



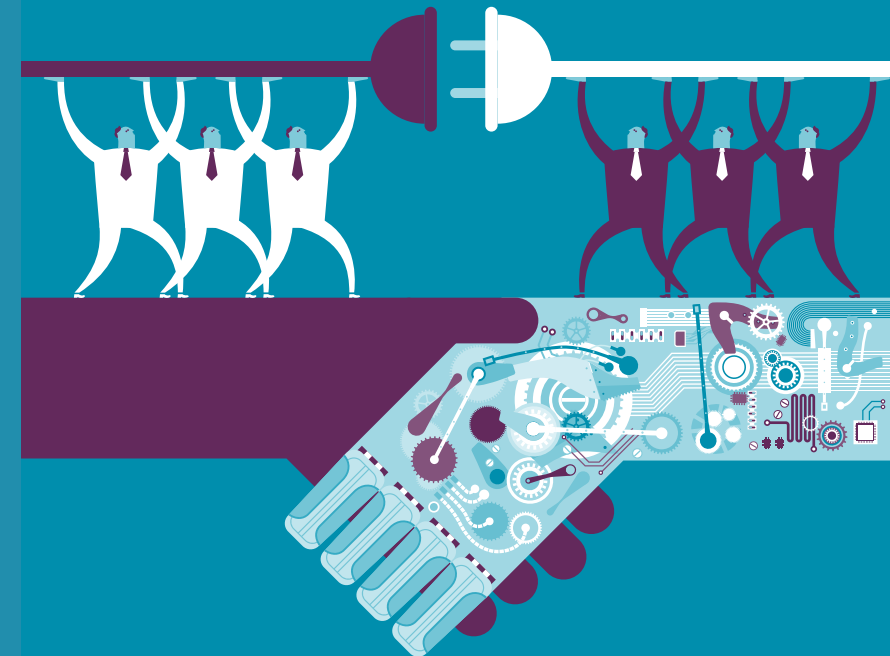
Rigorous empirical
research on
intellectual property

Licensing Negotiations Groups: What, Why?, How?

Host: Dr Claudia Tapia, President of 4iP Council.

Presenters:

- Haris Tsilikas
- Dr Igor Nikolic





Housekeeping: LNGs: What, Why?, How?

23rd November 2021

- ✓ The webinar will start in a few minutes
- ✓ Today's webinar is being recorded. We will be able to share links of the recording and the slides with you within 24 hours
- ✓ Please look at the Q&A box on your screen. If you think of a question for the speakers at any point, just type it in there and we will hold it for the discussion portion at the end of presentation

While waiting you may read Dr Igor Nikolic's research paper summary:



What do we do?



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For SMEs:



European Court Decisions:

Which types of intellectual property do you need?

Filter table columns

	Patents	Copyrights	Designs	Trademarks	Trade Secrets
What do they protect?	Invention (idea and technical way of doing something) or solving a technical problem See more	Original creative content See more	Useful and original visual appearance of an object See more	Identifiable and distinctive signs See more	Confidential information See more
Examples of what is protected	Software, products and processes in all types of business For example: an innovation in a new type of car engine See more	Audiovisual works, literary, artistic, scientific, technical, software, design, database, etc. For example: a new type of car engine, a new type of car engine, a new type of car engine See more	Transportation, furniture, packaging, etc. For example: a new type of car engine, a new type of car engine, a new type of car engine See more	Logos, slogans, etc. For example: a new type of car engine, a new type of car engine, a new type of car engine See more	Secret recipes, etc. For example: a new type of car engine, a new type of car engine, a new type of car engine See more
How are my rights protected?	Patents are automatically made effective in all countries of the European region See more	Copyright is automatically made effective in all countries of the European region See more	Designs are automatically made effective in all countries of the European region See more	Trademarks are automatically made effective in all countries of the European region See more	Trade secrets are automatically made effective in all countries of the European region See more
How long is my innovation protected?	Up to 20 years See more	Up to 70 years See more	Up to 15 years See more	Up to 10 years See more	Up to 10 years See more
Do I have to register it?	Yes, filing an application is required See more	No, registration is not required See more	Yes, filing an application is required See more	Yes, filing an application is required See more	No, registration is not required See more

How do I use intellectual property to grow my business?

