

e-Competitions

Antitrust Case Laws e-Bulletin

Standard Essential Patents

Standard-Essential Patents and Competition Law: An Overview of EU and national case law

UNILATERAL PRACTICES, UNITED KINGDOM, INTELLECTUAL PROPERTY, TELECOMMUNICATIONS, ALL BUSINESS SECTORS, REMEDIES (ANTITRUST), BARRIERS TO ENTRY, INFORMATION TECHNOLOGY, FOREWORD, EUROPEAN UNION, UNITED STATES OF AMERICA, CANADA, CHINA, JAPAN, INDIA, STANDARD ESSENTIAL PATENT, BIG TECH

Jay Jurata | Orrick, Herrington & Sutcliffe (Washington)

Emily Luken | Orrick, Herrington & Sutcliffe (Washington)

e-Competitions Special Issue Standard Essential Patents | 22 November 2018

The extent to which competition law has shaped developments and understandings of standard-essential patents (SEPs) has increased substantially over the past fifteen years. When *e-Competitions* began publishing, there were very few cases and agency enforcement actions on the topic. The “Smartphone Wars” that played out in the early 2010s altered the landscape significantly and brought about numerous decisions applying competition law and competition law principles to SEPs in Europe, the United States, and Asia. Today, the exact contours of how competition law interacts with SEPs is one of the most hotly debated topics in legal literature. Indeed, a small but vocal minority question whether the issues that arise with respect to SEPs even trigger competition law at all.

e-Competitions has provided an important forum in furthering the common understanding on SEPs and fostering ongoing discussions about the interaction between competition law and SEPs in both the European Union and abroad. This special issue brings together over 70 articles touching on SEP issues involving anticompetitive practices, unilateral practices, mergers, and procedures, spanning from 2003 to the present. This foreword attempts to synthesize that collection of literature, explore how it has emerged over the years, and offer thoughts on the present state of the law.

An undertaking of this nature is ambitious, given that the law is still in a nascent state in certain areas. Although advocates on all sides of the debate will fiercely dispute any claim that the law is settled on a particular issue, some trends can be drawn from the cases, investigations, and policy statements covered in this special issue. Because it is beyond the scope of this foreword to discuss every topic covered in this special issue, this foreword is intended as a high-level overview of the major developments on SEPs as reported in the special issue (rather than a comprehensive summary of the collection of articles).

SEPs, FRAND Commitment, & Competition Law

Standard-essential patents (SEPs) are patents which have been formally incorporated into a particular technological standard by a standard-setting organization (SSO); they are “essential” because products that incorporate the relevant standard cannot design around them. Standardization enables interoperability and seamless connections amongst a wide variety of technological devices. However, standardization also can eliminate potential competitors for alternative technologies and confer significant bargaining power upon the SEP-holder vis-à-vis potential licensees.

To address these potentially anti-competitive effects, many SSOs require their members to commit to license their SEPs on fair, reasonable, and non-discriminatory (FRAND) terms. Absent the FRAND commitment, there is a considerable risk that SEP-holders might engage in “hold-up” by wielding their strong bargaining position to obtain excessive royalties from licensees after they are locked into a standard. Given the competitive concerns that arise with SEPs, many courts and regulatory bodies around the world have held that a SEP-holder’s refusal to comply with FRAND may give rise to liability under competition and/or contract law.

Evolution of SEP & FRAND Disputes Over Time

As the many articles included in this special issue demonstrate, disputes involving SEPs have evolved dramatically over time, both in terms of the factual circumstances and allegations underlying the disputes as well as the type of relief that courts grant for violations of the FRAND commitment.

