

FRAND Licensing Works

Susanna Martikainen Keynote at IP Forefront ICT IP Conference, 9 Mar 2023

Thank you for the introduction.

This is my second visit to China in the past two months after a three-year break where it was not possible to travel due to the global pandemic. I am so pleased to be able to be here again and to have the opportunity to catch up with old friends and colleagues.

One thing I have found over the years is that while companies often have different interests or points of view, nothing beats face to face dialogue, so thank you again IP Forefront and Shenzhen IP Alliance for bringing us all together.

I have three things I would like to talk about today:

Number one: the licensing of Standard Essential Patents on FRAND terms **works well and delivers huge economic and social benefits.**

Number two: the real issue with SEP licensing is **hold out** by unwilling licensees.

Number three: arbitration is an effective tool to resolve global FRAND disputes.

But first, a few quick words about the company I work for. For more than thirty years Nokia has defined many of the fundamental technologies used in virtually all mobile devices and taken a leadership role in standard setting, contributing much of our technology to open standards.

Since 2000 we have invested over €140 billion in R&D. As a result, we hold one of the world's strongest patent portfolios of connectivity technologies, with around 20,000 patent families of which over 4,500 patents are declared as essential to 5G.

Nokia supports the licensing of SEPs on fair, reasonable and non-discriminatory terms. FRAND compensation enables us to continue to contribute our cellular and multimedia technologies to open standards. Other companies can then license and use these technologies without the need to make their own substantial investments in standards development. This enables implementers to invest their R&D spend elsewhere, fuelling further innovation and the development of new products and services for consumers.

The investment and compensation system has been central to making the cellular industry grow and prosper. **This model has enabled continued investments into innovation by**



companies such as Nokia, while simultaneously facilitating swift access to market by mobile device manufacturers.

In return we seek fair compensation for the use of our inventions. We reinvest royalties, along with additional investment, in developing the next generation of inventions. **It's a virtuous circle, a wheel that has been turning for many years, powering innovation.**

We have over two hundred licensees across all our programs, including most smartphone vendors, several leading consumer electronics firms, and almost all global leading car manufacturers.

The final thing to say about Nokia is that **we are both an inventor and an implementer of standardized technology** and therefore we support a balanced approach to SEP licensing that both incentivizes inventors and provides predictability to companies that license the use of another company's' inventions.

Moving onto **my three themes for today.**

Firstly, I'd like to stress that **the licensing of SEPs on FRAND terms works and delivers huge economic and social benefits.** There would be no smartphones, no 4G or 5G networks, no video streaming without global standards and licensing of Standard Essential Patents.

And it would have been much, **much harder – may be impossible – for new companies to have entered the smartphone market** without the licensing of standard essential technology on FRAND terms.

Open standards and the availability of **FRAND licensing enabled OPPO and Vivo and other players** to enter the market with devices that are compatible with cellular networks around the world without having to make their own substantial investment in the global standards that shape how these devices and networks operate.

And the cellular technology Nokia and other companies invent and share with the world through open standards will become even more important to the economy and to society in the coming years as everything becomes connected.

Standardisation works because innovators, such as Nokia, offer technologies on the basis that they will receive FRAND royalties. If this fundamental concept breaks down, the risk is not only to investment in R&D, but also to the ability and incentives to participate in open standards development.

SEPs are often taken granted **but we would all be much, much worse off without a balanced system** that allows innovators to receive fair compensation for the use of their inventions.

And FRAND licensing of SEPs will become even more important here in China in the coming years. Nokia looks forward to growing together with our customers and industry peers in China in such environment.



It has been suggested by some that because litigation is sometimes necessary, that the system of FRAND licensing is therefore broken. This is incorrect.

Litigation is always **our last resort** and much less common than people may realise. The majority of patent licensing agreements are agreed amicably. To put this into context, since 2017, Nokia has concluded or extended over 200 licenses – including amicable licenses with Huawei, Xiaomi, and OPPO - and launched just 6 litigation campaigns.

Regrettably, litigation is sometimes the only way to respond to those who choose not to play by the internationally established and accepted rules.

This brings me to **my second theme. The real barrier to efficient and effective SEP licensing is hold-out by unwilling licensees.**

Some companies don't want to pay for the use of other companies' inventions. **They hold-out from taking a license. This distorts the market** – putting good faith implementers who respect IPRs at a competitive disadvantage and depriving innovators of FRAND compensation necessary to develop the next generations of technologies that benefit the entire ecosystem.

