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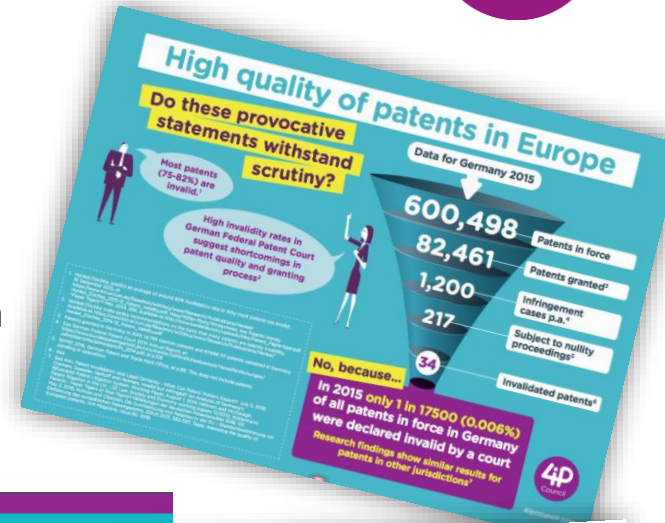
Negotiating Licenses for Essential Patents in Europe: Guidance by National Courts after *Huawei v ZTE*



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December 2015 ISBN: 978-3-945185-03-2

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How the Seminal Microsoft Ruling Could Impact the Value of Standard Essential Patents and the Future of Telecom Standards

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CHALMERS
Borealis Institute
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Chalmers University of Technology
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October 2016

Lessons from Huawei v. ZTE

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Rt Hon Professor Sir Robin Jacob
Alexander Milner

December 2015 ISBN: 978-3-945185-06-3

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A Comparison of FRAND Royalty Methodologies in U.S. Courts

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Understanding case law post Huawei v ZTE

Two interactive 4iP Council tools



Case Law post CJEU ruling *Huawei v ZTE*

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of the licensing terms.

Sisvel v Haier

30 March 2017 - Case No. I-15 U 66/15

A. Facts

The claimant is the owner of European patent EP B1, allegedly covering data transmission technology under the GPRS standard. The defendants produce and market devices using the GPRS standard. On 10 April 2013, the claimant made a commitment towards ETSI by declaring to grant a license on FRAND terms regarding, inter alia, patent EP B1. In various letters and meetings between 2012 and 2015, the claimant informed the parent companies of the defendants about its patent portfolio and made an offer, but no licensing agreement was entered into. These interactions took place before the CJEU handed down its *Huawei v. ZTE* ruling in July 2015. [On 3 November 2015, the District Court granted an injunction order.](#) [\[2\]](#) The District Court also held that the defendants were liable for compensation in principle and ordered them to render full and detailed account of its sales. Further, the District Court ordered a recall and removal of all infringing products from the relevant distribution channels.

The defendants lodged an appeal with the Higher Regional Court of Düsseldorf. They argued, inter alia, that the District Court had not taken into account the procedural requirements set out by the CJEU in the decision *Huawei v. ZTE* [\[3\]](#) and that the claimant had not made a license offer on FRAND conditions. [\[4\]](#) The Higher Regional Court of Düsseldorf partially granted the appeal. It held that the defendants were under an obligation to render accounts and that they owed compensation in principle. [\[5\]](#) However, it held that the defendants were under no obligation to recall and remove the products from the relevant distribution channels because the claimant was in breach of its obligations under EU competition law ("kartellrechtlicher Zwangslizenzinwand"). [\[6\]](#) The Higher Regional Court did not have to decide about the injunction order because the parties had agreed to settle the matter in this regard (the patent had expired in September 2016). [\[7\]](#)

B. Court's reasoning

1. Market Power

The Higher Regional Court held that the claimant was a dominant undertaking within the meaning of Art 102 TFEU. [\[8\]](#) In the eyes of the court, proprietorship of an SEP does not automatically constitute a dominant market position because not all SEPs necessarily influence competition in the downstream product market. [\[9\]](#)

Tool 1

Searchable, free to use library of national case summaries post *Huawei v ZTE*. Drafted in english by third party researchers.

