

All Things FRAND

Standard-Essential Patents (SEP) and Fair, Reasonable, and Non-Discriminatory (FRAND) Obligations: Protecting Small Businesses

Background

- Innovation is fueled by open and consensus-based technological standards (e.g., Wi-Fi, LTE, Bluetooth, etc.). Trusted public and private standards-setting organizations (SSOs) develop these technology standards. Small businesses need access to these standards to compete in the market and ensure interoperability.
- During SSO processes, companies voluntarily contribute patented tech into to these standards as they are built. Patents that must be implemented in order to utilize a standard are generally considered “essential” to the standard, making the patent(s) and standard mutually inclusive. These SEPs provide their owners with much greater leverage than any other kind of patent.
- SSOs ask that SEP owners volunteer to license their patents on FRAND terms to future standards implementers in order to balance this potential with the need to access the patents that are inseparable from the standard
- In exchange for making a voluntary FRAND commitment, SEP owners can obtain reasonable royalties from standards implementers. Without a FRAND commitment, SEP holders would have the same power as a monopolist, giving rise to serious competition issues.
- While FRAND promises are important, they become meaningless – and undermine innovation, particularly for small businesses – when ignored during subsequent licensing negotiations.

FRAND abuses pose an anticompetitive danger and a serious threat to the future of mobile computing and the internet of things (IoT).

FRAND Abuse is an Economic and Competition Issue

- Competition regulators around the globe (including the United States) agree about the key role that SEPs and related FRAND obligations play in healthy competition and a balanced patent system, and they have established a consensus that violating commitments to license SEPs under FRAND terms can pose a significant threat to competition.
- FRAND promises must mean something for both established (auto, telco, etc.) as well as nascent markets (IoT, smart wearables, etc.) to progress technologically.
- The App Association launched the All Things FRAND initiative because app developers and entire industries care deeply about these issues. All Things FRAND serves as a resource for SEP-FRAND developments around the globe as well as consensus SEP principles as well as resources to better understand how FRAND is defined by regulators and courts around the world.