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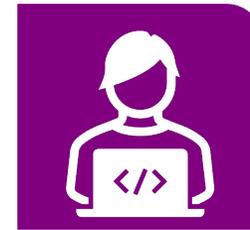
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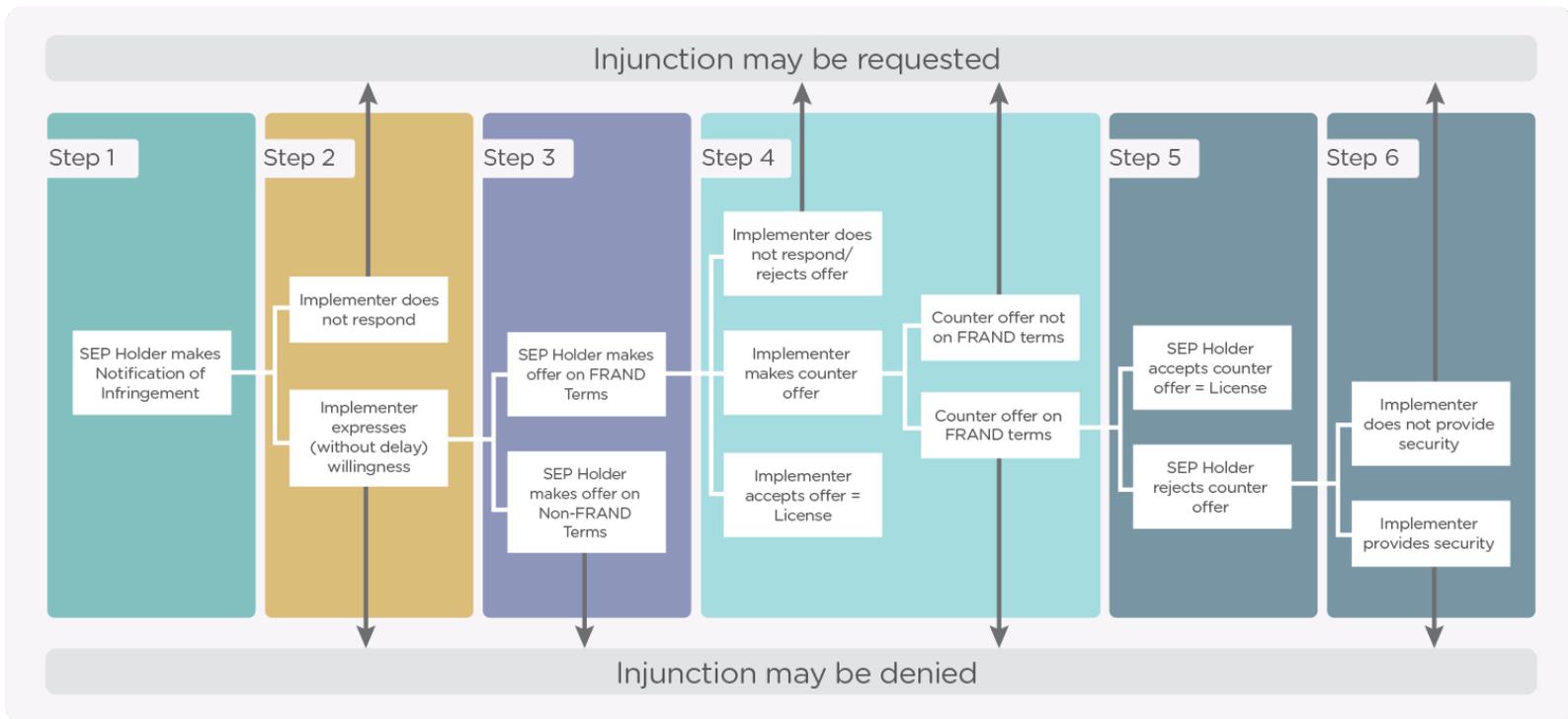
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Live Q&A on the Nokia v Daimler dispute



Prof. Nicolas Petit

Chair in Competition Law at the European University Institute and the Robert Schuman Center for Advanced Studies.



Richard Vary

Partner in Bird & Bird's Intellectual Property Practice and Technology and Communications sector group.

Questions received via the online form

Background

1. Could you explain in a nutshell the Nokia / Daimler dispute?
2. What are the main findings of the “FRAND licensing levels under EU law” academic paper?
3. What value chain licensing requirement the FRAND commitment actually does impose under EU law?
4. Why did it take so long to Nokia and Daimler to sign a patent licensing agreement?
5. What are the next steps now that Daimler has signed a licensing agreement with Nokia and all litigation between the two parties has been resolved, including the referral to the CJEU?

Implications for the automotive industry

1. Considering that Daimler is now a licensee of Nokia, why did Continental, a supplier of Daimler, declare they will pursue their complaint with the European Commission?
2. Why do suppliers keep asking for a direct licence when consent can be obtained indirectly through the have made right clauses inserted in a licence agreement in their case with Nokia? In both cases, consent to use the patent is understood to have been given, so there would be no infringement by either the OEM or its supplier.
3. According to the press in November 2019, Nokia made an offer of an end-user license to a supplier, Continental. We know there was no agreement signed with Continental. Could you please share what happened? Did Continental refuse to license? Did they reject the offer? If so, how did they justify such behaviour?
4. Daimler is a licensee of Nokia, but not a licensee of the Avanci marketplace that counts 41 licensors including Nokia. Does it mean that Daimler is far from being out of the wood?

Questions received via the online form

The referral

1. Do you consider the referral by the Düsseldorf court to the CJEU to be justified, i.e. do you consider that clarity is needed in establishing the owner's obligations related to the production chain, or are you of the opinion that the referral is only justified because the Düsseldorf court has a friendlier position in relation to the implementers? And secondly, do you think that this referral will lead to a refusal on the part of the owners to go to this court and be forced to go to another court to litigate their disputes, for example Munich or Mannheim?
2. There is still an ongoing case in Düsseldorf between Huawei and Nokia: should we expect a new referral?

Questions received via the online form

The debate

1. The research paper looked at the general principles, patent, contract and competition laws and concluded that the EU law does not require a license to all approach. So is the debate between license to all and access for all the wrong debate?
2. Is it correct to believe that the core of the issue is actually the lack of intellectual property rights knowledge of the non-telecommunication stakeholders who are now implementing technologies that are outside of their know-how?

Time for hypothesis

Hypothesis #1: Imagine the Düsseldorf court refers the Huawei/Nokia case to the CJEU

Hypothesis #2: Suppose the CJEU would rule in favour of an obligation of the SEP holder to license Tier 1 & Tier 2 component manufacturers:

1. Would that not contradict its own case law under 102 TFEU with respect to anti-competitive refusals to supply?

The confidentiality of the licensing agreement between Daimler and Nokia has been criticized by one of Daimler's suppliers.

Hypothesis: Daimler & Nokia accept to make public the terms of the licensing agreement.

1. Do you think that making this agreement public would help to calm down the OEM's suppliers and provide more certainty?

Thank you

Forthcoming webinar

<p>9th September 1600 CEST</p>	<p>Patents in our societies: Innovation, markets and new firms</p>	<p>Professor Alfonso Gambardella Professor of Corporate Management and Head of the Department of Management & Technology Bocconi University, Milan</p>
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