

## Statement on FRAND Licensing

InterDigital has for more than two decades been an active participant in standards development organizations (SDOs) like ETSI that develop wireless communications standards. In accordance with the requirements of those SDOs, InterDigital has disclosed thousands of patents and applications that we believe may be or may become essential to implementing those standards and has committed to be prepared to grant licenses to our portfolio of standards essential patents (SEPs) on fair, reasonable and non-discriminatory (FRAND) terms and conditions.

The FRAND commitment is intended to balance the interests of companies that develop patented technologies used in standards and companies that produce products that implement those standards. The FRAND commitment assures SEP holders that they will be fairly and reasonably compensated for the use of their patented standards essential technologies, while also assuring standards implementers that they will be able to get access to those patented technologies through licenses on FRAND terms and conditions.

InterDigital takes our FRAND commitments seriously: our positive reputation is important both for continued effectiveness in standards development activities and for our continued success in licensing our portfolio of SEPs. As a result, InterDigital has entered into patent license agreements with scores of companies over the last 20 years in accordance with those commitments. InterDigital will continue to make licenses to our portfolio of SEPs available on FRAND terms and conditions, recognizing the following basic principles:

### Licenses to a SEP holder's worldwide portfolio of SEPs are consistent with FRAND

- A worldwide SEP license is efficient for both licensors and licensees.
- Broader portfolio licenses may also be negotiated where desired by both parties.
- For patent owners with large SEP portfolios, patent-by-patent licensing, or country-by-country licensing is inefficient and not required by FRAND commitments.
- Requests by standards implementers for licenses on a patent-by-patent or country-by-country basis are often an indicator of an unwilling licensee engaged in improper "hold-out" behavior.

### In FRAND licensing, both parties have an obligation to negotiate in good faith

- Implementers of standards who believe that their products may infringe SEPs should contact the SEP owner to negotiate a license.
- SEP owners should engage in good faith negotiations for a license on FRAND terms and conditions.
- Upon the request of the prospective licensee, SEP owners should be willing to engage in a reasonable period of technical discussions concerning the essentiality and value of their portfolio.
- An SEP owner should normally make a license proposal and provide an explanation of the basis of the offer and why it believes it complies with applicable FRAND commitments.
- Prospective licensees should not engage in undue delay tactics and should respond to any proposal from the SEP owner promptly and in good faith. If an offer from an SEP owner is not acceptable, the prospective licensee should provide an explanation of why it does not believe that the offer is FRAND and promptly make a good faith counteroffer.
- Both parties should work diligently and in good faith to reach a license agreement.

### Licenses should be made available at the point of the value chain that reflects the value of the innovation and efficient industry practice

- Licensing at multiple levels of the value chain is inefficient, increasing monitoring costs, creating uncertainty for both licensees and licensors and raising costs for both parties.
- Industry licensing practices usually reflect the most efficient solution.
- A FRAND royalty for handsets should reflect the value of the innovation, not the cost of the component, and should not vary significantly depending on where the licensee is in the value chain.

### FRAND does not mean a single license structure or royalty rate for all licensees

- FRAND licenses need not be identical among licensees and can accommodate the needs and circumstances of individual licensees consistent with the licensor's overall licensing program and FRAND commitments.
- FRAND does not require any particular license structure and permits flexibility for the parties to agree to ad valorem or fixed per-unit running royalty, fixed fee, or hybrid license structures.

- Nor does FRAND require one particular royalty base. The royalty base, combined with the other terms of the license such as per unit royalty caps and floors, should provide for fair and reasonable compensation to the SEP holder for the value of its portfolio while reflecting an appropriate apportionment for the contribution of the licensed patents to the licensed product.

### **Binding arbitration provides an effective and efficient mechanism for resolving FRAND licensing disputes.**

- Where negotiations appear to reach an impasse, mutually agreed binding arbitration is generally the most efficient and effective dispute resolution mechanism for setting the FRAND terms and conditions of a worldwide license to a large portfolio of standards essential patents.
- For further information on InterDigital's perspectives on FRAND arbitration see <https://www.interdigital.com/resources/uploads/licensing/InterDigital-Arbitration-Principles.pdf>

### **Injunctive remedies for continuing infringement by unwilling licensees should be available to SEP holders**

- The availability of injunctive relief is necessary to combat free-riding by unwilling licensees who engage in delay tactics and other hold-out behavior.
- In those cases where standards implementers demonstrate that they are unwilling to engage in good faith negotiations for an SEP license, while continuing to sell infringing products, injunctive remedies should be available on the same basis as for infringement of any other patent.

In conclusion, InterDigital believes in a balanced and pragmatic approach to FRAND licensing, one that focuses on increased transparency, that will appropriately compensate innovators while meeting the needs of implementers, and that allows the process for standards development in wireless communications to continue to drive the innovations that have fueled this industry.