted a pending order to show cause on whether the jury verdict rendered the patent unenforceable against Tellabs. The terms of the settlement were not disclosed. (See [court order](#))

International

1. Europe - European Commission invites public comments on relationship between standardization and intellectual property rights

October 14, 2014: The European Commission issued a questionnaire seeking public comments on the relationship between standardization and intellectual property rights, including patents. The European Commission indicated interest in comments on the performance of the current framework governing standardization and suggestions on how the framework should evolve in response to the changing technology landscape. The comment period ends on January 31, 2015. (See [European Commission notice](#))

2. Korea - Korean Fair Trade Commission (KFTC) announces amended Intellectual Property Rights (IPR) guidelines

December 24, 2014: The Korean Fair Trade Commission (KFTC) announced amendments to its Guidelines for Examination of Improper Exercise of Intellectual Property Rights ("Amended IPR Guidelines") to provide a more detailed framework for evaluating when conduct may violate Korea's Fair Trade Law with respect to standard-essential patents (SEPs) and non-practicing entities (NPEs). The Amended IPR Guidelines identify what the KFTC believes may be abusive practices by SEP holders and NPEs. (See [Korean Fair Trade Commission release](#))

3. India - Indian High Court issues ex parte injunction order against Xiaomi for alleged infringement of Ericsson's standard-essential patents

December 8, 2014: An Indian High Court granted Ericsson's request for an ex parte injunction against Xiaomi based on the alleged infringement of various Ericsson's standard-essential patents. The temporary injunction bans Xiaomi from advertising, manufacturing, importing or selling products that infringe the patents-at-issue. (See [court order](#))

Portfolio Acquisitions and Licensing Agreements

1. IPXI holds auction of WiFi-related standard-essential patents

October 1, 2014: IPXI, a financial exchange for licensing and trading patents, announced a public offering of Unit License Right contracts for standard-essential patents related to the 802.11n wireless standard. The offering, which includes over 200 patents contributed by eight organizations, including Sony, Phillips, and Mitsubishi, is structured as a series of convertible contracts, allowing for additional patent owners to participate in future offerings. Each contract provides participating SEP implementers with a non-exclusive worldwide patent license for the manufacture and sale of 1,000 802.11n compliant wireless chipsets. (See [IPXI preliminary offering memo](#); [IPXI unit license right contracts](#))

2. RPX Clearinghouse agrees to underwrite purchase of Rockstar Consortium's patents

December 23, 2014: RPX Clearinghouse agreed to underwrite the purchase of patents controlled by Rockstar Consortium. The transaction includes about 4,000 patents, which were acquired by Rockstar following Nortel's bankruptcy. RPX Clearinghouse will underwrite an agreement between the Rockstar consortium owners, including Blackberry, Apple, Ericsson, Sony, and Microsoft, and a syndicate of over 30 licensees, including Google and Cisco. Upon closing, the syndicate participants will receive non-exclusive licenses to the Rockstar patents, while non-participants will have an option to license the patents on RAND terms. (See [RPX release](#))

3. General Access Solutions announces private sale of portfolio including 18 patents

November 12, 2014: General Access Solutions announced the sale of a portfolio of 18 U.S. patents, including standard-essential patents related to 4G and WiFi standards, and 4 patent applications. (See [ICAP Patent Brokerage article](#))

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