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Submission of

ACT | The App Association
Rue Belliard 40,
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on the

Unified Patent Court's Patent Mediation and
Arbitration Centre's Proposed Arbitration Rules

I. Executive Summary

ACT | The App Association is a policy trade association for the **small business technology developer community**. Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with markets across every industry. We work with and for our members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build incredible technology. Today, the ecosystem the App Association represents—which we call the app economy—is valued at approximately €830 billion globally and is responsible for more than 1.3 million jobs in the European Union (EU).¹

Many of our members invent, develop, and sell internet of things (IoT) devices. The IoT ecosystem is expected to generate EUR 12.5 billion for the global economy by 2030, significantly contributing to economic growth and job creation within the EU.² The IoT sector relies heavily on the seamless licensing and implementation of standard essential patents (SEPs). Unfortunately, the IoT market is “very fragmented, competitive and cost sensitive.”³ The IoT sector’s ability to realistically obtain licenses to SEPs on fair, reasonable, and non-discriminatory terms (FRAND) is therefore paramount to ensuring a competitive and dynamic marketplace.

We would like to thank the Unified Patent Court’s Patent Mediation and Arbitration Centre for the opportunity to submit our comments regarding the proposed arbitration rules. As explained in more detail below, we make the following three recommendations regarding PMAC’s proposed arbitration rules:

- *Non-participation in arbitration should not be used as an indication that one party is acting as an “unwilling” party. As provided in the Charter of Fundamental Rights of the European Union, parties must always retain their fundamental right of access to the courts, without penalties for not pursuing non-public arbitration processes.*
- *Section 7 should provide parameters regarding appropriate FRAND rate methodology in order to ensure that the process does not produce outcomes that are inconsistent with European patent and competition law, or risk to implicate the Centre in any potential violations.*
- *Articles 45 and 48 should be amended to increase transparency with regards to important arbitration decisions and ensure relevant anonymized FRAND rate information from PMAC arbitrations is published to prevent PMAC from exacerbating existing information asymmetries.*

II. SEPs and FRAND Licensing

Technical standards allow manufacturers to produce interoperable equipment by defining common protocols and specifications. Standards are ubiquitous in the modern world and include interoperability standards like 5G, Wi-Fi, and Bluetooth. Standards reduce the need for direct coordination during the product development process because each participant can design

¹ See <https://actonline.org/wp-content/uploads/Deloitte-The-App-Economy-in-the-EU-2020.pdf>.

² See Impact assessment accompanying the proposal for a regulation of the European Parliament and of the Council on standard essential patents and amending Regulation (EU) 2017/1001, Page 10

³ See <https://actonline.org/2023/10/05/the-european-unions-proposal-for-a-transparent-fair-and-reliable-standard-essential-patent-landscape/>.

products around the agreed-upon specifications. Standards are developed by standard development organizations (SDOs) which involve broad collaboration from industry stakeholders who work to identify and solve technical challenges necessary to establish uniform interoperability and product compatibility.

Small businesses, including those ACT represents, are particularly dependent on the widespread availability of standards on reasonable terms for implementation. These entrepreneurs, innovators, and developers can incorporate standardized features into their products by purchasing off-the-shelf components without the need to design these components themselves or develop internal expertise in these technologies. Instead, they can dedicate their R&D resources to developing the unique features that set their products apart and bring them to market more swiftly.⁴ This is particularly true in the context of products incorporating IoT components, as such products are typically specialized devices designed to focus on one or two distinctive and innovative features.⁵ Small business developers often have a competitive advantage in this area because they can develop these specialized and innovative products without the costly overhead and infrastructure of larger organizations.

Despite the benefits of standardization, adopting standardized technology creates risks. Once a company develops and begins to sell a product with a standardized feature, it typically becomes costly to abandon the standard. This is especially true if the standard has been widely adopted by an industry, leaving no practical alternative solutions, as is the case with communications standards such as cellular and Wi-Fi.⁶ This phenomenon, known as “lock-in,” can make companies that market standard compliant products susceptible to “hold-up.” Hold-up can occur when owners of the patented technologies essential to the standard—SEPs—use the threat of injunctive or exclusionary relief against locked-in manufacturers to extract unreasonable and excessive royalties. The risk of SEP hold-up can not only discourage companies from adopting standards in the first place (an issue that ACT has directly experienced with some of its members) but can also undermine many of the benefits standardization is intended to provide: it can increase costs for consumers, hinder innovation, and disadvantage small businesses.