The first wave of SEP-related disputes tended to involve what now might be considered a well-settled violation of competition law: allegedly deceptive behavior by SEP-holders before an SSO during the standard-setting process. Such deception can take the form of the SEP-holder either (1) failing to fully disclose ownership of patents likely to be essential to a given standard, or (2) making false promises concerning the SEP-holder’s willingness to license on FRAND terms in order to induce the SSO to select its patents for the standard. In either case, there is a concern that the SEP-holder will deceptively gain market power, through the act of standardization, that otherwise would not have existed. For example, the United States Federal Trade Commission (FTC) filed an administrative complaint against Unocal in 2003, alleging that it misrepresented to a state regulatory body setting a gasoline standard that its research was non-proprietary and therefore in the public domain, while simultaneously seeking patent protection. [1] The complaint also alleged similar deceptive behavior before two private SSOs. The FTC ultimately approved Chevron’s acquisition of Unocal subject to the condition that Chevron agree to release all of its rights to the relevant Unocal patents.

The next major trend centered on the availability of injunctive relief for SEP-holders. As discussed below in this foreword, these decisions crystallized the consensus viewpoint that a SEP-holder is entitled to injunctive relief only under rare circumstances. In 2012, the United States Department of Justice (DOJ) closed an investigation into Google’s acquisition of Motorola Mobility but at the same time expressed concern over Google’s apparent policy of refraining from injunctive relief only for disputes involving future license revenues and if the counterparty, among other things, agrees not to challenge the validity of the patent. [2] A year later, the US FTC obtained a consent order barring Google from seeking injunctions against any willing licensee in federal court or the United States International Trade Commission on patents subject to a FRAND commitment.

Around the same time, the European Commission (EC) sent statements of objections to both Samsung [3] and Motorola [4] concerning both companies’ alleged SEP misuses based on seeking injunctions against Apple in Europe. The EC issued its decisions for both cases in April 2014. In the case of Motorola, the EC held that Motorola’s having sought, obtained, and enforced an injunction against Apple in a German court constituted an abuse of dominant position in violation of EU competition law where Apple had already agreed that it would be

willing to enter into a license with FRAND terms adjudicated by a neutral third-party. [5] In the case of Samsung, the EC made legally binding commitments offered by Samsung that it would not seek injunctions in Europe for a specified time period on certain SEPs against any potential licensee who agrees to a mandatory negotiation period of 12 months, or failing that, a third-party adjudication of FRAND terms. [6] Together, the EC's *Motorola* and *Samsung* decisions laid the analytical foundation for the Court of Justice of the European Union (CJEU)'s decision in *Huawei v. ZTE*, which reaffirmed that seeking injunctions for SEPs can, in certain circumstances, constitute an abuse of dominance in violation of Article 102 of the Treaty for the European Union. [7]

At the same time that the jurisprudence was developing on injunctions, courts also began to analyze what constituted reasonable royalties under FRAND. The first decision to calculate a FRAND royalty was authored in 2013 by Judge Robart of the Western District of Washington in *Microsoft v. Motorola*. [8] In calculating a rate for Motorola's wireless and video coding SEPs that was orders of magnitude below what it had initially demanded, Judge Robart specifically affirmed that an appropriate royalty rate – which can also be a range – should seek to mitigate hold-up. Later in 2013, in *Innovatio*, Judge Holderman of the Northern District of Illinois largely followed the framework established by Judge Robart to arrive at a FRAND rate that was again significantly lower than what the SEP-holder had initially demanded. [9]

Finally, some of the most recent FRAND litigation has interpreted the meaning of the non-discriminatory prong. In another case in which the court adjudicated a FRAND rate, *Unwired Planet v. Huawei* (2017), Mr. Justice Birss of the United Kingdom High Court of Justice (Patents) looked to the non-discriminatory prong in identifying comparable licenses. [10] He held that the size and/or market strength of the licensee is immaterial, and that FRAND must be assessed with reference to the value of the patents at issue. Therefore, licensees who need the same kind of license should be charged the same rate, regardless of whether they are large industry players or smaller, new entrants to the market.