Understanding case law post Huawei v ZTE

Two interactive 4iP Council tools



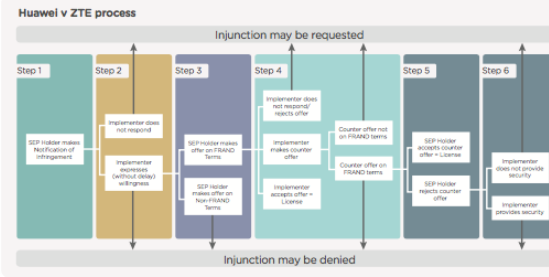
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Negotiating licenses for essential patents in Europe: Guidance from national courts

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 the Court's decision in 2016, national courts have been steadily exploring the scope of these obligations, providing further clarity on what is or is not to be considered appropriate behaviour. Below is a summary of these steps drawn from 4iP Council's post-Huawei v ZTE case search tool.

This information is not intended as legal advice and, in the event of dispute, independent advice should be sought. In addition, the precedential nature of these decisions depends on the jurisdiction and instance in which they were delivered.



As of March 2018. See www.4ipcouncil.com for regular updates

Step	Term	Country	Interpretation	Case reference
Step 1	Notification of infringement	Germany	SEP holder's notification of infringement does not have to contain either the original or a revised FRAND declaration, nor must that a FRAND declaration has been made during the development of the standard, provided that SEP holder takes no account of it in a standard-essential FRAND licensing agreement.	Proctor v. Intel, LG Mannheim, 8 January 2016. Case No. 13 186/16
		Germany	SEP holder's notification of infringement has to (1) specify the infringed patent including its number; (2) state that the patent has been declared standard-essential; (3) name the relevant standard; (4) state that the implementer uses another technology or an own or third-party patent technology that qualifies as an alternative to the patent technology; (5) state that the implementer is not aware of the specific circumstances of the case, particularly the technical knowledge of the implementer on the availability of essential patents in the relevant standard; (6) provide the information that does not have to be determined as facts together with a statement of the patent holder's position. As a rule, there is no claim for an offer.	NTT Docomo v. HTC, LG Mannheim, 28 January 2016. Case No. 13 186/16 Proctor v. Intel, LG Mannheim, 28 January 2016. Case No. 13 186/16
		Germany	SEP holder's notification of infringement has to (1) specify the infringed patent including its number; (2) state that the patent has been declared standard-essential; (3) name the relevant standard; (4) state that the implementer uses another technology or an own or third-party patent technology that qualifies as an alternative to the patent technology; (5) state that the implementer is not aware of the specific circumstances of the case, particularly the technical knowledge of the implementer on the availability of essential patents in the relevant standard; (6) provide the information that does not have to be determined as facts together with a statement of the patent holder's position. As a rule, there is no claim for an offer.	Sartorius Leumann v. Wellpoint, LG Düsseldorf, 8 February 2016. Case No. 4 O 175/15 Sartorius Leumann v. Wellpoint, LG Düsseldorf, 28 January 2016. Case No. 4 O 175/15
		Germany	SEP holder's notification of infringement has to (1) specify the infringed patent including its number; (2) state that the patent has been declared standard-essential; (3) name the relevant standard; (4) state that the implementer uses another technology or an own or third-party patent technology that qualifies as an alternative to the patent technology; (5) state that the implementer is not aware of the specific circumstances of the case, particularly the technical knowledge of the implementer on the availability of essential patents in the relevant standard; (6) provide the information that does not have to be determined as facts together with a statement of the patent holder's position. As a rule, there is no claim for an offer.	Sartorius Leumann v. Wellpoint, LG Düsseldorf, 28 January 2016. Case No. 4 O 175/15
		France	SEP holder's notification of infringement has to contain the following information: (1) the number, including each SEP and its filing date; (2) the parts of the standard in which the respective patented technology is included; (3) the nature of the notice including whether it is a notification of the non-availability of a technology or an offer as well as (4) information to the recipient's ability to explain to correct both the non-availability of a technology and the availability of a technology.	Ardea v. Enelec, Tribunal de Commerce de Montpellier, 20 September 2016. Case No. 16 004 088 001
		Italy	A notification of infringement towards the patent proprietor of the implementer does not meet the required requirements, if the SEP holder's letter or any other document does not contain the relevant information.	Brand v. ZTE, Tribunale Civile di Torino, 30 January 2016. Case No. 33306/2015 R.G.
		Germany	Ensuring claim charts to the implementer, either according to contractual practice or also used in licensing negotiations, is an obligation only in a notification of infringement.	NTT Docomo v. HTC, LG Mannheim, 28 January 2016. Case No. 13 186/16
Germany	Ensuring customary claim charts containing the relevant patent claims and the corresponding passages of the standard to the implementer is an obligation only in a notification of infringement.	LG Mannheim, 4 March 2016. Case No. 13 186/16		
Step 2	Willingness to conclude licensing	UK	The Huawei requirement of "willingness to enter into a licence" refers to a willingness which is unconditional in the sense that a willing implementer must be in a position to take a FRAND licence on reasonable terms as set out in FRAND.	Unwired Planet v. Huawei, High Court of Justice, 5 March 2017. Case No. 16F 004 000015, 20171