To at least partially address this risk, many SSOs have developed intellectual property rights (“IPR”) policies that require patent holders that voluntarily participate in the standard-setting process to make a binding commitment to license their SEPs.⁷ Many standards, like USB and Bluetooth, operate under royalty-free frameworks, where manufacturers either pay nothing or a flat administrative fee to use the features of the standard in their devices. For other standards, SEP holders may charge royalties for use of their patented technology under the condition that their licenses comply with their FRAND commitments.

The FRAND commitment is not merely a contractual tool used by SSOs to encourage adoption of their standards. According to the European Commission, “the concept of FRAND has been developed in an attempt to limit the ability of SEP holders to abuse their market power and to

⁴ European Commission, *Commission Staff Working Document – Impact Assessment Report* (“Impact Assessment Report”), at 20 (Apr. 27, 2023) https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13109-Intellectual-property-new-framework-for-standard-essential-patents_en.

⁵ See Joachim Henkel, *Licensing Standard-Essential Patents in the IoT*, 51 Rsch. Pol’y 1, 2 (2022).

⁶ Thomas Cotter, Erik Hovenkamp, Norman Siebrasse, *Demystifying Patent Holdup*, 76 Wash & Lee L. Rev. 1501, 1527–29 (2019).

⁷ Some standard setting organizations use reasonable and non-discriminatory, or RAND, as the basis of their intellectual property policy. Despite the difference in terminology, they are considered functionally equivalent.

provide effective access to the standard for all interested third parties.”⁸ Indeed, it was competition law guidance from the European Commission that originally—in the early 1990s—instructed ETSI on development and implementation of its IPR policies.⁹

III. The Difficulties of FRAND Licensing

Despite the FRAND commitment, some SEP holders have pursued royalties several times higher than the rates that courts have ultimately adjudicated to be FRAND.¹⁰ Their ability to demand and, in some cases, receive above-FRAND royalties is due to the existence several significant asymmetries that give licensors a significant advantage in negotiations. Notably, an informational asymmetry between licensors and licensees amplifies this risk by making it exceedingly costly to negotiate with an aggressive SEP licensor. This asymmetry amplifies the power of SEP holders to threaten and obtain injunctions given that a potential licensee that fails to take a license offer that a patent holder claims is FRAND can be labeled “unwilling” by certain courts and thus subjected to injunctive relief. This gives SEP holders significant coercive power over potential licensees.

These asymmetries pose a particularly significant problem for the SMEs (such as ACT’s members) who typically source their standard implementing components from third parties and lack both the resources and experience needed to negotiate or litigate for FRAND terms. Indeed, this is in many cases an existential risk for SMEs. An astounding 38% of SEP users reported that the “costs involved in licensing SEPs (search, negotiation and litigation costs)” for SMEs was enough to make them “go out of business/change business.”¹¹

A. SEP Holders Possess an Asymmetric Informational Advantage

SEP licensing faces significant problems arising from an informational asymmetry. The asymmetry affords licensors a significant advantage that can encourage abuse. Licensors are well situated to assess the value of their portfolios, while licensees are not.¹² And this asymmetry is a global problem. As the Commission has found, an also-astounding 100% of licensees reported insufficient information about FRAND royalties, and 97% reported insufficient information about the SEP landscape, while only a small fraction of SEP licensors claimed the same.¹³ This asymmetry is driven by several factors:

- The SDOs that develop many standards, including Wi-Fi, do not require SEP holders that commit to FRAND licensing to disclose which of their patents they believe are

⁸ Case COMP/M.6381 –*Google/Motorola Mobility*, Commission Decision at ¶ 107 (Feb. 13, 2012).

⁹ Communication from the Commission to the Council and the European Parliament, *Intellectual Property Rights and Standardization*, COM (92) 445 final (Oct. 27, 1992); see also Robert Pocknell & David Djavaherian, *The History of the ETSI IPR Policy: Using the Historical Record to Inform Application of the ETSI FRAND Obligation*, 75 Rutgers L. Rev. 977 (2023).

