



Enforcement of FRAND Commitments under Article 102 TFEU: The Nature of FRAND Defence in Patent Litigation (Munich Intellectual Property Law Center - MIPLC)

Tuire Anniina Väisänen

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Väisänen

In attempting to define the true meaning of "fair, reasonable and non-discriminatory terms" - also known as FRAND - one is reminded of the parable of two political parties arguing before the elections about who is right and who is wrong, although they both know that there is no such thing as one truth and that it utterly depends on the individual perspective. Given the very substantial legal and business concerns involved within the telecommunication standardization environment, the conflicting interpretations of FRAND terms and conditions seem to be unavoidable. This paper is based on the author's master thesis as part of the LL.M. in Intellectual Property and Competition Law. The analysis presented shows that the FRAND debate is very controversial and that many questions related to the enforcement of FRAND commitments under EC competition law remain unsolved. In essence, this paper demonstrates that FRAND commitments can be used as a powerful defense in order to prevent dominant patent holders from abusively exploiting their standard-essential patents. However, when determining the impact of FRAND commitments under Article 102 TFEU (Treaty on the Functioning of the European Union), it should be kept in mind that the test that complainants need to meet is not merely a test based on the rationale of FRAND commitments under the relevant standards-setting organization rules. In other words, in the absence of dominance, even if a patentee in fact does not fulfill his FRAND commitments and asks for exorbitant royalty rates, this does not automatically provide complainants with an antitrust remedy under the EC competition law. Master Thesis.

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