Legal Landscape Worldwide

Although any court or regulatory body necessarily applies the competition law of its own domestic or transnational jurisdiction, the law on issues involving SEPs, FRAND, and competition law is being shaped by worldwide developments. This reflects not only the fact that the parties to the disputes are often multinational corporations but also that courts and agencies will look to see what is happening outside their own territorial jurisdiction to inform their views. The focus of this special edition is on Europe, but it also includes important developments on government investigations, court decisions, policy statements, legislative hearings, and meetings in the United States, [11] Canada, [12] Japan, [13] China, [14] and India, [15] as well as the Organisation for Economic Co-operation and Development. [16]

Many aspects of this area of the law are far from settled, but a comprehensive examination of the major cases and enforcement actions reveal an emerging consensus that (1) competition law plays a role in addressing FRAND violations; (2) SEP-holders are constrained in their ability to obtain injunctions for FRAND-encumbered SEPs but injunctions are not outright banned; and (3) good faith behavior is expected on the part of both SEP-holders and potential licensees during negotiations.

Role of Competition Law in Addressing FRAND Violations

It is well-established that there is a role for competition law in preventing hold-up and other potential anti-competitive behavior. When a SEP-holder refuses to uphold its FRAND commitment by, for example, demanding exorbitantly high royalties based on the value of the standard as opposed to the value of the underlying

technology, [17] and there is a resulting distortion of competition, competition law concerns arise. These concerns can be – and are – appropriately remedied by courts and regulatory authorities.

One powerful example demonstrating the consensus viewpoint on the appropriateness of applying competition law to SEPs and FRAND is how regulatory bodies in Asia, Europe, and the United States have investigated Qualcomm's alleged FRAND abuses in connection with its licensing program for various wireless communications SEPs. Indeed, as a result of these investigations, Qualcomm was fined \$975 million by China's National Development and Reform Commission (NDRC) in 2015 (the largest fine ever levied by the NDRC), [18] \$853 million by the Korea Fair Trade Commission in 2016, [19] and €997 million by the European Commission in 2018. In addition, a lawsuit brought by the US FTC in federal court in California in 2017 is ongoing. [20] Although the specific allegations in each jurisdiction somewhat vary, competition law authorities have taken issue with the following aspects of Qualcomm's licensing program (among other challenges): (1) charging SEP royalties as a percentage of the final product price (as opposed to the contribution of the technology), (2) conditioning access to its chipsets upon taking a license to its preferred terms, including above-FRAND royalties, (3) tying its SEPs and non-SEPs, and (4) refusing to license to competing chipset manufacturers. In addition, the NDRC in particular found that Qualcomm's practices of requiring Chinese manufacturers to (1) enter into royalty-free patent license grant backs and (2) accept license agreements forbidding challenges to patent validity were also anti-competitive. [21]

Private litigation also confirms that competition law is proper tool to regulate and address FRAND violations. For example, in an earlier iteration of the *Unwired Planet v. Huawei* case that involved Samsung at that point, Samsung argued that Ericsson's transfer of its SEPs to Unwired Planet, a patent assertion entity, violated EU competition law because of the failure to ensure that Unwired Planet would respect Ericsson's original non-discriminatory obligation. Mr. Justice Birss struck this defense on grounds that it was sufficient for Unwired Planet to make its own FRAND declaration, but the UK Court of Appeal overturned and reinstated Samsung's defense, recognizing that Samsung had a valid argument that Ericsson strategically sold off parts of its SEP portfolio to Unwired Planet – while maintaining a financial interest in the assertion of those patents – to circumvent its FRAND obligation. [22] And, as discussed below, a SEP-holder that seeks an injunction without first satisfying certain steps to establish good faith behavior may be found to have abused its dominant position.

Notwithstanding the broad consensus on the role of competition law authorities and courts to hold SEP licensors accountable for FRAND violations through competition law, the US DOJ has recently expressed an apparent shift in policy and questioned whether the antitrust laws should be used to regulate FRAND. [23] This seeming reversal of position is out of line not only with the consensus discussed above but also with well-reasoned U.S. appellate and district court decisions that have carefully examined this issue under the American antitrust laws. [24] The current US DOJ position represents an outlier view, and the immediate impact of the shift has yet to be materialized but should be closely monitored for future developments.

