



YIGAL ARNON & Co.
LAW FIRM

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Supply Chain Licensing for Automotive/IoT Startups

Israel boasts a strong start-up ecosystem, including in the field of vehicular communications, smart mobility and sensors. Such technologies often require the use of patented wireless communication standards, such as Wi-Fi or 4G/5G cellular standards. Recent legal developments in the United States and the European Union threaten to impose the costs of licensing these standards on such start-up companies, rather than on larger Tier 1 or OEM manufacturers farther down the supply chain.

Background and Analysis

Wireless communication standards such as Wi-Fi and 5G are patented technologies. As these communication technologies are standardized, startups incorporating these technologies in their products cannot avoid patent infringement.

Nonetheless, startups should be confident that wireless communication technologies are available for incorporation in their products. Patent holders often commit to license this technology under "fair, reasonable and non-discriminatory" (FRAND) terms specifically in order to encourage third parties to adopt their patented technology.

However, though FRAND licenses may be available, payment of a FRAND royalty is a non-negligible expense, especially for a start-up company. In addition, startups rarely have the leverage or market information to negotiate better FRAND terms.

Startups have in the past found relief in the customary commercial practices of the wireless communication industry, which typically saw the FRAND license fee as being paid downstream by the original equipment manufacturer. Startups negotiating their place in the supply chain have been able to argue that they should bear neither the costs of the FRAND license nor the potential liability from the infringement of wireless communication patents.

Recent cases in the United States and the European Union challenge these customary practices. For example, a federal district court in California has held that the contractual FRAND commitment required Qualcomm to license its patents to any interested party in the supply chain. The Tier 1 automotive supplier Continental has sued patent holders to obtain a FRAND license, even though Continental does not occupy the ultimate spot in the supply chain. In other words, automotive and IoT startups can no longer be confident that the burden of negotiating and paying FRAND license fees will fall on larger and more sophisticated parties downstream in the supply chain. These developments will require startups to change their negotiating strategies when contracting in the supply chain.

Contact

Should you have any specific questions or concerns, please do not hesitate to be in touch with us.

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This newsletter is intended as general legal information and does not constitute legal advice.



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