Tool 2

Interactive graphic illustrating the guidance that national courts are providing on good faith conduct in relation to injunctive relief for infringements of FRAND-based SEPs.

- Huawei v ZTE process explained
- Good behaviour clarified

CJEU HUAWEI v ZTE Case C-170/13, 16 July 2015



Q: can a SEP implementer avoid an injunction merely by expressing "willingness" to negotiate a FRAND license?

EC *Samsung and Motorola* Cases

Seeking injunction against implementer who has expressed willingness is abuse of dominant position and thus a violation of competition law

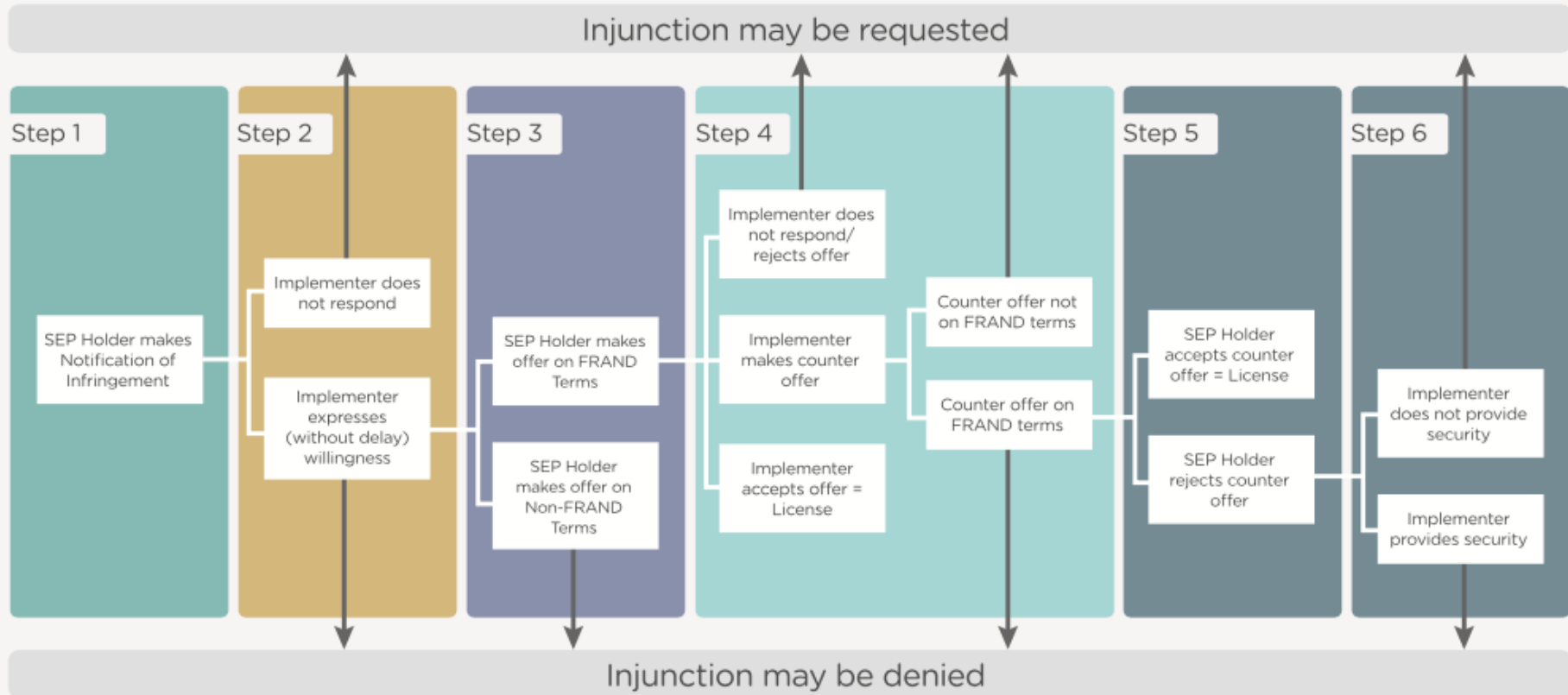


National Courts (*Orange Book Standard*)