Injunctions Should be Rare

Another key area of consensus – which flows from the first point concerning the role of competition law in regulating FRAND – is that SEP-holders usually may not seek injunctive relief against willing licensees. There is also consensus that injunctions on FRAND-encumbered SEPs are not *per se* banned, but should only be granted in rare circumstances. These principles were broadly recognized in the European Commission's decisions in *Samsung* and *Motorola* and further articulated in the CJEU's opinion in *Huawei v. ZTE*, which made clear that companies designing products that comply with industry standards have a competition law defense to an injunction providing that they follow the framework set forth in that case for establishing "willing licensee" status. [25]

A corollary to this principle, which is recognized in the United States, is that injunctions should be rare because normally monetary damages will suffice as adequate compensation to the SEP-holder for any alleged infringement. [26] The US DOJ endorsed this principle in a business review letter to the Institute of Electrical and Electronics Engineers (IEEE), applauding the IEEE's revisions to its patent policy to prohibit exclusion orders (injunctions) on patent holders that make commitments to the SSO. [27]

Good Faith Behavior Expected by Both Parties in Licensing Negotiations

The FRAND commitment is intended to strike a balance between compensating patented, technological contributions while ensuring access to that same technology. In light of this balance, it is not surprising that there is agreement that both SEP-holders and potential licensees must act in good faith during licensing negotiations. Specifically, in the EU, a licensor must, at a minimum, (1) explicitly notify the potential licensee in writing of suspected infringement, (2) provide a written offer for a license on FRAND terms, including how the royalty is calculated, and (3) refrain from seeking injunctive relief until negotiations break down to the point that the other party is an unwilling licensee. [28] Any injunctive relief sought against an unwilling licensee acting in bad faith must also be proportional. [29] To act in good faith during licensing negotiations – and maintain a competition law defense to an injunction – a potential licensee must, at a minimum (1) diligently respond to a SEP-holder's offer and avoid unnecessary delay, (2) if it does not accept the initial license offer, make a proposed FRAND counteroffer in writing, (3) if necessary, provide an appropriate security, such as a bank guarantee, for past and future SEP use. [30] In addition, it is not inconsistent with good faith for a potential licensee to challenge patent validity and infringement. [31]

Meaning of Non-Discrimination Prong

As discussed above, although some of the more recent cases have interpreted the non-discrimination prong in greater detail than earlier decisions focusing on the reasonable prong, the meaning of the non-discriminatory prong remains an open issue subject to intense debate. While there is agreement in principle that the non-discriminatory prong means that similarly-situated licensees must be treated alike, which the EC recognized in a recent official Communication on SEPs, [32] the precise contours of the non-discriminatory prong are still under development. For example, although Mr. Justice Birss in *Unwired Planet v. Huawei* recognized that there cannot be discrimination between companies of different sizes, he also noted the lack of consensus amongst economists as to the meaning of the non-discrimination prong and held that discriminatory license terms (what he called “hard-edge discrimination”) do not constitute an abuse of dominance absent evidence of distortion of competition. [33]

Another aspect of the non-discriminatory prong that is being debated is whether it requires a SEP-holder to license at the component level. Some commentators argue that FRAND does require as such, but this exact theory has not yet been addressed in a final court decision or enforcement action.

Geographic Scope for Willing Licensee

Another important open topic is the appropriate geographic scope for determining what constitutes a “willing licensee” for purposes of a competition law defense to an injunction. In the EC's 2014 *Motorola* decision, the Commission held that EU competition law precluded Motorola from seeking an injunction against Apple in German courts because Motorola's FRAND obligation required it to accept Apple's offer to take a license to only Motorola's German SEPs. [34] In other words, the Commission endorsed the view that a potential licensee has a right to insist on a country-specific license without fear of losing its “willing licensee” status. In contrast, Mr. Justice Birss in *Unwired Planet v. Huawei* departed from the Commission's *Motorola* decision and held that Huawei was an

unwilling licensee, in part, precisely because it insisted on a UK-only license and refused to accept a global license. [35] Mr. Justice Birss therefore issued an injunction against Huawei for its failure to enter into a worldwide license because Unwired Planet had satisfied its FRAND obligation through its global license offer.

