



U.S. District Court Finds Ericsson's 4G Licensing Rates Comply With FRAND

On February 15, 2019, following a five-day trial in the U.S. District Court for the Eastern District of Texas, Tyler Division, a jury found that Ericsson's 4G licensing rates comply with its obligation to offer rates that are fair, reasonable, and non-discriminatory (FRAND). The challenge was raised by HTC, who asserted that the royalty rates in Ericsson's licensing offers for Ericsson's worldwide 4G (LTE) essential patent portfolio were too high. Ericsson's offers were 1% per HTC 4G phone with a \$1 floor and a \$4 cap, or \$2.50 per HTC 4G phone.

HTC Corporation and HTC America, Inc. originally filed the suit on April 2017. HTC's primary ground for its assertion of breach of FRAND was that Ericsson's 4G royalty rates should be calculated based on a percentage of the profit margin of the smallest saleable patent-practicing unit (SSPPU) in their cell phones, which HTC asserted was the baseband processor. HTC contended that under its SSPPU licensing model, Ericsson's royalty share should be less than 10 cents per unit to comply with FRAND.

In response to HTC, Ericsson presented evidence that HTC's model was unreliable because the cost of producing a baseband processor is unrelated to the value of Ericsson's essential 4G inventions, measured at the time of standardization. Additionally, Ericsson presented evidence that its patents are not exclusively practiced on the baseband processor. Instead, numerous other components in the phone also are required to practice the claims of Ericsson's patents. Ericsson also presented evidence that the licensing of essential patents in the cellular industry is traditionally at the end user device.

The jury sided with Ericsson's approach to FRAND royalties, which is to use comparable licenses as the best evidence of how the market values Ericsson's patents. Ericsson introduced over a dozen licenses with leading cellular phone manufacturers as evidence of the royalty rate the market had set. Those licenses were consistent with Ericsson's offers to HTC.

Ericsson appreciates the jury's hard work, and welcomes the jury's finding, that Ericsson did not breach its contractual obligation to offer HTC a license, on FRAND terms, to its cellular standard-essential patents. This decision confirms the value of our 4G patent portfolio and validates our ability to license it on FRAND terms and conditions.