- 2 - NEGOTIATING
- 3 - FUNDING
- 4 - STRATEGIC VALUE

Explore how patents add value with our [interactive guide](#).

- 3 - COLLABORATION
- 4 - FUNDING

Explore the benefits of copyright with our [interactive guide](#).

4 REASONS 4 TRADEMARKS

- 1 - DIFFERENTIATION
- 2 - PROTECTION
- 3 - REPUTATION
- 4 - REVENUE

Explore the benefits of trademarks with our [interactive guide](#).

4 REASONS 4 DESIGN RIGHTS

- 1 - EXCLUSIVITY
- 2 - COMMERCIALISATION
- 3 - REPUTATION
- 4 - VALUE

Explore the benefits of design rights with our [interactive guide](#).

Case Law post CJEU ruling *Huawei v ZTE*

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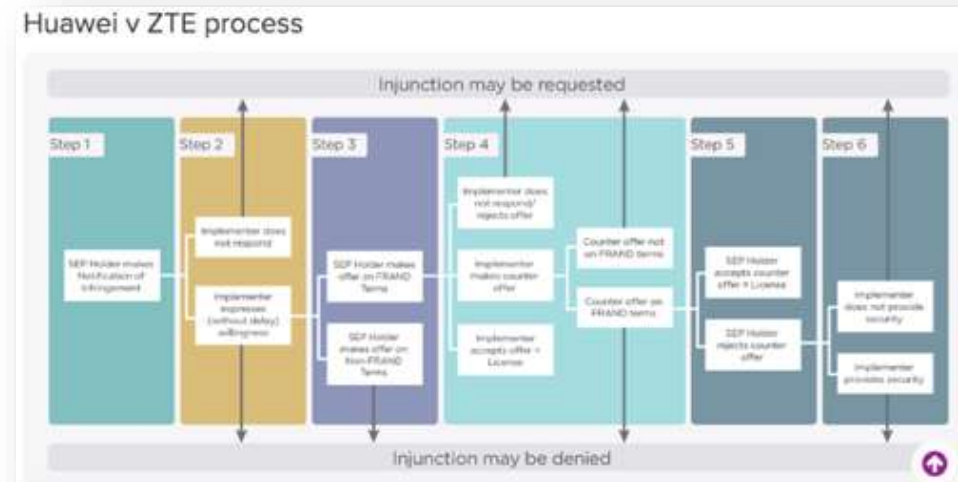

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National Courts Guidance

Negotiating Licenses for Essential Patents in Europe

Increased clarity provided on the principles established by the Court of Justice of the European Union in *Huawei v ZTE*.

The Court of Justice of the European Union clarified, in *Huawei v ZTE* (Case No. C-170/13), European law relating to the availability of injunctive relief for infringements of FRAND-based standard essential patents. In doing so, the Court provided a legal framework focused on the good faith conduct to be expected of both parties. Since



Licensing Negotiation Groups: what, why, how?



Haris Tsilikas

Senior Associate, Office of Elisabeth Opie (Munich), PhD candidate, Max Planck Institute and Edison Fellow, at Center for the Protection of Intellectual Property, George Mason University.



Dr. Igor Nikolic

Research Fellow at European University Institute. PhD from University College London. Recent book: 'Licensing Standard Essential Patents: FRAND and the Internet of Things' (Hart Publishing 2021).