Although parties may often agree to a global SEP license out of convenience, this dichotomy between *Samsung* and *Unwired Planet* is stark. And if that portion of the *Unwired Planet* decision is upheld on appeal, which is pending, it would put potential licensees in a precarious position during SEP licensing negotiations.

Note from the Editors: Although the e-Competitions editors are doing their best efforts to build a comprehensive set of the leading EU and national antitrust cases, the completeness of the database can not be guaranteed. The present foreword provides readers with a fair view of the existing trends based on cases reported in e-Competitions and alternative sources gathered by the author. Readers are welcome to bring to the attention of the editors any other relevant cases.

[1] See **Don T. Hibner, Jr.**, *The US FTC proposes conditional consent order approving an acquisition of the voting securities of a major petroleum explorer and marketer (Unocal / Chevron)*, 10 June 2005, e-Competitions Bulletin June 2005, Art. N° 67408.

[2] See **Juha Vesala**, *The US DoJ clears acquisition involving standards-essential patents relevant to wireless devices (Google / Motorola Mobility)*, 13 February 2012, e-Competitions Bulletin February 2012, Art. N° 62563.

[3] See **Peter L'Ecluse**, *The EU Commission sends a statement of objections to a mobile operator over alleged misuse of mobile phone standard essential patents (Samsung)*, 21 December 2012, e-Competitions Bulletin December 2012, Art. N° 58214; **Gabriele Accardo**, *The EU Commission sends statement of objections regarding its alleged abuse of mobile phone standard-essential patents (Samsung)*, 21 December 2012, e-Competitions Bulletin December 2012, Art. N° 62460.

[4] See **Peter L'Ecluse, Jerome Dickinson**, *The EU Commission sends statement of objections to a telecom operator over standard essential patents (Motorola Mobility)*, 6 May 2013, e-Competitions Bulletin May 2013, Art. N° 56914.

[5] See **Gabriele Accardo**, *The EU Commission finds that the order sought and the enforcement of an injunction before a German Court on the basis of a smartphone standard essential patent constituted abuse of dominance (Motorola Mobility)*, 29 April 2014, e-Competitions Bulletin April 2014, Art. N° 66853.

[6] See **Gabriele Accardo**, *The EU Commission approves commitments concerning certain standard essential patents relating to the European Telecommunications Standardisation Institute's 3G UMTS standard (Samsung Electronics)*, 29 April 2014, e-Competitions Bulletin April 2014, Art. N° 66854.

[7] See, e.g., **Antonio Bavasso**, *The EU Court of Justice holds standard-essential patent owner can abuse its position by seeking to enjoin infringement and sets out specific requirements (Huawei / ZTE)*, 16 July 2015, e-Competitions Bulletin July 2015, Art. N° 79668.