¹⁰ See, e.g., *In re Innovation IP Ventures, LLC Patent Litig.* 11-C-9308, 2013 WL 5593609, at *43 (N.D. Ill. Oct. 3, 2013) (finding a RAND royalty of \$0.0956 per unit as compared to the demand of \$16.17 per unit for tablet computers); *Microsoft Corp. v. Motorola Inc.*, No. 10-1823, 2013 WL 2111217, at *99–100 (W.D. Wash. Apr. 25, 2013) (finding a FRAND rate of \$0.03471 per unit compared to initial demands of \$6–8 per unit); *Optis Cellular Tech. LLC v. Apple Inc.* [2023] EWHC 1095 (Ch) ¶¶ 342, 467(iv), 494 (May 10, 2023) (finding the FRAND rate was less than 2% of the rate demanded).

¹¹ Impact Assessment Report at 15.

¹² Impact Assessment Report, at 36.

¹³ Impact Assessment Report, at 36.

- essential.¹⁴ This lack of disclosure makes it difficult for licensees to estimate the share of the standard held in a licensor's portfolio or their potential total licensing liability for using the standard.
- For many standards, the vast majority of patents declared essential to the standard are not actually essential. Essentiality rates can vary significantly from portfolio to portfolio, and the cost of evaluating large portfolios can be prohibitively expensive for even large companies, and even more so for SMEs.¹⁵
 - When tested, even the alleged "crown jewel" patents included in SEP portfolios have significant rates of invalidity.¹⁶
 - Royalty demands by SEP licensors often exceed the actual market rate, and smaller companies typically lack both access to the licensor's other licenses agreements and adequate experience to make their own FRAND estimations.¹⁷

As a result, licensees' attempts to estimate the aggregate royalty burden from using a standard and evaluate the value of an individual SEP portfolio can be incredibly expensive. Licensors typically do not need to make the former investment (they already know their own portfolio), while companies seeking to use the standard need to do so for dozens of third-party portfolios when faced with associated licensing demands.

B. The Availability of Injunctive Relief Affords SEP Holders Asymmetric Leverage in SEP Licensing

Injunctions can present an acute problem in the context of SEP licensing because they can allow SEP holders to extract more value from their patents than the economic value of what is claimed, based on the cost of market exclusion. "When a technology is incorporated into a standard, it is typically chosen from among different options."¹⁸ Once a patent becomes essential to a standard, those alternatives become unavailable for manufacturers seeking to adopt the standard. The inability of manufacturers to walk away means that injunctions and the threat of injunctions give SEP holders significant leverage. The cost of market exclusion resulting from a granted injunction is often orders of magnitude higher than even otherwise excessive royalty demands made by SEP licensors.¹⁹

¹⁴ Rudi Bekkers *et al*, *Disclosure Rules and Declared Essential Patents*, 52(1) Res. Pol'y 104618 at 3 (2023).

¹⁵ See John Hayes *et al.*, Charles Rivers Assocs., *A Critical Review of 5G SEP Studies*, at 6 (Nov. 8, 2022) (noting studies have found SEP essentiality range from 8–33%), https://media.crai.com/wp-content/uploads/2022/11/09132755/Critical-Reviewof-5G-SEP-Studies_Nov-2022.pdf

¹⁶ Matthew Rose, Jay Jurata, & Emily Luken, "Between a Rock and a Hard Place": *Unwired Planet v. Huawei and Dangerous Implications of Worldwide FRAND Licenses*, Concurrences No. 84684 at 6 (2017).

¹⁷ See Robert Pocknell, *Buying and Selling Smart Devices: SEP Licenses and Competition Law* (Mar. 25, 2024) <https://www.keystonelaw.com/keynotes/buying-and-selling-smart-devices-sep-licences-and-competition-law>.

¹⁸ *D-Link*, 773 F.3d at 1233; see also Expert Report of Friedhelm Hillebrand at 7 ¶ 11, C.A. No. 2330-VCS (Del. Ch. May 22, 2008), filed as ECF 359-2 in *Nokia Corp. v. Apple Inc.*, No. 1:09-cv-00791-GMS (D. Del. May 16, 2011) (noting that in "nearly all cases," the European Telecommunications Standards Institute (ETSI) had choices during the development of the GSM and UMTS standards).

¹⁹ John Hayes & Assaf Zimring, *Injunctions in Litigation Involving SEPs*, 6/2024 GRUR Patent 240, 242–43 (June 20, 2024), <https://tinyurl.com/3dajevn4>.