Mere expression of willingness not sufficient to avoid injunction, binding offer on terms that SEP holder cannot refuse required

A: FRAND is a two-way street: Both parties have obligations in order to obtain/avoid an injunction





Huawei v ZTE process



Step 1

Term	Country	Interpretation	Case reference
Notification of infringement	 Germany	SEP holder's notification of infringement does not have to contain either the original written FRAND declaration, nor proof that a FRAND declaration has been made during the development of the standard, provided that SEP holder leaves no doubt that it is bound by a FRAND licensing commitment	Pioneer v Acer , LG Mannheim, 8 January 2016 -Case No. 7 O 96/14
	 Germany	SEP holder's notification of infringement has to (1) specify the infringed patent, including its number, (2) inform that the patent has been declared standard-essential, (3) name the relevant standard, (4) inform that the implementer uses patent's teachings as well as (5) indicate which technical functionality of the challenged embodiment makes use of the patent. The level of detail depends on the specific circumstances of the case, particularly the technological knowledge of the implementer (or the availability of external expertise gained by reasonable efforts). However, the information does not need to be as substantiated as facts submitted with a statement of claim in patent litigation. As a rule, reference to claim charts suffices.	NTT DoCoMo v HTC , LG Mannheim, 29 January 2016 Case No. 7 O 66/15
			Philips v Archos , LG Mannheim, 1 July 2016 Case No. 7 O 209/15
			Philips v Archos , LG Mannheim, 17 November 2016 Case No. 7 O 19/16
	 Germany	SEP holder's notification of infringement has to take place before an action is filed, at the latest, prior to the advance payment on costs by the SEP holder. The notification must indicate, at least, (1) the number of the patent, (2) the contested embodiments and (3) the alleged acts of use performed by the implementer. The court did not rule on whether additional information, such as an interpretation of the patent claims or information regarding the part of the standard the patent reads, are also required. SEP holder is not obliged to notify the patent infringement to third parties (for instance to suppliers of the implementer), unless third parties submit a request for a license on FRAND terms to the SEP holder.	Saint Lawrence v Vodafone , LG Düsseldorf, 31 March 2016 Case No. 4a O 73/14
			Saint Lawrence v Vodafone , LG Düsseldorf, 31 March 2016 Case No. 4a O 126/14
	 France	SEP holder's notification of infringement has to contain the following information: (1) an overview, including each SEP and its filing date, (2) the parts of the standard implementing the respective patented technology, (4) an indication of the devices embodying such use (4) an indication of the consequences of acts of unauthorized use as well as (5) information to the recipient about its option to contest both the communicated information and the validity of the patents at issue.	Wiko v Sisvel , Tribunal de Commerce de Marseille, 20 September 2016 Case No. RG: 2016F01637
	 Italy	A notification of infringement towards the parent company of the implementer does not meet the Huawei requirements, if the SEP holder brings an action only against the implementer.	Sisvel v ZTE , Tribunale Ordinario di Torino, 18 January 2016 Case No. 30308/20215 R.G.
Claim charts	 Germany	Presenting claim charts to the implementer, which according to commercial practice are also used in licensing negotiations, is an adequate way to give notification of infringement.	NTT DoCoMo v HTC , LG Mannheim, 29 January 2016 Case No. 7 O 66/15
	 Germany	Presenting customary claim charts (containing the relevant patent claims and the corresponding passages of the standard) to the implementer is an adequate mean to give notification of infringement	LG Mannheim, 4 March 2016 Case No. 7 O 24/14