- [8] See **Brianne L. Kucerik**, *The US Court of Western District of Washington finds that the patented technology didn't play a significant role for the overall functionality of the plaintiff's products (Microsoft / Motorola)*, 25 April 2013, *e-Competitions Bulletin April 2013*, Art. N° 57657.
- [9] See **Nicole Daniel**, *A US District Court determines the RAND licensing rate per Wi-Fi chip while considering related issues such as hold-up, royalty stacking and reverse hold-up (Innovatio)*, 27 September 2013, *e-Competitions Bulletin September 2013*, Art. N° 63559.
- [10] See **Peter L'Ecluse**, *The English High Court delivers judgment in FRAND royalty case (Unwired Planet / Huawei)*, 5 April 2017, *e-Competitions Bulletin April 2017*, Art. N° 84310.
- [11] See, e.g., **Nicole Daniel**, *The US DoJ and PTO issue a policy statement on remedies for standards-essential patents subject to (F)RAND commitments*, 8 January 2013, *e-Competitions Bulletin January 2013*, Art. N° 57645.
- [12] See **Douglas H. Ginsburg, Joshua D. Wright**, *The Canadian Competition Bureau submits a draft of its upcoming intellectual enforcement property guidelines for public comment*, 9 June 2015, *e-Competitions Bulletin June 2015*, Art. N° 75206; **Jeffrey Brown**, *The Canadian Competition Bureau releases "phase II" draft revision of the intellectual property enforcement guidelines*, 9 June 2015, *e-Competitions Bulletin June 2015*, Art. N° 74048.
- [13] See, e.g., **Nick Reeve**, *The IP High Court of Tokyo decides on the rights and responsibilities of dominant patent holders (Apple / Samsung)*, 16 May 2014, *e-Competitions Bulletin May 2014*, Art. N° 70646; **Seiji Sogo**, *The IP High Court of Japan considers the enforceability of a standard essential patent after FRAND declaration (Apple / Samsung)*, 16 May 2014, *e-Competitions Bulletin May 2014*, Art. N° 70647.
- [14] See, e.g., **Peter J. Wang, Sébastien J. Evrard, Yizhe Zhang**, *The China's State Administration for Industry and Commerce publishes guidelines on application of the anti-monopoly law to intellectual property rights*, 7 April 2015, *e-Competitions Bulletin April 2015*, Art. N° 73740; **Zhan Hao, Song Ying**, *The Guangdong High Court settles a high profile case dealing with refusal to licence intellectual property, which must be taken with caution (Huawei / IDC)*, 28 October 2013, *e-Competitions Bulletin October 2013*, Art. N° 75454.
- [15] See, e.g., **Natasha Nayak**, *The Competition Commission of India orders thorough investigation concerning an alleged abuse of dominant position in the in the market for 'Global System for Mobile Communication' (Micromax / Ericsson)*, 12 November 2013, *e-Competitions Bulletin November 2013*, Art. N° 63589.
- [16] See, e.g., **OECD Competition Division**, *The OECD holds a roundtable on standard setting*, 1 June 2010, *e-Competitions Bulletin June 2010*, Art. N° 85635.
- [17] See **David Golden**, *The US Court of Appeals decides on the reasonableness of licensing royalties (Ericsson / D-Link)*, 4 December 2014, *e-Competitions Bulletin December 2014*, Art. N° 70708.
- [18] See **Susan Ning, Kate Peng**, *The Chinese NDRC imposes its highest fine in an abuse of dominance case (Qualcomm)*, 10 February 2015, *e-Competitions Bulletin February 2015*, Art. N° 71657; **Ken Dai, Jet Zhisong Deng**, *The Chinese NDRC applies rigorously the Anti-monopoly*

Law and fines a company for abuse of dominant position (Qualcomm), 10 February 2015, e-Competitions Bulletin February 2015, Art. N° 72925.

[19] See **Nicole Daniel**, *The California Southern District Court receives a claim from a smartphone manufacturer against one of its suppliers over allegedly abusive wireless patents (Apple / Qualcomm), 20 January 2017, e-Competitions Bulletin January 2017, Art. N° 84381.*

[20] See *id.*

[21] See **Cunzhen Huang, Maurits Dolmans, Stephan Barthelmess, Anita Ng, Tara Tavernia**, *The China's NDRC imposes changes in licensing practices (Qualcomm), 2 March 2015, e-Competitions Bulletin March 2015, Art. N° 72356.*

[22] See, e.g., **James Bourke, Jon Turner, Meredith Pickford, Laura Elizabeth John**, *The UK Court of Appeal overturns UK Patents Court and allows hearing to be held on competition law arguments in a FRAND dispute in relation to Standard Essential Patents (Unwired Planet / Huawei / Samsung / Ericsson), 27 May 2016, e-Competitions Bulletin May 2016, Art. N° 81684.*