FRAND commitments are supposed to limit SEP holders' ability to seek injunctions against manufacturers who adopt standards incorporating their SEPs willing to take a license.²⁰ Indeed, the "normal exploitation of the patent in the context of standard-compliant products is to collect FRAND royalties."²¹ By committing to license its patents on FRAND terms, a SEP holder is acknowledging "its objective [should it seek to monetize its patents] is not to stop the sale of infringing products but to collect royalties from the sales."²² "Seeking injunctions against willing licensees of FRAND-encumbered standard essential patents ... is a form of FRAND evasion and can reinstate the risk of patent hold-up that FRAND commitments are intended to ameliorate."²³

While European courts are supposed to be prohibited from issuing injunctions against willing licensees under the framework established by the ECJ in *Huawei v. ZTE*,²⁴ some courts have placed an affirmative burden to demonstrate willingness on licensees. The European Commission has argued that such approaches misapply European law,²⁵ but the practices nevertheless persist. The difficulties with evaluating whether a SEP holder's offer is FRAND due to the above discussed information asymmetry can result in missteps during negotiations that can easily result in a *good-faith* licensee being labeled unwilling and thus subject to the risk of market exclusion. Potential licensees thus often face substantial pressure to accept royalties that they believe in good faith to be well above-FRAND, particularly for smaller companies that cannot afford to engage in costly litigation.

C. Solving the Imbalance in FRAND Licensing

Solving the imbalance in FRAND licensing requires ending the systematic asymmetry that facilitates SEP holders' ability to extract above FRAND royalties. Any viable solution must mitigate the coercive power conveyed by the threat of market exclusion while reducing the imbalance in transaction costs for SEP negotiations.

There have been multiple attempts to resolve the existing imbalance in FRAND licensing. The European Commission's proposed SEP regulation's SEP registry, essentiality checks, and aggregate rate determination would reduce the information asymmetry, while its prelitigation nonbinding rate determination proceeding would mitigate the threat of an injunction until after an independent party assessed the merits of an offer.²⁶ Meanwhile, courts in the United Kingdom have demonstrated that the establishment of an interim license during the pendency of a rate

²⁰ *Panasonic Holdings Corp. v. Xiaomi Tech. UK Ltd.* [2024] EWCA (Civ) 1143 at ¶ 101.

²¹ Impact Assessment Report at 122.

²² *Id.* at 121.

²³ Federal Trade Commission, Analysis of Agreement Containing Consent Orders to Aid Public Comment, *In re Robert Bosch GmbH*, File No. 121-0081, Dkt. No. C-4377, at 4 (Apr. 23, 2013).

²⁴ *Huawei Techs. Co. v. ZTE Corp.*, Case C-170/13, ECLI:EU:C:2015:477 (2015)

²⁵ Brief for the European Comm'n, Directorate-General for Comp. as Amicus Curiae, HMD Glob. Oy v. VoiceAge EVS GmbH & Co. KG, Case 6 U 3824/22 Kart (Oberlandesgericht [OLG] München [Munich Higher Regional Court] Apr. 15, 2024) (Ger.).

²⁶ See Rafał Sikorski and David Katz, *EU Patent Licensing Reform Would Boost Tech and Curb Sales Bans*, Bloomberg Law (Mar. 15, 2024) <https://news.bloomberglaw.com/us-law-week/eu-patent-licensing-reform-would-boost-tech-and-curb-sales-bans>

determination process can lead to settlement.²⁷ Finally, the prospect of competition law oversight can reduce anticompetitive licensing practices by SEP holders.²⁸

IV. Role of Arbitration in Resolving FRAND Disputes'

While arbitration can certainly serve a useful role in resolving some FRAND disputes, unfortunately, as the European Commission noted, the utility of arbitration for solving these problems can be limited. "There is no indication that traditional alternative dispute resolution mechanisms currently available to SEP holders and implementers will be used more often going forward to settle FRAND-related issues."²⁹ Only 43% of companies—including licensors and licensees—responding to European Commission survey viewed arbitration as useful in resolving FRAND disputes.

Diverting parties from court adjudicated FRAND determinations into arbitration can have negative consequences. Like mediation, arbitration "proceeding[s] . . . as well as the resulting decision[s] [are] maintained as confidential and [are] not publicly available, so [have] has limited precedential value for future FRAND-related cases."³⁰ Shifting disputes that would otherwise be subject to public FRAND adjudications deny the market valuable data. SMEs who have limited licensing experience are likely to be particularly impacted by this shift as publicly available adjudicated FRAND rates are invaluable objective reference points for them to rely on during negotiations.

This is not to say that arbitration cannot be a helpful tool to resolve some FRAND licensing disputes, but it is important for PMAC to recognize that arbitration is unlikely to serve as a panacea to resolve the systemic problems that have plagued SEP licensing.