Background

International Standards Development Ecosystem:

- Contribution of breakthrough technologies to standards
- Access of essential IPR on FRAND terms and conditions
- Incentives to innovate and participate in standards development
- Exponential growth in markets for standard-practicing products
- Ubiquitous connectivity, Internet of Things
- Significant welfare gains for consumers, businesses, societies
- But also occasional disputes over FRAND terms and conditions

European Commission Standardisation Policy

1. 2017 Communication ‘Setting out the EU approach to Standard Essential Patents’:

- Transparency, efficiency, FRAND determination in license negotiations
- Options for enhancing transparency (e.g., essentiality checks), efficiency (e.g., patent pools, licensing platforms)

2. 2020 IP Action Plan

- Commission will work to enhance transparency and predictability in the licensing of standard essential patents

3. 2021 Expert Group Report on Standard Essential Patents

- Proposals for FRAND license negotiations
- Proposal 75: Licensing Negotiations Groups (LNGs)

Licensing Negotiation Groups – What? (I)

Industry Practice:

- No evidence of LNGs currently in operation
- Bilateral FRAND license negotiations under *Huawei v. ZTE* framework
- LNGs advocated by certain stakeholders (e.g., automotive sector)
- LNGs explored by regulators in various jurisdictions:

LNGs in EC Expert Group Report (Proposal 75 – 2021)

- Collective license negotiations
- Groups of licensees active in the same product market (e.g., automotive)
- Will observe the CJEU *Huawei v. ZTE* framework
- Will not facilitate/encourage licensee holdout
- Will be monitored by competition authorities to avoid collusion

Licensing Negotiation Groups – What? (II)

EC DG Comp Targeted Survey (Consultation on Horizontal Guidelines – 2021)

- LNGs examined as joint purchasing arrangements (JPAs)
- Competitive impact of LNGs
- Factors for competitive assessment of LNGs
- Restrictive by object/effect?

Japan, Ministry of Economy, Trade and Industry (METI), Study Group Interim Report (2021)

- Japanese government will explore LNGs
- LNGs must be compliant with antitrust law

Licensing Negotiation Groups – Why?

Rationale of EC Expert Group Report, Proposal 75:

- Enhanced efficiency in license negotiations
- Pooling of technical and commercial expertise on the licensee side
- Balance in FRAND license negotiations
- Good for SMEs
- Reduced transaction costs

Licensing Negotiation Groups – How?

EC Expert Group Report, Proposal 75:

- Licensees active in the same market, i.e., competitors
- LNGs can also be industry associations collectively negotiating licenses for their members
- Licensees will agree ex ante on:
 - Licensed product(s) covered by the license
 - Value chain level of licensing
 - *An upper bound for the royalty*
 - (a lower bound is not proposed)
- Competition authorities monitoring to avoid licensee collusion

Are LNGs Anticompetitive?

The competitive concerns over LNGs:

1. licensees operating in the same market
2. licensee collusion – setting upper bound of “FRAND” royalty – price fixing to suppress royalty rates for essential IPR
3. buyer-side market power (monopsony)
4. price fixing incompatible with FRAND licensing
5. anticompetitive object(?)
6. anticompetitive effects(?):
 - incentives to innovate
 - incentives to participate/contribute in standards development
 - consumers deprived of innovative standards

Q&A

- What are the competition law challenges of LNGs?
- Could LNGs generate efficiencies in FRAND negotiations, e.g., reduce transaction costs?
- If LNGs raise competition problems, do they constitute restrictions by object or effect?
- What's the difference between LNGs and Group Purchasing Organisations in the US and the EU?
- Are LNG useful for licensing of IP rights like GPOs are for the purchase of physical products?

Thank You!

Haris Tsilikas' forthcoming paper in CPI:

Elisabeth Opie and Haris Tsilikas: An Assessment of the Proposal for Licensee Negotiations Groups (LNGs) in SEP Licensing under Article 101 TFEU

Dr Igor Nikolic's forthcoming paper in Les Nouvelles December 2021 issue:

Licensing Negotiation Groups for SEPs. Collusive Technology Buyers Arrangements: Pitfalls and Reasonable Alternatives



Forthcoming Webinar:

Date	Title	Summary
01-12-2021	Intellectual Property Systems in China and Europe	Joint webinar with the China IP SME Helpdesk with Peter Finnie (IP strategy adviser to European startups, Simon Cheetham (China IPR Enforcement expert)



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