[23] See, e.g., **Makan Delrahim**, Assistant Att'y Gen., Antitrust Div., Remarks at the USC Gould School of Law's Center for Transnational Law and Business Conference (November 10, 2017), available at <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-usc-gould-school-laws-center> ↗; **Makan Delrahim**, Assistant Att'y Gen., Antitrust Div., "The 'New Madison' Approach to Antitrust and Intellectual Property Law" (March 16, 2018), available at <https://www.justice.gov/opa/speech/assistant-attorneygeneral-makan-delrahim-delivers-keynote-address-university> ↗.

[24] See, e.g., *Broadcom v. Qualcomm*, 501 F.3d 297, 310 (3d Cir. 2007); *Microsoft Mobile Inc. v. Interdigital, Inc.*, 2016 WL 1464545, at *2 (D. Del. Apr. 13, 2016).

[25] See, e.g., **James Killick, Katarzyna Czapracka, Daniel Hoppe-Jänisch**, *The EU Court of Justice sets out specific requirements with which an SEP holder needs to comply in order to be able to seek an injunction without abusing its dominant position (Huawei / ZTE), 16 July 2015, e-Competitions Bulletin July 2015, Art. N° 74861.*

[26] *Apple v. Motorola*, 757 F.3d 1286, 1113 (Fed. Cir. 2014).

[27] See **David Golden**, *The US DOJ allows a standards association's new patent policy for wi-fi standards, finding it potentially pro-competitive (IEEE-SA), 2 February 2015, e-Competitions Bulletin February 2015, Art. N° 71373.* This is another well-established principle that the current DOJ has retreated from, but again, its position is at odds with binding legal precedent in the United States. See, e.g., *Apple v. Motorola*, 757 F.3d at 1113.

[28] See, e.g., **Trevor Soames, Miguel Rato**, *The EU Court of Justice rules on the circumstances in which a presumptively dominant SEP holder who has given a FRAND commitment may seek injunctive relief (Huawei / ZTE), 16 July 2015, e-Competitions Bulletin July 2015, Art. N° 74863.*

[29] See **Tim Kasten**, *The EU Commission publishes a communication on Standard Essential Patents, 29 November 2017, e-Competitions Bulletin November 2017, Art. N° 85457.*

[30] See, e.g., **Roberto Dini**, *The EU Court of Justice sets out specific requirements with which an SEP holder needs to comply in order to be able to seek an injunction without abusing its dominant position (Huawei / ZTE)*, 16 July 2015, *e-Competitions Bulletin July 2015*, Art. N° 85452.

[31] See, e.g., **Seth D. Greenstein**, *The EU Court of Justice holds standard-essential patent owner can abuse its position by seeking to enjoin infringement (Huawei / ZTE)*, 16 July 2015, *e-Competitions Bulletin July 2015*, Art. N° 74456.

[32] See **Charles Bankes, Michael Burdon**, *The EU Commission publishes a Fact Sheet on Intellectual Property Rights Enforcement and a Communication setting out the EU's approach to Standard Essential Patents*, 29 November 2017, *e-Competitions Bulletin November 2017*, Art. N° 85381.

[33] See **Matthew G. Rose, Jay Jurata, Emily Luken**, *The UK High Court of Justice issues an injunction prohibiting an undertaking from selling wireless telecommunications products in Britain due to its failure to enter into a worldwide patent license (Unwired Planet / Huawei)*, 7 June 2017, *e-Competitions Bulletin June 2017*, Art. N° 84684.

[34] See **Nicole Daniel**, *The European Commission publishes a decision finding that request and enforcement of an injunction before a German court regarding a smartphone standard essential patent constituted an abuse of dominant position (Motorola Mobility)*, 9 July 2014, *e-Competitions Bulletin July 2014*, Art. N° 68270.

[35] See *supra* note 33.