V. Recommendations Regarding PMAC's Rules for FRAND Arbitration

Arbitration provides parties flexibility to reach accord and resolve disputes. Establishing rules for arbitration for the PMAC is important with regards to how the UPC, PMAC, arbitrators, and parties interact with each other. Rules on what happens to court proceedings, limitation periods, and other procedural questions are useful for providing an efficient and predictable process. Similarly, establishing a protocol for selecting arbitrators and how arbitration fees will be paid are important threshold questions for parties contemplating arbitration that should not be developed anew for each arbitration.

However, PMAC arbitration should not deprive the market of rate information that would otherwise emerge from an adjudication. Moreover, given that PMAC is part of the UPC, it is particularly important that its arbitration is not used for unfair or anticompetitive ends, or to advantage one party or the other in the underlying litigation.

²⁷ Enrico Bonadio and Arjun Solanki, *FRAND Interim Licenses in Standard Essential Patents Disputes*, Tech Reg Chron at 29 (Mar. 2025).

²⁸ European Comm'n, DG Comp., *Ex Post Evaluation of the Implementation & Effectiveness of EU Antitrust Remedies* at 126 (2025) (noting that for a time after the 2014 decision in AT.39985 – Motorola – Enforcement of GPRS Standard Essential Patents there was "calming down of patent wars in the mobile device industry").

²⁹ Impact Assessment Report at 26.

³⁰ Impact Assessment Report at 36-37.

In light of those considerations, ACT makes the following three recommendations to the proposed rules.

A. Non-Participation in Arbitration Cannot Serve as Evidence of Unwillingness

Recommendation 1: Article 45 should be amended to prohibit the use of non-participation in arbitration as evidence of unwillingness to take a license.

The concept of “unwillingness” is a common issue in SEP litigation given that under *Huawei v. ZTE*, a court may not—consistent with competition law—issue an injunction against a “willing” licensee. It is important that PMAC arbitration does not become a tool used to establish the unwillingness of a party, and so as a “punitive” tool to disadvantage one party in the underlying litigation.

First and foremost, it would be inconsistent with a party’s fundamental right of access to the courts, as provided for in the Charter of Fundamental Rights of the European Union, to penalize a party for insisting that its disputes be addressed by the European courts, rather than via private, non-public arbitration. The PMAC rules must ensure that arbitration remains entirely *voluntary*, and as such cannot and should not put in place any approaches that would serve, legally or practically, as a “sanction” on parties that chose not to participate in arbitration.

Article 45 should be amended to include a subpart that ensures that any conduct in pre-arbitration procedures cannot be used as evidence of unwillingness. This guarantee that a party is not penalized for exercising their right to have a dispute adjudicated and reduce the likelihood that parties will attempt to use arbitration as a strategic tactic aimed at obtaining injunctive relief. Specifically, we propose adding the following:

(1bis) Any evidence relating to pre-arbitration procedures under Sections 2 and 3 of these rules, including the choice to decline such proceeding, may not be introduced as evidence in national court proceedings that a party is unwilling to offer or take a license on FRAND terms.

B. Provide a Framework for Mediators to Address FRAND Terms and Methodology

Recommendation 2: Sections 1 and 7 should include articulable guidelines for discussion of FRAND terms that comply with EU Competition Guidelines.

As noted above, the FRAND commitment is not merely a question of private contract interpretation—it also involves matters of competition law. PMAC should not facilitate arbitrations that risk promoting non-FRAND outcomes or that could implicate EU competition law concerns.

It is important that PMAC provide guidance to limit the discretion of arbitrators making FRAND determinations. Having such a framework in place in PMAC’s rules would ensure that arbitrations are consistent with European law and provide consistency in PMAC arbitrations outcomes by making them less dependent on unique arbitrator preferences.

The FRAND commitment, as its name specifies, requires SEP holders to license their patents on terms that are fair, reasonable, and non-discriminatory. As the Commission’s Horizontal Guidelines explain, a FRAND rate must “bear a reasonable relationship to the economic value

of the [intellectual property rights]" being licensed.³¹ A FRAND rate should reflect the approximate value of [the SEP's] technological contribution, not the value of its widespread adoption due to standardization.³²

Article 46 and the definitions should thus recognize the above principles as the cornerstone of FRAND rate discussions. This would provide guardrails in the arbitration to ensure that the Tribunal remains within the bounds of competition law obligations and that the Centre is not facilitating anticompetitive conduct.