Step 2

Term	Country	Interpretation	Case reference
Willingness (to conclude licensing agreement)	 UK	The Huawei requirement of "willingness to enter into a license" refers to a willingness which is unqualified. In other words, a willing licensee must be one willing to take a FRAND licence on whatever terms are in fact FRAND.	Unwired Planet v Huawei , High Court of Justice, 5 April 2017 Case No. HP-2014-000005, [2017] EWHC 711 (Pat)
	 Germany	The declared willingness of a device manufacturer to enter into a FRAND license could preclude the granting of an injunction requested by SEP holder against the distributor of the same devices.	Saint Lawrence v Deutsche Telekom , OLG Karlsruhe, 23 April 2015 Case No. 6 U 44/15
Without delay	 Germany	The more detailed the infringement notification is, the less time is available to the implementer to express its willingness to conclude a FRAND licensing agreement. The implementer did not comply with the Huawei requirements, since it took more than five months to react to SEP holder's notification of infringement and its reaction consisted only in asking for proof of the alleged infringement.	Saint Lawrence v Vodafone , LG Düsseldorf, 31 March 2016 Case No. 4a O 73/14
	 Germany	The implementer did not sufficiently express its willingness to conclude a FRAND licensing agreement, since it took him more than three months to request a license from the SEP holder, after it had become aware of the court action brought by the SEP holder against the distributor of its products using the SEP in question.	Saint Lawrence v Deutsche Telekom , LG Mannheim, 27 November 2015 Case No. 2 O 106/14

