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FRAND Royalties for Standard Essential Patents and Case Review of Philips v. Gigastorage in Taiwan IP Court

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Abstract

The article reviews judicial decisions of fair, reasonable, non-discriminatory (“FRAND”) royalties in various jurisdictions. Starting with *Microsoft v. Motorola* in 2013, the first FRAND royalty decision ever made, courts from different juris-

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dictions have addressed their opinions on how to determine FRAND royalties. After exploring rationales in each case, the article then extracts useful approaches and key implications for determining FRAND royalties in order to depict an applicable framework. Courts now primarily consider either “top down approach” or “comparable license analysis,” or even both as a reliable cross-check, to come up with final FRAND royalties for SEPs in suit. The article further focuses on *Philips v. Gigastorage*, a controversial patent infringement case where Taiwan Intellectual Property Court awarded the patentee (Philips) an outrageous amount of damages. The article respectively analyzes and discusses the methodology the court adopted in its first and second instance. The article then suggests that under the comparable license analysis, royalties from a comparable license should be considered as a starting point for the calculation, and that the court should further consider apportioning economic value of the infringed patent(s) from the entire patent portfolio. The consideration could help avoid risk of patent hold-up and royalty stacking. The implications and trends in the article may shed some light on future FRAND royalty calculation, for corporations in the global telecommunications arena as well as for the judiciary in Taiwan.

Keywords: Standard Essential Patent (SEP), Fair, Reasonable, Non-Discriminatory (FRAND), Reasonable Royalty, Top Down Approach, Comparable License