
Japan IP High Court to Decide Samsung vs. Apple Regarding Licensing Under FRAND Terms

On January 23, 2014, the Japan IP High Court announced that they had selected *Samsung Electronics Co., Ltd. vs. Apple Japan LLC* concerning three consolidated appeal cases as the 8th Grand Panel case*. One of the issues is regarding a standard-essential patent owned by Samsung and FRAND (Fair, Reasonable and Non-discriminatory) licensing.

The case concerns an appeal case, *2013 (Ne) No. 10043*, seeking a declaratory judgement of absence of obligation, and others. The Appellant-Defendant Samsung is a member of the 3rd Generation Partnership Project (3GPP) defining the standards of a mobile telecommunications system, and has a standard essential patent (JP 4642898). Samsung had declared that its patent is allowed to be licensed in accordance with FRAND terms, however, the negotiation between Samsung and Apple failed in light of the licensing rate demanded by Samsung. Apple filed a lawsuit against Samsung to seek a declaratory judgement for absence of obligation before the Tokyo District Court.

The Tokyo District Court held that Samsung's patent is valid and had been infringed, however, Samsung's enforcement of its patent constitutes an abuse of rights in light of the way it negotiated the license agreement with Apple. Specifically, the court pointed out that Samsung did not make sufficient effort to achieve a positive outcome for the negotiation because Samsung did not demonstrate the reasonableness of its requested royalty rate on the basis of FRAND terms.

The IP High Court announced that it is seeking information or comments from the public (similar to *amicus curiae*) regarding whether enforcing a standard-essential patent should be restricted once a FRAND declaration has been made. The IP High Court's decision is expected to set the standard as to whether there is any restriction on enforcing a standard-essential patent after a FRAND declaration.

* http://www.ip.courts.go.jp/eng/hanrei/g_panel/index.html

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