Step 3



Term	Country	Interpretation	Case reference
SEP owner's offer	Germany	SEP holder's offer made only towards the parent company of the implementer is in line with the Huawei requirements. It is not required that SEP holders submit an individual offer to each company within a group of companies.	Sisvel v Haler , LG Düsseldorf, 3 November 2015 Case No. 4a O 93/14
	Germany	SEP holder's offer must contain all essential contractual terms and specify the conditions in a way that, in order to conclude a licensing agreement, the implementer only has to accept the offer. The calculation of the license fee must be explained in a manner that enables the implementer to objectively assess its FRAND conformity. SEP holder meets the Huawei requirements, even if its offer lies slightly above the FRAND threshold. This is, however, no longer the case, if the SEP holder offers conditions to the implementer that are manifestly economically less favourable than the conditions offered to other licensees without objective justification. In this context, the court is only required to determine on the basis of a summary assessment, whether SEP holder's licensing offer evidently violates FRAND. (In variance with the decision Pioneer v Acer, LG Mannheim, 8 January 2016, Case No. 7 O 96/14)	Sisvel v Haler , LG Düsseldorf, 3 November 2015 Case No. 4a O 144/14
	Germany	SEP holder's offer must contain all essential contractual terms and specify the conditions in a way that, in order to conclude a licensing agreement, the implementer only has to accept the offer. The calculation of the license fee must be explained in a manner that enables the implementer to objectively assess its FRAND conformity. SEP holder meets the Huawei requirements, even if its offer lies slightly above the FRAND threshold. This is, however, no longer the case, if the SEP holder offers conditions to the implementer that are manifestly economically less favourable than the conditions offered to other licensees without objective justification. In this context, the court is only required to determine on the basis of a summary assessment, whether SEP holder's licensing offer evidently violates FRAND. (In variance with the decision Pioneer v Acer, LG Mannheim, 8 January 2016, Case No. 7 O 96/14)	Pioneer v Acer , LG Mannheim, 8 January 2016 Case No. 7 O 96/14
	Germany	If the implementer does not express its willingness to conclude a licensing agreement in due time, the SEP holder can submit a licensing offer on FRAND terms even in the course of ongoing litigation against the implementer.	NTT DoCoMo v HTC , LG Mannheim, 29 January 2016 Case No. 7 O 66/15
	Germany	If the implementer does not express its willingness to conclude a licensing agreement in due time, the SEP holder can submit a licensing offer on FRAND terms even in the course of ongoing litigation against the implementer.	Saint Lawrence v Vodafone , LG Düsseldorf, 31 March 2016 Case No. 4a O 73/14
	Germany	SEP holder's offer has to fully qualify as FRAND. Offers, which lie even slightly above the FRAND threshold, are not in line with the Huawei requirements. The court competent for the injunction proceedings has to finally assess the FRAND compatibility of SEP holder's offer. A summary assessment of whether SEP holder's offer is evidently non-FRAND does not suffice.	Saint Lawrence v Vodafone , LG Düsseldorf, 31 March 2016 Case No. 4a O 126/14
	Germany	SEP holder's offer has to fully qualify as FRAND. Offers, which lie even slightly above the FRAND threshold, are not in line with the Huawei requirements. The court competent for the injunction proceedings has to finally assess the FRAND compatibility of SEP holder's offer. A summary assessment of whether SEP holder's offer is evidently non-FRAND does not suffice.	Pioneer v Acer , OLG Karlsruhe, 31 May 2016 Case No. 6 U 55/16
	Germany	SEP holder's offer must contain all essential contractual terms and specify the conditions in a way that, in order to conclude a licensing agreement, the implementer only has to accept the offer. The calculation of the license fee must be explained in a manner that enables the implementer to objectively assess its FRAND conformity. In the case of quota license agreements, it is not sufficient to indicate the royalties per unit without substantiating their FRAND character. The royalty amount must be made sufficiently transparent, for instance by reference to an existing standard licensing program or by indicating other reference values allowing to deduce the royalty demanded, such as a pool license fee covering patents also relevant for the standard in question. The court repeated that in this context, the court competent for the injunction proceedings is only required to determine on basis of a summary assessment, whether SEP holder's licensing offer evidently violates FRAND (and not to fully assess FRAND conformity as requested in OLG Karlsruhe, 31 May 2016, Case No. 6 U 55/16).	Pioneer v Acer , OLG Karlsruhe, 31 May 2016 Case No. 6 U 55/16
Germany	SEP holder's offer must contain all essential contractual terms and specify the conditions in a way that, in order to conclude a licensing agreement, the implementer only has to accept the offer. The calculation of the license fee must be explained in a manner that enables the implementer to objectively assess its FRAND conformity. In the case of quota license agreements, it is not sufficient to indicate the royalties per unit without substantiating their FRAND character. The royalty amount must be made sufficiently transparent, for instance by reference to an existing standard licensing program or by indicating other reference values allowing to deduce the royalty demanded, such as a pool license fee covering patents also relevant for the standard in question. The court repeated that in this context, the court competent for the injunction proceedings is only required to determine on basis of a summary assessment, whether SEP holder's licensing offer evidently violates FRAND (and not to fully assess FRAND conformity as requested in OLG Karlsruhe, 31 May 2016, Case No. 6 U 55/16).	Philips v Archos , LG Mannheim, 1 July 2016 Case No. 7 O 209/15	
Germany	SEP holder's offer must contain all essential contractual terms and specify the conditions in a way that, in order to conclude a licensing agreement, the implementer only has to accept the offer. The calculation of the license fee must be explained in a manner that enables the implementer to objectively assess its FRAND conformity. In the case of quota license agreements, it is not sufficient to indicate the royalties per unit without substantiating their FRAND character. The royalty amount must be made sufficiently transparent, for instance by reference to an existing standard licensing program or by indicating other reference values allowing to deduce the royalty demanded, such as a pool license fee covering patents also relevant for the standard in question. The court repeated that in this context, the court competent for the injunction proceedings is only required to determine on basis of a summary assessment, whether SEP holder's licensing offer evidently violates FRAND (and not to fully assess FRAND conformity as requested in OLG Karlsruhe, 31 May 2016, Case No. 6 U 55/16).	Philips v Archos , LG Mannheim, 17 November 2016 Case No. 7 O 19/16	
Italy	SEP holder's offer for a licensing agreement towards the parent company of the implementer does not need to meet the Huawei requirements, if SEP holder brings an action only against the implementer.	Sisvel v ZTE , Tribunale Ordinario di Torino, 18 January 2016 Case No. 30308/20215 R.G.	