Specifically, Article 46 should include a subpart (2) that states:

(3) Any FRAND rates set in arbitration must be consistent with the principles underlying a FRAND rate as described in the definitions

and the definitions should include:

"FRAND rate" means a rate that is consistent with obligations under competition law. Such a rate will bear a reasonable relationship to the economic value of the intellectual property rights being licensed and should reflect the approximate value of the SEP's technological contribution, not the value of its widespread adoption due to standardization.

C. Improve and Expand PMAC Arbitration Transparency

Recommendation 3: Articles 45 and 48 should be amended to provide transparency regarding arbitration proceedings and help promote FRAND rate transparency.

Article 45(7) correctly gives the Centre discretion to publish arbitration decisions so long as it does not disclose confidential information. This demonstrates that PMAC recognizes that there is public value in providing these decisions.

However, the rules, as written, make such publications subject entirely to the consent of the parties by allowing any party to object to the publication within 60 days from when they are notified that the Centre intends to publish the decision. The scope of such objections should be limited to disclosure of confidential information. The objection should also include proposed redactions. Where the Centre and party (or parties) to the arbitration are unable to reach accord on the scope of appropriate redactions, the matter should be referred to the presiding arbitrator for resolution.

Specifically, article 45(7) should be amended as follow:

7. The Centre may publish the award, orders, corrections thereof and other decisions of the Tribunal in an anonymous form that does not enable identification of the parties or other persons or discloses confidential information, unless a party objects in writing to the publication within 60 days from the day of making the

³¹ Eur. Comm'n, *Guidelines on the Applicability of Article 101 of the Treaty on the Functioning of the European Union to Horizontal Co-operation Agreements* ¶ 460 (Jul. 21, 2023)..

³² Horizontal Guidelines at ¶ 460 ("The economic value of the IPR could be based on the present value added of the covered IPR and should be irrespective of the market success of the products, which is unrelated to the patented technology."); see also *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1233 (Fed. Cir. 2014)

decision. The grounds for objection shall be limited to claims that publication would identify one or more of the parties or other persons or would disclose confidential information. The objecting party shall propose necessary redactions to remedy the disclosure. The Centre shall accept the proposal, reject the proposal and provide reasons for rejection, or provide an updated publication with the reasons for the update. If the objecting party maintains their objection, the matter will be referred to the presiding Arbitrator for a final determination with costs to be divided between the Centre and objecting party.

Additionally, Articles 45 and 48 should include a mechanism mandating the publication of anonymized FRAND rate information. Article 48 should include a requirement that any tribunal decision that makes a rate determination must include a section containing specified information regarding the rate that for publication by the Centre. The scope of this information should be broad enough to enable third parties to rely on it for licensing negotiations without disclosing the identity of the parties or any confidential information. Article 45 should also be amended to require the Centre publish this information.

Specifically, Article 48 should include:

3. Any Tribunal award, order, correction, and other decision that includes a FRAND rate determination shall include a section containing non-confidential information for publication by the Centre. The contents of this section shall include, but are not limited to:
 - (i) Which standards were subject to the rate determination, including specific versions and the scope of optional features.
 - (ii) The methodology or methodologies used by the Tribunal.
 - (iii) The per unit rate per patent family for each standard.
 - (iv) Whether the license was a cross license agreement, and if the impact on the per unit rate per patent family
 - (v) The geographic scope of the decision.
 - (vi) Whether the Tribunal found the SEP holder's portfolio was more or less valuable than average based on the number of claimed essential patents and if so, whether it was more or less valuable than average.
 - (vii) Whether the decision was unanimous. In the event of a dissent, the above information shall be provided where relevant.

Further Article 45 shall include a subpart (8) stating:

8. Within 60 days of any FRAND rate arbitration decision under Section 7, the Centre shall publish non-confidential rate information as described in Article 48(3).

VI. Conclusion

PMAC's arbitration rules should be established to advance fair and effective dispute resolution. The above modifications can be made to facilitate that PMAC arbitration is established as an option that does not incentivize strategic gamesmanship, encourage non-FRAND or anticompetitive outcomes, or deny market participants of important rate information.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Sax", with a stylized flourish at the end.

Mike Sax
Founder and Chairperson

Brian Scarpelli
Senior Global Policy Counsel

Priya Nair
Senior Intellectual Property Policy Counsel