

Thoughts on Determination of SEP Terms

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Important Factors

	Licensor	Implementer	Main issues
Royalty	<p>Sufficiently compensated</p> <p>Percentage based on proud list and declared SEP</p> <p>Presumed validity</p>	<p>Have I pay higher than other competitors</p> <p>SEP Evaluation, Invalidation</p>	<p>Real proportion of SEPs (report)</p> <p>Validity</p> <p>Claim mapping</p> <p>Global or regional license (local)</p>
Time	<p>Get the royalty faster to avoid financial risk and reinvest for invention</p>	<p>Pay later, preferably until other competitors have paid</p>	<p>Risk increase for licensor and decrease for implementer</p>
Global FRAND practice	<p>Balance between practice of major jurisdictions and keep reasonable consistency between implementors</p>	<p>Comply with practice of major jurisdictions separately</p>	<p>Find an overlap (space) between the practice of major jurisdictions (local)</p>
Dispute resolution	<p>Competition law penalty</p> <p>Patent invalidation</p> <p>Lower royalty</p>	<p>Injunction</p> <p>High royalty</p>	<p>Dilemma about conflicting decisions; Forum shopping (local)</p>
Back-up option for dispute resolution	<p>Accept “low” royalty</p> <p>Renegotiate</p> <p>Quit a market; Less innovation</p>	<p>Accept “high” royalty</p> <p>Renegotiate</p> <p>Quit a market</p>	<p>Backup reaction in different conditions (local)</p>

Dispute resolution channels

	By parties	By multiple third parties	By single third party
Flexibility	High	Medium	Low
Predictability	Low	Medium	High
Risk	Acceptable	Medium (diversified)	High (concentrated)
Influence	Acceptable	Medium (diversified)	High (concentrated)
Reasonability	Acceptable	Averagely acceptable	?
Enforceability	High	High	?
Efficiency	Diversified	?	?

Thoughts on the way for the near future

Resolution in near future - FRAND negotiation with guidance of third parties (reasonably diversified)

FRAND range (global) or FRAND rate (local) – Comity and harmonization (leave the space)

Deposit in dispute resolution– Balance the risk for licensor

Precondition for FRAND terms determination by third party – Agreed by the parties or both comply with FRAND



Thank you!

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