Recognised commercial practices	 Germany	SEP holder's offer for a worldwide portfolio license addressed to the parent company of a group of companies complies with the Huawei requirements, since it corresponds to the respective recognised commercial practice in the field of standards applicable worldwide.	Pioneer v Acer , LG Mannheim, 8 January 2016 Case No. 7 O 96/14
	 Germany	Recognised commercial practice in the relevant sector has to be considered, when determining whether the (geographical) scope of the licensing agreement offered by the SEP holder complies with FRAND.	Saint Lawrence v Vodafone , LG Düsseldorf, 31 March 2016 Case No. 4a O 73/14 Saint Lawrence v Vodafone , LG Düsseldorf, 31 March 2016 Case No. 4a O 126/14
Portfolio license	 Germany	SEP holder's offer for a (worldwide) portfolio license is in line with the Huawei requirements.	Saint Lawrence v Vodafone , LG Düsseldorf, 31 March 2016 Case No. 4a O 73/14 Saint Lawrence v Vodafone , LG Düsseldorf, 31 March 2016 Case No. 4a O 126/14
	 UK	SEP holder's offer for a (worldwide) portfolio license is not contrary to competition law.	Unwired Planet v Huawei , High Court of Justice, 5 April 2017 Case No. HP-2014-000005, [2017] EWHC 711 (Pat)
Worldwide portfolio license	 Germany	SEP holder's offer for a worldwide portfolio license addressed to the parent company of a group of companies complies with the Huawei requirements, since it corresponds to the respective recognised commercial practice in the field of standards applicable worldwide.	Pioneer v Acer , LG Mannheim, 8 January 2016 Case No. 7 O 96/14
	 Germany	SEP holder's offer for a (worldwide) portfolio license is in line with the Huawei requirements, unless the circumstances of the specific case (for instance, if the implementer limits its market activity to one geographical market) require a modification.	Saint Lawrence v Vodafone , LG Düsseldorf, 31 March 2016 Case No. 4a O 73/14 Saint Lawrence v Vodafone , LG Düsseldorf, 31 March 2016 Case No. 4a O 126/14
	 UK	SEP holder's offer for a worldwide portfolio license is not contrary to competition law. As willing and reasonable parties would agree on a worldwide portfolio licence, the insistence by the implementer on a license which was limited to a single market (UK) is not FRAND compliant.	Unwired Planet v Huawei , High Court of Justice, 5 April 2017 Case No. HP-2014-000005, [2017] EWHC 711 (Pat)
FRAND range	 UK	In each individual case, there is only a single FRAND compliant set of terms (including royalty rates); the so-called "true FRAND" terms. However, the fact that an opening offered rate is higher than the "true FRAND" rate does not mean of itself that a SEP holder has failed to take a FRAND approach.	Unwired Planet v Huawei , High Court of Justice, 5 April 2017 Case No. HP-2014-000005, EWHC 711 (Pat)

Step 4

Term	Country	Interpretation	Case reference
Obligation to respond	 Germany	Even if SEP holder's licensing offer is not FRAND, the implementer still has to react. (In variance with the decision <i>Sisvel v Haier</i> , OLG Düsseldorf, 13 January 2016, Case No. 15 U 65/15)	Sisvel v Haier , LG Düsseldorf, 3 November 2015 Case No. 4a O 93/14
			Sisvel v Haier , LG Düsseldorf, 3 November 2015 Case No. 4a O 144/14
	 Germany	The implementer has to submit a FRAND counter-offer, irrespective of whether the preceding licensing offer made by the SEP holder is FRAND. Implementer's obligation is triggered, when SEP holder's offer formally contains all information (in particular regarding the royalty calculation) required for the implementer to make a FRAND counter-offer.	Saint Lawrence v Deutsche Telekom , LG Mannheim, 27 November 2015 Case No. 2 O 106/14
	 Germany	The implementer is not required to respond to a SEP holder's license offer, if the terms of such an offer are not FRAND.	Sisvel v Haier , OLG Düsseldorf, 13 January 2016 Case No. 15 U 65/15
Without delay	 Germany	The implementer is required to respond to SEP holder's license offer, even if, in his view, this offer is not FRAND. This is not the case, when SEP holder's offer is evidently not FRAND on basis of a summary assessment. (Contrary to the decision <i>Sisvel v Haier</i> , OLG Düsseldorf, 13 January 2016, Case No. 15 U 65/15).	NTT DoCoMo v HTC , LG Mannheim, 29 January 2016 Case No. 7 O 66/15
			Phillips v Archos , LG Mannheim, 1 July 2016 Case No. 7 O 209/15
			Phillips v Archos , LG Mannheim, 17 November 2016 Case No. 7 O 19/16
			LG Mannheim, 4 March 2016 Case No. 7 O 24/14
	 Germany	Submitting a counter-offer only 1,5 years after receiving SEP holder's licensing offer and half a year after the SEP holder brought an action against the implementer is not in line with the Huawei requirements.	NTT DoCoMo v HTC , LG Mannheim, 29 January 2016 Case No. 7 O 66/15