The heart of the issue is that open standards mean that **implementers have access to SEPs without a licence**. Some implementers employ a variety of tactics to deliberately avoid or delay payment for the use of standardized technologies,. They know that litigation is expensive and time consuming and seek to get away without paying for as long as possible.

Evidence of unilateral and coordinated hold-out is well-documented in recent case-law, in particular in the decisions of courts across Europe.

This undermines the ability of innovators to invest in future cellular technology and removes the incentive to contribute these inventions to open standards.

Take the example of our on-going dispute with OPPO. **Nokia and OPPO had a patent license agreement which expired at the end of June 2021.** Under this license, which was agreed amicably, OPPO paid Nokia for the use of our technology. This included certain Standard Essential Patents - technologies that Nokia has contributed to open cellular connectivity standards and without which, OPPO's smartphones would not work.

When it came to renewing their license agreement, OPPO rejected our fair and reasonable offers, insisting that they wanted to pay less than their peers.

Once it became clear OPPO were unwilling to agree to reasonable terms directly with us, **we offered to enter into independent and neutral arbitration.**

Sadly, **OPPO has not embraced our arbitration offer** and we had no choice but to initiate legal action in a number of countries in Europe, Asia and South America. The actions center on a mix of cellular SEPs and implementation patents covering connectivity, user interface and security technologies.



Last year two German courts ruled that OPPO is using Nokia's technologies in its smartphones and is selling them illegally without a license. In fact, the courts in Munich and Mannheim have so far found they are infringing six patents in total and that Nokia has acted fairly.

In their judgments, the courts highlighted OPPO's unwillingness to play by the rules, confirming that OPPO was unwilling to agree a license and actively sought to delay the conclusion of a license agreement.

Rather than respect the decision of the German courts and play by the well-established international rules, OPPO then announced it would suspend sales in Germany, although in November last year OPPO was fined by one of the German courts for failing to comply with the injunction.

Since then, courts in the **UK and the Netherlands** have found in our favor, and also a court in **Brazil** has granted a preliminary injunction. But still OPPO refuse to agree a license on fair terms.

And all through this time - for over 18 months - they have continued to sell their devices, continued to use our technology, but not paid a single cent in royalties.

And as a result, **OPPO have enjoyed an unfair, anti-competitive advantage over other Chinese smartphone companies**, who play by the rules and who have been paying to use our technology.

Now, moving to **my third theme, alternative dispute resolution**. As I said earlier, the vast majority of licensing agreements are agreed amicably. **Litigation is the exception, not the rule**. But not all disagreements can be resolved through negotiations. **When this is the case, we believe independent, legally binding arbitration is the best solution**.

And we have a suggested blueprint for how to do this in a fair and neutral way. Our recommendation is that any arbitration should follow the **International Chamber of Commerce's Rules of Arbitration**.

There should be a panel of three arbitrators. Each party would nominate one arbitrator, and the two party-nominated arbitrators or the ICC will nominate the third arbitrator who is the Chair of the panel.

None of the three arbitrators should be citizens from the two companies' home markets and ideally the venue would be in a neutral location.

The arbitration panel's decision should **not take more than eighteen months** from the constitution of the panel.

This approach, we believe, is a better way to resolve global FRAND disputes and address any jurisdictional issues. It means for the implementor that there is no injunction risk, and for the licensor that he will receive FRAND royalties.



For example recently in open court in Delhi, India, we offered to discontinue all legal action around the world against Oppo if OPPO agreed to enter into arbitration and made an interim payment based on our previous agreement.

OPPO rejected our offer during the court proceedings, but I would like to state publicly today that we remain committed to reaching an amicable settlement of this matter and encourage OPPO to think again about entering into arbitration.

Now as I am almost out of time, let me finish with **a quick summary**.

The licensing of SEPs on FRAND terms works well and delivers huge economic and social benefits. It has enabled the continued investments into innovation by companies such as Nokia, while simultaneously enabling quick access to market by new entrants such as OPPO. The real problem with FRAND licensing **is hold out by unwilling licensees**. And independent, **legally binding arbitration is** a better way to settle global FRAND disputes than litigation.

And my final point is, we would much rather work in partnership with implementers to maximise the benefits of our inventions. **Every dollar spent on legal costs is money that could be spent on R&D**.

Thank you for listening. If you have any questions or wish to discuss these themes in more detail, please do come say hello during the break.

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