

FRAND Defense: ALJ Essex Provides an Evidence-Based Framework

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Administrative Law Judge Essex has made another important contribution to the ongoing conversation regarding the enforcement of **standard essential patents (SEPs)** at the International Trade Commission. Building on the analysis he presented in his Initial Determination in Commission investigation No. 337-TA-868, In the Matter of Certain Wireless Devices with 3G and/or 4G Capabilities and Components Thereof, Judge Essex recently issued the public version of his Initial Determination on Remand in investigation No. 337-TA-613, In the Matter of Certain 3G Mobile Handsets and Components Thereof, in which he provides a grounded, evidence-based framework for adjudicating the FRAND defense.

While Judge Essex's decision is subject to Commission review, it is nevertheless noteworthy because it addresses several important questions related to the enforcement of SEPs:

1. What makes a patent standard essential?
2. Who bears the burden of proving a patent is standard essential?
3. How are obligations to license patents on FRAND (fair, reasonable, and non-discriminatory) terms triggered?
4. How is a FRAND rate determined?
5. What obligations do the implementers of standards owe to patent owners?
6. Are the owners of standard essential patents entitled to exclusionary relief for infringement of their patents?

We examine each of these questions and discuss Judge Essex's framework for adjudicating the FRAND defense and the implications for patent owners and accused infringers in [this alert published last week](#).

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