Without delay	 Germany	Submitting a counter-offer only 1,5 years after receiving SEP holder's licensing offer and half a year after the SEP holder brought an action against the implementer is not in line with the Huawei requirements.	NTT DoCoMo v HTC , LG Mannheim, 29 January 2016 Case No. 7 O 66/15
Recognised commercial practices	 Germany	The implementer's obligation to respond to SEP holder's offer is a manifestation of its due diligence obligations arising from the principle of good faith as well as recognised commercial practice in the business field in question.	NTT DoCoMo v HTC , LG Mannheim, 29 January 2016 Case No. 7 O 66/15
	 Germany	A counter-offer needs to be made in due course, which means as soon as possible, taking into account the recognised commercial practice in the field and the principle of good faith.	Phillips v Archos , LG Mannheim, 17 November 2016 Case No. 7 O 19/16 LG Mannheim, 4 March 2016 Case No. 7 O 24/14
Implementer's counter-offer	 Germany	Implementer's counter-offer is not "specific" in terms of the Huawei requirements, when the royalty amount is not specified in the counter-offer itself, but shall be determined by an independent third party, instead.	Saint Lawrence v Deutsche Telekom , LG Mannheim, 27 November 2015 Case No. 2 O 106/14
	 Germany	Implementer's counter-offer limited to a license for one single market (Germany) is non-FRAND, particularly if implementer (or the group of companies it belongs to) distributes products using the SEP in question also in other markets.	Pioneer v Acer , LG Mannheim, 8 January 2016 Case No. 7 O 96/14
	 Germany	Implementer's counter-offer does not meet the Huawei requirements, when the royalty amount shall be determined by an independent third party and the counter-offer is limited to a license for one single market (Germany), although the implementer (potentially) infringes the SEP in question in several countries in which the SEP is protected.	Saint Lawrence v Vodafone , LG Düsseldorf, 31 March 2016 Case No. 4a O 73/14 Saint Lawrence v Vodafone , LG Düsseldorf, 31 March 2016 Case No. 4a O 126/14
FRAND-range	 UK	In each individual case, there is only a single FRAND compliant set of terms (including royalty rates), the so-called "true FRAND" terms. However, the fact that an offered rate is lower than the "true FRAND" rate does not mean of itself that an implementer has failed to take a FRAND approach.	Unwired Planet v Huawei , High Court of Justice, 5 April 2017 Case No. HP-2014-000005. EWHC 711 (Pat)

Step 5&6

Term	Country	Interpretation	Case reference
Provision of security	 Germany	The implementer is obliged to both render accounts regarding acts of use and to provide security for potential royalties, both based on its counter-offer. The implementer has to fulfil this obligation after the rejection of its first counter-offer, regardless of whether subsequent offers and counter-offers were made. Fulfilling this obligation more than a month after implementer's first counter-offer was rejected, does not meet the Huawei requirements.	Sisvel v Haier , LG Düsseldorf, 3 November 2015 Case No. 4a O 93/14
	 Germany	The fact that the implementer has - allegedly - terminated its use of the SEP, does not remove its obligation to provide security for past periods of use.	Pioneer v Acer , LG Mannheim, 8 January 2016 Case No. 7 O 96/14
	 Germany	Security has to be provided after the rejection of the implementer's first counter-offer by the SEP holder, regardless of whether subsequent offers and counter-offers were made. Payment of security several months after implementer's first counter-offer was rejected does not meet the Huawei requirements. This is also true, if implementer provides security only with respect to acts of use in one market (Germany). The Huawei requirements are also not met, when the implementer only proposes to have the security - if requested by the SEP holder - determined by an arbitration tribunal or by a different (English) court.	Saint Lawrence v Vodafone , LG Düsseldorf, 31 March 2016 Case No. 4a O 73/14 Saint Lawrence v Vodafone , LG Düsseldorf, 31 March 2016 Case No. 4a O 126/14
Rendering of accounts	 Germany	The fact that the implementer has - allegedly - terminated its use of the SEP, does not remove its obligation to render accounts for past periods of use.	Pioneer v Acer , LG Mannheim, 8 January 2016 Case No. 7 O 96/14